

## CHAPTER 2 Referral and Investigation

### 2.1 REFERRALS OF CHILD MALTREATMENT

#### *A. Mandatory Reporting*

The Idaho Child Protective Act (CPA) provides for mandatory reporting of suspected child abuse and neglect.<sup>1</sup> The Act specifically mandates reporting by physicians, residents on a hospital staff, interns, nurses, coroners, school teachers, day care personnel, and social workers. In addition, it requires every person who has reason to believe that a child is being abused, neglected, or abandoned to report the alleged abused. Reports of suspected child abuse and neglect must be made within twenty-four (24) hours to either law enforcement or the Department of Health and Welfare (IDHW).<sup>2</sup>

Any person making a report of child maltreatment in good faith and without malice is immune from civil or criminal liability in making the report.<sup>3</sup> However, any person who knowingly makes a false report or allegation of child abuse, abandonment, or neglect is liable to the party against whom the report was made for the amount of actual damages or up to \$2,500, plus attorney's fees and costs of the suit.<sup>4</sup>

The duty to report does not apply to a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which he belongs if:

1. The church qualifies as tax-exempt under 26 U.S.C. section 501(c)(3);
2. The confession or confidential communication was made directly to the duly ordained minister of religion; and
3. The confession or confidential communication was made in the manner and context which places the duly ordained minister of religion specifically and strictly under a level

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*Note re Terminology:* In this manual, "prosecutor" refers to both a county prosecutor and/or a deputy attorney general; "GAL" refers to both a guardian *ad litem* and/or a CASA; "Indian child" refers to all native children as defined by ICWA; and "IDHW" and "the Department" are used interchangeably to refer to the Idaho Department of Health and Welfare.

<sup>1</sup> IDAHO CODE ANN. § 16-1605(1) (2011).

<sup>2</sup> *Id.* Where a physician, resident, intern, nurse, day care worker, or social worker who obtains information regarding abuse or neglect does so as a member of the staff of a hospital or similar institution, the report can be made to a designated institutional delegate who then makes the necessary reports to law enforcement or IDHW.

<sup>3</sup> § 16-1606.

<sup>4</sup> § 16-1607.

of confidentiality that is considered inviolate by canon law or church doctrine. A confession or confidential communication made under any other circumstances does not fall under this exemption.<sup>5</sup>

### ***B. Other Sources of Child Protective Reports***

Regardless of how the initial report is made, IDHW is designated by Idaho law as the official child protection agency of state government and has the duty to intervene in reported situations of child abuse and neglect.<sup>6</sup> The division of IDHW that has primary responsibility in the area of child protection is Family and Community Services (FACS). IDHW is staffed 24 hours a day 7 days a week to respond to reports of child abuse, neglect, and abandonment.

Reports and requests for investigations come from a number of sources, including:

- *Courts.* Judges may order an IDHW investigation as a part of an Idaho Juvenile Rule 16 expansion or in other court proceedings (such as child custody hearings) when the court suspects that abuse or neglect has occurred or is occurring.
- *Safe Havens.* A report is generated by a safe haven which accepts an abandoned infant.<sup>7</sup>
- *Law Enforcement Officers.* In the course of their regular duties, law enforcement officers often encounter children who they have reason to believe have been abused, neglected, or abandoned.

### ***C. Response to Referrals***

When IDHW receives a referral of child maltreatment that appears to fall within the CPA's definitions of child abuse, neglect, or abandonment<sup>8</sup>, the referral will be assigned a priority. Priority is determined by the Priority Response Guidelines, which classify, report, and organize responses based on the level of threat to the child's safety and well-being.<sup>9</sup> The Priority Response Guidelines require social workers to respond according to the severity described in the referral. Before responding, IDHW social workers search agency records to determine whether other relevant reports regarding the family have been received and the status of those reports. A pattern of referrals indicates a cumulative risk; therefore, a referral of child abuse or neglect should be assigned for safety assessment when the history of referrals indicates potential risk to the child even when that referral would not, in and of itself, meet the standard of assignment.

If the information contained in the referral does not fall within the definitions of the Child Protective Act, the report will be entered into IDHW's data system for information. Every referral of child maltreatment is reviewed by a supervisor to ensure it is correctly screened and prioritized.

