

CHAPTER 2: Referral and Assessment

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.¹ 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 reporting by every person who: 1) has reason to believe that a child is being abused, neglected, or abandoned; or 2) who observes a child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect. Reports of suspected child abuse and neglect must be made within 24 hours to either law enforcement or the Department of Health and Welfare (IDHW).² Failure to report as required by the Act is a misdemeanor.³

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.⁴ 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, whichever is greater, plus attorney's fees and costs of the suit.⁵

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. § 501(c)(3); and
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 of confidentiality that is considered inviolate by canon law or church doctrine. A

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

¹ I.C. § 16-1605(1).

² *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).

³ I.C. § 16-1605(4).

⁴ I.C. § 16-1606.

⁵ I.C. § 16-1607. (If the court finds that the individual acted with "malice or oppression", the court may award treble actual damages or treble statutory damages, whichever is greater).

confession or confidential communication made under any other circumstances does not fall under this exemption.”⁶

The CPA was amended in 2018 to require IDHW to investigate when IDHW knows or has reason to know that an adult in the home has been convicted of lewd and lascivious conduct or felony injury to child, or that the child has been removed from the home for circumstances that resulted in a conviction for lewd and lascivious conduct or felony injury to child.⁷ This amendment takes effect July 1, 2018, and as of the writing of this manual, the Department is in the process of incorporating this requirement in the response protocols that are described below.

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.⁸ 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.

All child abuse and neglect reports and calls go through a centralized intake unit that collects the information, assigns the report one of three priority responses, and forwards the information to local field offices for local assessment and appropriate action. The central intake unit is located in Boise and takes calls and reports for the entire state. The Department staffs the unit 24 hours a day, 7 days a week by licensed child welfare social workers who have received specialized training. On average, the unit receives approximately 3,750 calls, emails, and faxes per month. School personnel, parents, private agencies, relatives, and law enforcement are the source of the majority of the reports made to the intake unit.

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.⁹
- *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 abandonment¹⁰, the referral is assigned one of three

⁶ I.C. § 16-1605(3).

⁷ I.C. § 16-1605(1) (Supp. 2018).

⁸ IDAHO ADMIN. CODE r. 16.06.01.550 (2015) (The Idaho Administrative Code is also known as “IDAPA.”); *See also* I.C. § 16-1629 (Supp. 2014). (“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”).

⁹ I.C. § 39-8203 (2009) (Idaho Safe Haven Act).

priority responses. 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.¹¹ 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 in 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.

The IDHW's *Priority I Guidelines*:

- If a 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 either respond to or accompany the social worker.
- IDHW will coordinate the assessment with law enforcement.
- 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.¹²

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 seven 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.
- Law enforcement must be notified within 24 hours of receipt of all Priority II referrals that involve issues of abuse, neglect, or abandonment.

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

¹⁰ I.C. §§ 16-1602(1), (2), and (31) (Supp. 2014).

¹¹ IDAPA r. 16.06.01.554.

¹² IDAPA r. 16.06.01.554.01.

Idaho law requires this notification because the assessment must be coordinated with law enforcement's investigation.¹³

The IDHW *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.¹⁴

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

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

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.¹⁵ 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 role in cases concerning child abuse and neglect.

MDTs are charged by statute with the responsibility to develop 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.¹⁶

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.

¹³ IDAPA r. 16.06.01.554.02.

¹⁴ IDAPA r. 16.06.01.554.03.

¹⁵ I.C. § 16-1617. (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).

¹⁶ I.C. §§ 16-1617(2)–(5).

The roles of core MDT members are determined by each county's protocol. Consistent with the statutory mandate, best practice recommendations¹⁷ concerning the roles of key MDT members include:

1. Prosecutor:
 - a. Provide consultation during child abuse investigations
 - b. Initiate civil and criminal legal proceedings
 - 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 her or his surroundings is necessary to prevent serious physical or mental injury to the child
 - f. Interview alleged perpetrator
 - g. Interview child victim, when appropriate

3. Social Worker:
 - a. Make reasonable efforts to prevent the removal of a child when safe to do so
 - b. Conduct a comprehensive safety assessment of the family
 - 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

¹⁷ Throughout this Manual “best practice recommendations” are included. These recommendations are not required by Idaho law but represent instead generally accepted guidelines for judges, 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.