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<sup>5</sup> § 16-1605(3).

<sup>6</sup> IDAHO ADMIN. CODE r. 16.06.01.550 (2010). *See also* IDAHO CODE ANN. §16-1629 (2011) ("The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter.")

<sup>7</sup> §39-8203 (Idaho Safe Haven Act).

<sup>8</sup> §16-1602 (1), (2), (25).

<sup>9</sup> r. 16.06.01.554 (2010).

Under IDHW's *Priority I Guidelines*:

- If child is in immediate danger involving a life threatening and/or emergency situation, IDHW shall respond immediately;
- Law enforcement must be notified and requested to respond or to accompany the social worker;
- IDHW coordinates the assessment with law enforcement; and
- The child must be seen by a social worker immediately and by medical personnel when deemed appropriate by law enforcement and/or the social worker.<sup>10</sup>

Examples of threats to a child or children that fall within *Priority I Guidelines* include:

- Death of a child
- Life-threatening physical abuse or physical or medical neglect
- Physical abuse of a child who is under 7 years of age
- Sexual abuse if the alleged offender has immediate access to the child
- Infant and/or mother testing positive for drugs at birth
- Preservation of information if there is a risk that the family is leaving the area

The IDHW *Priority II Guidelines*:

- A child is not in immediate danger but allegations of abuse or serious physical or medical neglect are clearly defined in the referral;
- The child must be seen by the social worker within 48 hours of IDHW's receipt of the referral; and
- Law enforcement must be notified within 24 hours of receipt of all Priority II referrals which involve issues of abuse, neglect, or abandonment.

Idaho law requires this notification so that the assessment must be coordinated with law enforcement's investigation.<sup>11</sup>

Examples of threats within the *Priority II Guidelines* include:

- Non-life threatening physical abuse and/or physical or medical neglect
- Sexual abuse when the alleged offender does not have immediate access to the child

Under *Priority III Guidelines*:

- A child is in a vulnerable situation or without parental care necessary for safety, health, and well-being.
- The social worker must respond within three days, and the child must be seen by social worker within 120 hours (5 days) of IDHW's receipt of the referral.<sup>12</sup>

Examples of threats within the *Priority III Guidelines* include:

- Inadequate supervision
- Home health and safety hazards
- Moderate medical neglect
- Educational neglect

<sup>10</sup> r. 16.06.01.554.01 (2010).

<sup>11</sup> r. 16.06.01.554.02.

<sup>12</sup> r. 16.06.01.554.03.

### ***D. Multi-Disciplinary Teams***

The CPA provides for the formation and involvement of Multi-Disciplinary Teams (MDTs) in each county to assist in coordinating work in child maltreatment cases.<sup>13</sup> This provision, in part, recognizes that child abuse and neglect are community problems requiring a cooperative response by law enforcement and IDHW’s child protection social workers. Although their perspectives and roles are different, both agencies share the same basic goal: the protection of endangered children. Depending on the situation, either agency may benefit from the assistance of the other.

Section §16-1617(1) of Idaho Code requires the prosecuting attorney in each county to be responsible for the development of the county MDT. The statute further provides that, at a minimum, an MDT should consist of a representative from the prosecuting attorney’s office, law enforcement personnel, and IDHW child protection risk assessment staff. Members may also include a representative from the guardian *ad litem* program, medical personnel, school officials, and any other persons deemed beneficial because of their roles in cases concerning child abuse and neglect.

MDTs are charged by statute with the responsibility of developing a written protocol for investigating child abuse cases and for interviewing alleged victims of abuse or neglect. Teams are trained in risk assessment, dynamics of child abuse, interviewing, and investigation. They also are required to assess and review a representative selection of cases referred to either the Department or to law enforcement for investigation.<sup>14</sup>

Although social workers, law enforcement, and prosecutors bring different perspectives in investigating child abuse and neglect, working together can ensure a cooperative and coordinated action. Each must recognize the interrelationship among the legal, health, social service, and educational responses that occur in cases of child abuse and neglect.

The roles of core MDT members are determined by each county’s protocol. Consistent with the statutory mandate, best practice recommendations<sup>15</sup> concerning the roles of key MDT members include:<sup>16</sup>

1. Prosecutor:
  - a. Provide consultation during child abuse investigations
  - b. Initiate civil and criminal legal proceedings

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<sup>13</sup> §16-1617.

<sup>14</sup> §16-1617(2)–(5).

<sup>15</sup> Throughout this Manual “best practice recommendations” are included. These recommendations are not required by Idaho law but represent instead generally accepted guidelines for judge’s lawyers and social workers. These recommendations are often based on national, research based recommendations, or on practices that appear to be employed in a majority of jurisdictions.

<sup>16</sup> The benefits and methods of approaching multidisciplinary teams in child welfare cases are described in A. P. Giardino & S. Ludwig, *Interdisciplinary Approaches to Child Maltreatment: Accessing Community Resources*, in *MEDICAL EVALUATION OF CHILD SEXUAL ABUSE: A PRACTICAL GUIDE* 215 (2d ed. Martin A. Finkel & Angelo P. Giardino eds., 2001).

- c. Determine what specific charges to file
  - d. Make decisions regarding plea agreements
  - e. Work closely with the victim-witness coordinator
2. Law Enforcement:
- a. Gather evidence to support criminal prosecution of crimes against children
  - b. Investigate allegations of child abuse, abandonment, or neglect
  - c. Enforce laws
  - d. Remove perpetrator from the family home in child protection cases, if needed
  - e. Take custody of a child where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury to the child
  - f. Interview alleged perpetrator
  - g. Interview child victim, if warranted
3. Social Worker:
- a. Make reasonable efforts to prevent the removal of a child when safe to do so
  - b. Conduct safety and comprehensive family assessments
  - c. Consult with the prosecutor regarding an Order of Removal
  - d. Make child placement decisions
  - e. Explore kinship placements
  - f. Link family with resources
  - g. Develop case plan with family
  - h. Interview child victims, if appropriate
  - i. Monitor family's progress and report to the court

The advantages of MDTs are substantial. Appropriate use of an MDT can increase success in civil and criminal courts, reduce contamination of evidence, and provide more complete and accurate data. In addition, MDTs allow for improved assessment, shared decision making, support, and responsibility, reduced role confusion among disciplines, decreased likelihood of conflicts among agencies, and effective management of difficult cases. Finally, MDTs help ensure increased safety in volatile situations.

MDTs are also advantageous for the child and her or his family. MDTs help provide increased safety for children through improved evaluation of cases. Also, coordination often means that the family is required to participate in fewer interviews. Finally, MDTs help to ensure more comprehensive identification of and access to services for the family.<sup>17</sup>

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## 2.2 INVESTIGATION

### A. *Risk and Safety*

When a referral of child abuse, neglect, or abandonment is received, IDHW and/or law enforcement conducts an investigation to determine whether or not a child is safe. A child's safety depends on the presence or absence of threats of danger, the child's vulnerability, and a family's protective capacities to manage or control threats of danger.

The terms *risk* and *safety* are often used interchangeably. However, within the child protection context, these terms have significantly different meanings. *Safety* refers to threats to a child that are either occurring presently or that are likely to occur in the imminent future, that are likely to result in severe consequences for the child, and that are due to a family member or an out of control family situation or condition. In contrast, *risk* refers to the likelihood that child maltreatment might or might not occur without an intervention. The timeframe for risk is open-ended, and the consequences to a child may be mild to serious.<sup>18</sup>

According to both the federal Child Abuse Prevention Treatment Act<sup>19</sup> and the Idaho CPA,<sup>20</sup> upon the first contact with the family, the social worker must explain the purpose and nature of the assessment, including the allegations or concerns that have been made regarding the child/family. The explanation should include the general nature of the referral rather than specific details that could supply information to the alleged offender and impede any potential criminal investigation. If a criminal investigation is pending, disclosure of any details should be coordinated with law enforcement.

### B. *Assessment of Child Safety*

When a social worker investigates a CPA referral, the focus of the investigation is on signs of present or emerging danger. Present danger is an observable threat that exists at the time of the investigation, requiring prompt IDHW and/or law enforcement response. Emerging danger (sometimes referred to as "impending danger") is the likelihood of serious harm that is not immediately present, but could occur in the immediate to near future. In emerging danger situations, threats are starting to surface or escalate in intensity, pervasiveness, duration and/or frequency, and/or caregiver capacities may be weakening rapidly. Emerging danger is often seen as a "red flag", and the likelihood of serious harm, while not immediate, could present itself at any time, thereby causing a child to be unsafe.