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.

2.2 ASSESSMENT

A. Risk and Safety

When a referral of child abuse, neglect, or abandonment is received, IDHW and law enforcement work together to determine whether or not a child is safe. A child's safety depends on the presence or absence of threats of danger 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 specific threats to a vulnerable child which can be described or seen, that are either occurring presently or that are likely to occur in the immediate future, that will result in severe harm or injury to the child, and that are due to an out of control family situation or condition that no adult can prevent from happening. 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 or not occur at all.¹⁸

According to both the federal Child Abuse Prevention Treatment Act¹⁹ and the Idaho CPA,²⁰ 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 responds to a CPA referral, the focus is on assessing for present and/or emerging danger. Present danger is a significant and clearly observable threat that exists at the time of the assessment, requiring immediate IDHW and/or law enforcement response. Some examples of present danger are:

- Serious bodily injury
- Life-threatening living arrangements
- Unexplained injuries
- Child needing immediate medical attention
- Parent/caregiver is currently unable to perform parental responsibilities
- Parent/caregiver's behavior is currently out of control
- Domestic violence and child maltreatment are currently occurring

¹⁸ See generally THERESE ROE LUND & JENNIFER RENNE, CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS 9 (2009). (providing a detailed discussion of the concepts of safety and risk in a context relevant to judges).

¹⁹ 42 U.S.C. § 5106a(b)(2)(B)(xviii) (2011); 42 U.S.C. § 5116(a)–(f) (2011).

²⁰ I.C. § 16-1629(7)(b) (Supp. 2014).

Emerging danger (sometimes referred to as “impending danger”) refers to a family circumstance where a child is living in a state of danger. Danger may not exist at a particular moment or be an immediate concern (like in present danger), but a state of danger exists. Emerging danger can be identified and understood upon more fully evaluating individual and family conditions and functioning through assessment.

To guide and document decision making related to child safety, IDHW uses a standardized comprehensive safety assessment that is to be completed no later than 45 calendar days from the earliest start date on any report associated with the assessment. It contains information collected from the assessment tools used by the Department, discussed below.

1. The Six Domains of Information Collection²¹

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 domains of information collection to assist in understanding the family conditions and identifying safety threats:

1. **Extent of Maltreatment:** Includes straightforward information concerned with the facts, and evidence, summarizes the allegations, and documents the worker’s determination as to whether or not maltreatment occurred.
2. **Nature of Maltreatment and History:** What is occurring in the family that impacts, influences, or causes maltreatment? Includes a summary of past child protection history and how it may impact or influence the current safety threat.
3. **Adult Functioning:** How do the caregivers in the home function on a daily basis?
4. **Parenting Practices:** What is the caregiver’s overall parenting style?
5. **Disciplinary Practices:** How do the caregivers in the home discipline the child?
6. **Child Functioning:** How does the child function on a daily basis?

2. Safety Threshold²²

When assessing child safety, social workers utilize standardized criteria to differentiate between safe and unsafe children. The safety threshold is the point at which a risk factor becomes a safety threat to a child and a child is determined to be unsafe. The safety threshold is crossed when the following five criteria apply:

1. **Severity:** Harm that results in significant pain, serious injury, disablement, grave or debilitating physical health or physical conditions, acute or grievous suffering, terror, impairment, or death.
2. **Immediate to Near Future:** Threats to child safety that are likely to become active without delay, likely to occur within the immediate to near future, and that could have severe effects.
3. **Out-of-Control:** Family conditions that can affect a child, are unrestrained,

²¹ IDAHO DEPARTMENT OF HEALTH AND WELFARE, CHILDREN AND FAMILY SERVICES STANDARD FOR COMPREHENSIVE SAFETY, ONGOING, AND RE-ASSESSMENT (2014).

²² *Id.*

unmanaged, without limits, not monitored, not subject to influence, manipulation or internal power, and/or are out of the family's control. No responsible adult in the home can prevent the emerging danger from happening.

4. Observable/Describable: The threat or harm to the child is real, can be seen or understood, can be reported, and is evidenced in explicit, unambiguous ways.
5. A Vulnerable Child: A child who is dependent on others for protection.