Child safety is assessed by gathering information about the family through interviews with the child, the parents or caregivers, and collateral contacts. The social worker also visits the family home to determine if the environment poses a threat of harm to the child(ren). In gathering information about the family, social workers focus on six background questions to assist in identifying safety threats:

<sup>18</sup> See generally THERESE ROE LUND & JENNIFER RENNE, CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS (2009). BB 4.2(b).

<sup>19</sup> 42 USC § 5106a(b)(2)(B)(xviii) (2011); 42 USC §§ 5116a-f (2011).

<sup>20</sup> §16-1629(7)(b) (2011).

1. What is the nature and extent of the maltreatment?
2. What circumstances accompany the maltreatment?
3. How does the child function day to day?
4. How does the parent discipline the child?
5. What are the overall parenting practices?
6. How does the parent manage his/her own life?<sup>21</sup>

### 1. Threats of Danger

In investigating child abuse and neglect, social workers and law enforcement look for threats of danger. A threat of danger is a specific family situation or behavior, emotion, motive, perception, or capacity of a family member that may impact a child's safety status.

The *ABA Child Safety Guidelines for Attorneys and Judges* define a "threat of danger" using the following criteria:

- *Specific and Observable.* The condition is clearly identifiable. It must be in the form of a behavior, emotion, attitude, perception, intent, or situation rather than a "gut feeling."
- *Immediate – A Specific Time Frame.* A belief that threats to child safety are likely to become active or a certainty about occurrence of child safety threats within the immediate to near future.
- *Out of Control.* When a condition is out of control, there is no apparent natural, existing means within the family network that can assure control.
- *Serious or Severe Consequences.* Serious harm could include serious physical injury, significant pain, and suffering.<sup>22</sup>

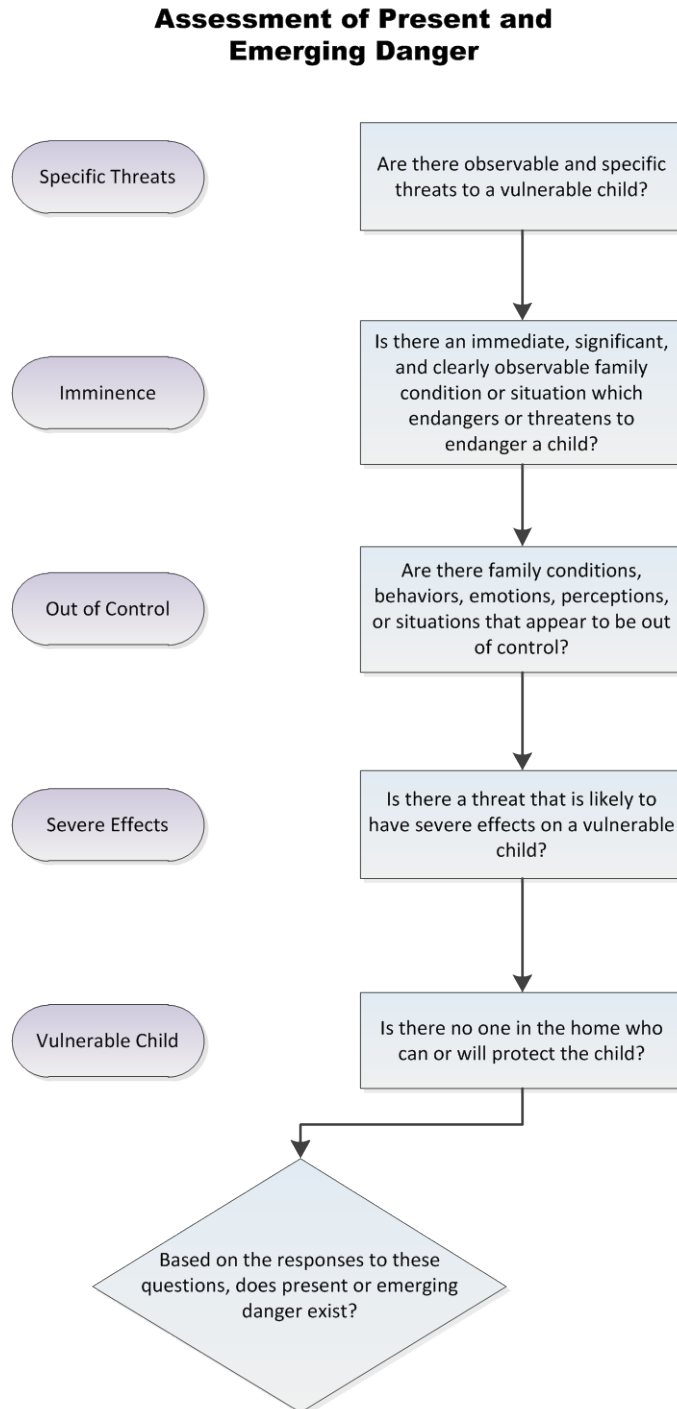
To guide and document decision making related to child safety, IDHW uses a standardized safety assessment that is to be completed no later than thirty working days after first seeing the child. It contains seventeen specific threats of danger that are used nationally to assess child safety. Some examples of threats of danger on IDHW's safety assessment include:

- A caregiver or alleged offender's behavior is violent and/or out of control.
- The child is fearful of people living in or frequenting the home.
- The caregiver or alleged offender describes or acts toward the child in predominantly negative terms or has extremely unrealistic expectations given the child's age or level of development.
- The current alleged abuse is severe and suggests there may be immediate and urgent risk to the child.
- The caregiver or alleged offender's drug or alcohol use may seriously affect his/her ability to supervise, protect, or care for the child.
- The child's whereabouts cannot be ascertained and/or there is reason to believe the family is about to flee or the family refuses access to the child.

<sup>21</sup> See LUND & RENNE, *supra* note 17, at "Benchmark A" (there are "Benchmark A-L" in the front sleeve of this publication for quick reference).

<sup>22</sup> LUND & RENNE, *supra* note 17, at 9.

Present or emerging danger is determined by the nature of threats of danger as illustrated by the accompanying Flowchart of Present and Emerging Danger Assessment.



*Figure 2.1: Flowchart of Danger Assessment  
IDHW Flowchart developed for Idaho by the National Resource Center for Child Protective Services*



## 2. *Child Vulnerability*

A child is vulnerable when he/she lacks the capacity to protect him or herself. The *ABA Child Safety Guidelines for Attorneys and Judges* states that vulnerability depends on the degree to which a child can avoid, negate, or modify the impact of threats of danger or compensate for a parent/caregiver's lack of protective capacities.<sup>23</sup> The following criteria are considered in assessing a child's vulnerability:

- The child's ability to protect his/herself, including the child's age and ability to communicate;
- The likely severity of harm, given the child's developmental level;
- Visibility of the child to others/child's access to individuals who can and will protect the child;
- The child's physical and emotional health/social functioning;
- The child's physical size and robustness;
- The child's understanding of appropriate treatment (does the child normalize the alleged abuse?);
- Prior victimization of the child; and
- The child's temperament and physical appearance.

A child's behavior must also be considered in relation to the caretaker's capacity for patience, tolerance, and coping strategies.

## 3. *Parental Protective Capacities*

Protective capacities of the parent/caregiver are family strengths or resources that reduce, control, and/or prevent threats of danger from occurring or from having a negative impact on a child. Protective capacities are strengths that are specifically relevant to child safety. They can include a parent's knowledge, understanding, and perceptions which contribute to how well a parent carries out his/her parental responsibilities.<sup>24</sup> Protective capacities also refer to observable behaviors of a parent that are protective, as well as their feelings, attitudes, and motivation to protect the child.<sup>25</sup>

### **C. *Safety Decision***

Social workers and law enforcement must make a safety decision based on an assessment of the threats of danger, the vulnerability of the child, and the protective capabilities of the parents. The following decision tree illustrates the process of the social worker and law enforcement in making this assessment.

<sup>23</sup> See LUND & RENNE, *supra* note 17, at "Benchcard C."

<sup>24</sup> LUND & RENNE, *supra* note 17, at "Benchcard D."

<sup>25</sup> LUND & RENNE, *supra* note 17, at "Benchcard D."