3. Safety Factors²³

A safety factor is a specific family situation or behavior, emotion, motive, perception, or capacity of a family member that may impact a child's safety status. There are 14 safety factors that are nationally recognized and accepted by child welfare programs as best practice in assessing child safety. By applying the safety threshold analysis to one or more of the 14 safety factors, a social worker evaluates a child's safety. When a safety factor crosses the safety threshold, the factor becomes a safety threat and a child is considered unsafe. These factors include:

1. Caregivers cannot, will not, or do not, explain a child's injuries or threatening family conditions.
2. A child has serious physical injuries or serious physical symptoms/conditions from maltreatment.
3. One or more caregivers intended to seriously hurt the child.
4. The living environment seriously endangers the child's physical health.
5. The child demonstrates serious emotional symptoms, self-destructive behavior and/or lacks behavioral control that results in provoking dangerous reactions in caregivers.
6. A child has exceptional needs that affect his/her safety that caregivers are not meeting, cannot meet, or will not meet.
7. A child is fearful of the home situation or people within the home.
8. One or more caregivers lack parenting knowledge, skills or motivation necessary to assure a child's safety.
9. One or more caregivers are threatening to severely harm a child or are fearful they will maltreat the child and/or request placement.
10. No adult in the home is routinely performing parenting duties and responsibilities (food, clothing, age appropriate supervision, and nurturance) that assure child safety.
11. A child is perceived in extremely negative terms by one or more caregivers.
12. Caregivers do not have or use resources necessary to assure a child's safety.
13. One or more caregivers will not/cannot control their behavior, and/or are acting violently and/or dangerously.
14. Caregivers refuse intervention, refuse access to a child, and/or there is some indication that caregivers will flee.

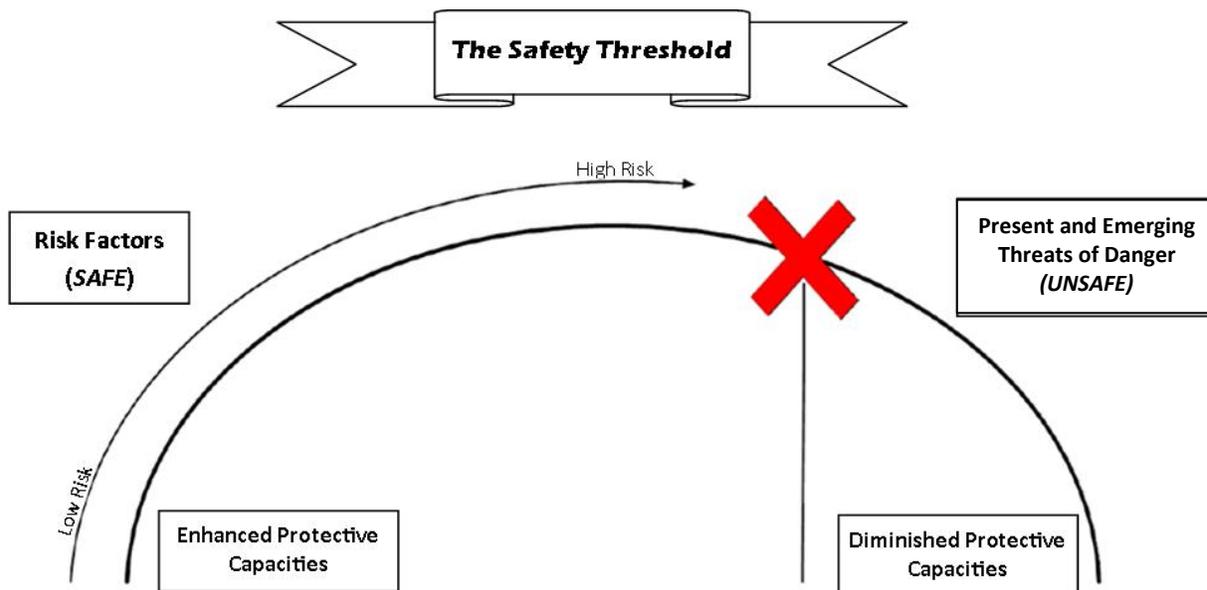
4. Caregiver Protective Capacities

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 that contribute to how well a

²³ *Id.*

parent carries out his/her parental responsibilities.²⁴ Protective capacities also refer to observable behaviors of a parent that prevent threats of danger from occurring, as well as the parents' feelings, attitudes, and motivation to protect the child.²⁵

The safety threshold, in relationship to risk, safety threats, and caregiver protective capacities is shown in the following illustration:



5. Safety Decision

A child is unsafe when a present or emerging threat of danger exists and caregivers are unable or unwilling to provide protection. When a safety threat has been identified through the application of the safety threshold analysis, a child is considered to be unsafe. A child is considered to be safe when there are no present or emerging threats of danger or the caregiver's protective capacities can control existing threats.

Decisions related to child safety are not made alone. Pursuant to IDHW practice, a supervisor reviews all cases assigned for assessment. 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?²⁶

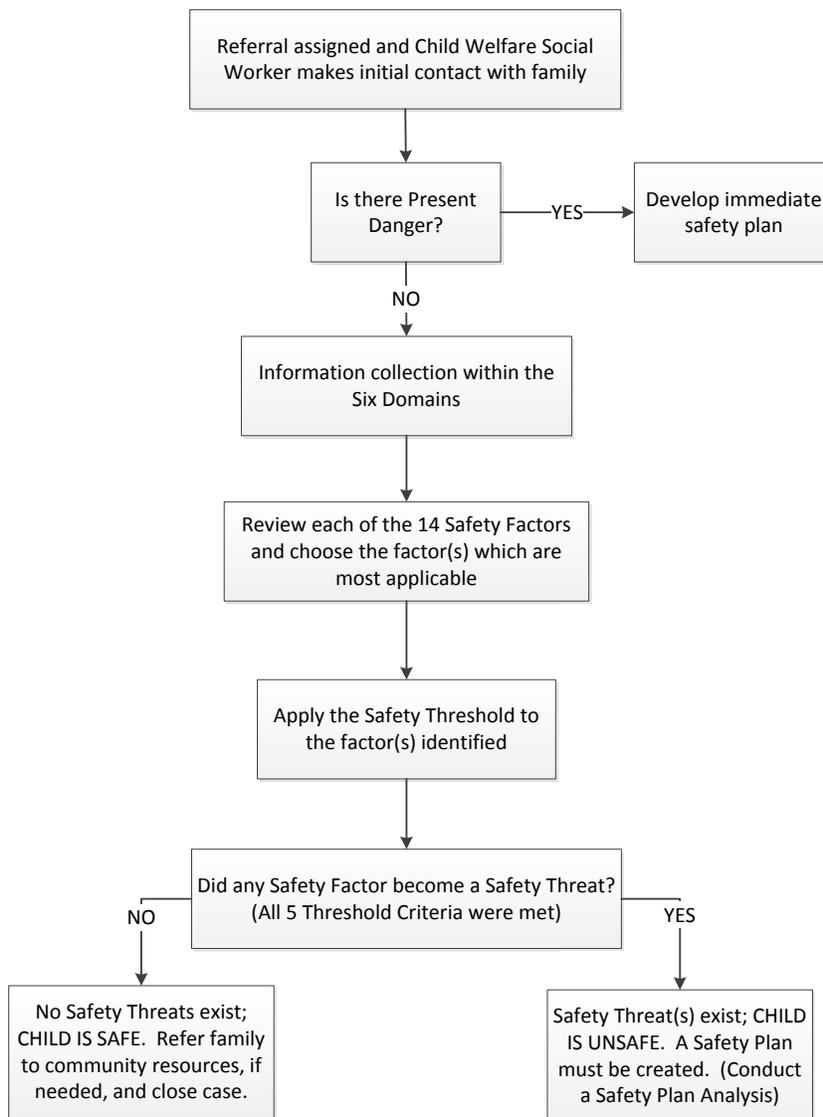
²⁴ LUND & RENNE, *supra* note 17, at "Benchcard D."

²⁵ *Id.*

²⁶ LUND & RENNE, *supra* note 17 at page 19.