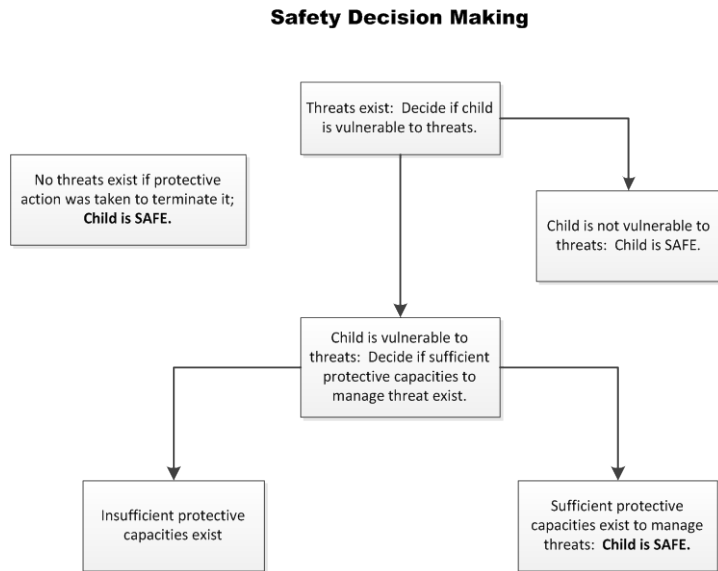


Figure 2.2: Safety Decision Making

Pursuant to IDHW guidelines, a child may be determined to be safe, conditionally safe, or unsafe.<sup>26</sup>

Figure 2.2 displays the choices which are reviewed when a child is determined to be safe, conditionally safe, or unsafe.<sup>27</sup>

A child is considered safe when an assessment of available information leads to the conclusion that there are no threats of danger or that the protective capacities of the family can manage any identified threats to a child.

A child is considered to be conditionally safe when threats of danger exist and a safety plan is being

implemented to resolve the threats of danger. For example, a child is conditionally safe in a dangerously unsanitary house when the child stays with a relative until the family cleans the house and the unsanitary conditions no longer exist.

A child is considered unsafe if he/she is in imminent danger and thus requires removal from the parent/caretaker to protect him/her from immediate and serious harm. If a child is determined to be conditionally safe or unsafe, a safety plan must be developed. A safety plan is a specific and concrete strategy for controlling threats of danger, reducing child vulnerability, and/or supplementing protective capacities. It must be implemented immediately to control those behaviors or conditions that pose a danger to the child. The safety plan should protect the child while a more complete assessment is undertaken and a case plan is established and implemented to remediate the underlying conditions of the threats of danger.<sup>28</sup>

Decisions related to child safety are not to be made alone. Therefore, IDHW has a supervisor review all cases assigned for investigation. The supervisor considers the following:

- Was the assessment completed in a timely manner?
- Does the assessment provide a thorough description of the family's situation so that it can be used to support decision making in the case?
- Were IDHW standards, policies, and rules adhered to in the assessment process?
- Was the assessment documented in IDHW's data system, using best practice documentation standards?<sup>29</sup>

<sup>26</sup> See, e.g., Idaho Department of Health & Welfare Standards Template for Ensuring Child Safety at <http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/CWStandard-ImmedSafetyComprehensive&OngoingAssessment.pdf>

<sup>27</sup> LUND & RENNE, *supra* note 17, at 19.

<sup>28</sup> LUND & RENNE, *supra* note 17, at 21–3.

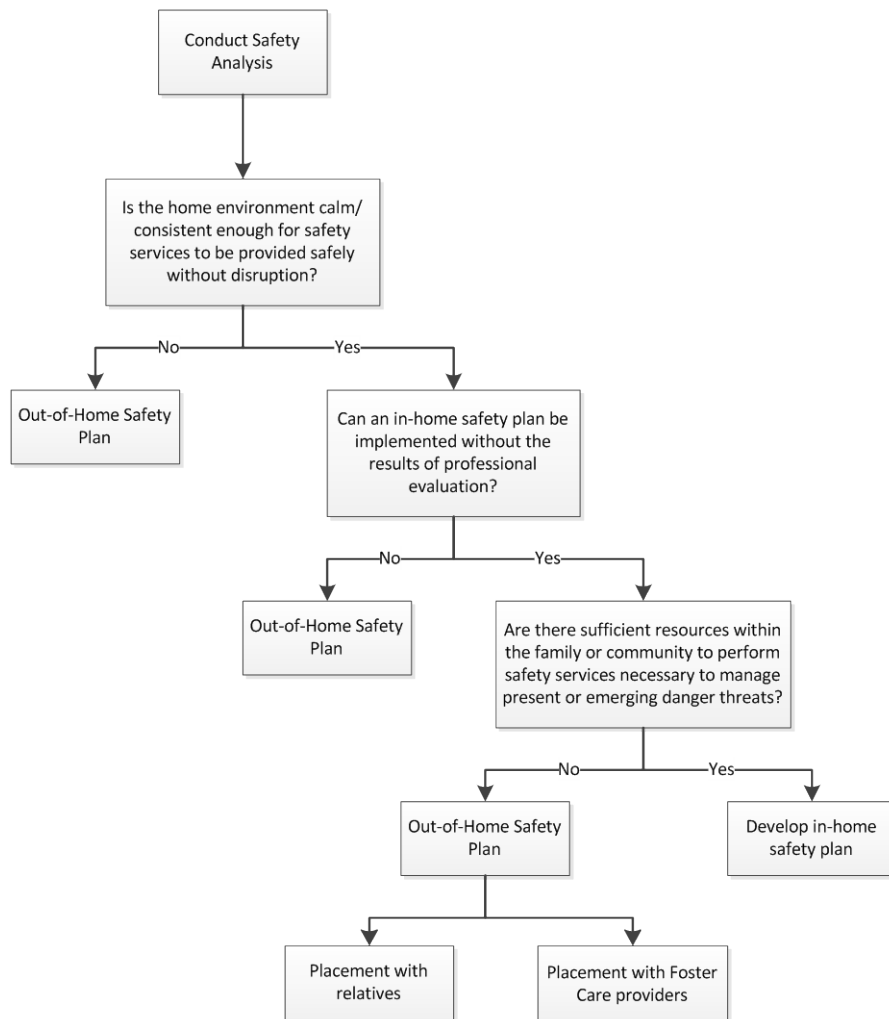
<sup>29</sup> See *supra* note 17.

**D. Efforts to Prevent Removal of the Child**

Under federal and state law, children should remain in their own home with their family whenever safely possible.<sup>30</sup> “If an in-home safety plan would be sufficient, and the agency fails to consider or implement one, then the agency has failed to provide reasonable efforts to prevent removal.”<sup>31</sup>

The decision tree in Figure 2.3 was developed by IDHW and the National Resource Center on Child Protective Services. The purpose of the decision tree is to assist Idaho law enforcement and social workers in determining when it is safe to develop an in-home safety plan and to offer in-home services.

**Safety Assessment for In-Home Services**



In developing safety plans and implementing in-home services for families, it is important to use the strengths and resources of the family. Often the family’s greatest resource is extended family, kin, and community supports. Relatives and kin know a great deal about the family situation, often have resources not available to agencies, are more likely to show up to meetings, can create family-specific solutions, and are invested in those solutions which they create. Family Group Decision Making Meetings (FGDM) can assist families in developing and implementing plans that keep children safe.

Figure 2.3: Safety Assessment for In-Home Services

<sup>30</sup> IDAHO CODE ANN. §16-1601 (2011); 42 U.S.C. § 621.

<sup>31</sup> LUND & RENNE, *supra* note 17, at 25.

Family and kin can:

- Serve as mentors;
- Care for children until parental capacities have been strengthened; and
- Assist in monitoring child safety.

In addition to involving relatives and kin, children can also be maintained safely in their own homes by:

- Law enforcement removing the alleged offender as provided in Idaho Code §16-1608(1)(b); or
- Removal of an offender through Domestic Violence Protection Orders – Idaho Code §16-1602(28) and §16-1611(5).

In situations where a family refuses to work with IDHW on a voluntary basis and the threats of danger do not meet the standard of imminent danger, IDHW can contact the local county prosecutor about a judicial order for protective supervision.<sup>32</sup>

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<sup>32</sup> IDAHO CODE ANN. §16-1619(5)(a) (2011); IDAHO JUV. R. 41(h).