The following chart illustrates the Comprehensive Safety Assessment process:

Comprehensive Safety Assessment Flow Chart



6. Safety Plan

When a child is found to be unsafe a safety plan is required. Safety plans prescribe actions intended to control present or emerging danger rather than changing the conditions that cause it. These prescriptive provisions of the safety plan must have an immediate effect, be immediately accessible, and available. The safety plan must focus only on safety services and actions, not on services designed to effectuate long-term change. The safety plan must be sufficient to ensure the child's safety. The plan may be implemented in the home or may include an out-of-home plan when child safety can only be assured through temporary placement with relatives or in substitute care.

C. Safety Plan Analysis: In-Home versus Out-of-Home Safety Plan

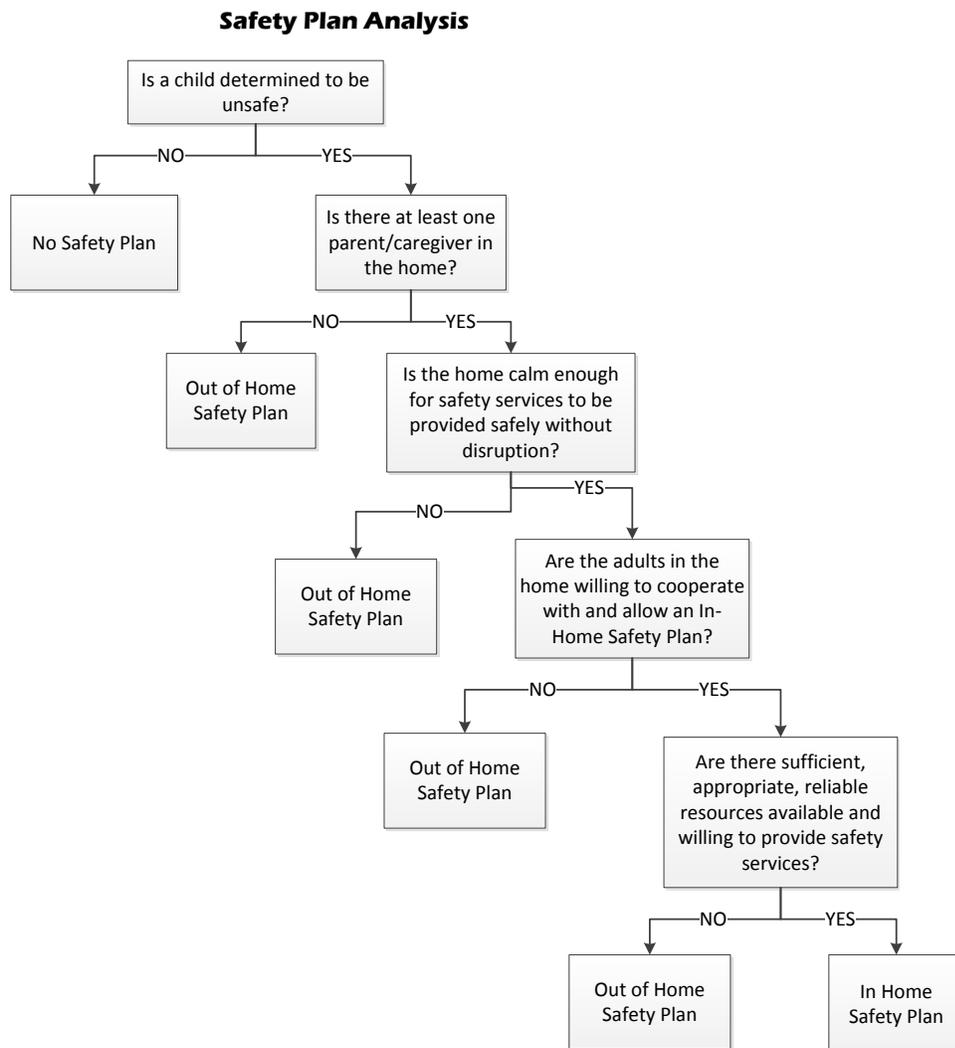
Under federal and state law, children should remain in their own home with their family whenever safely possible.²⁷ “If an in-home safety plan would be sufficient, and the agency fails to consider or implement one, then the agency has failed to provide reasonable efforts to prevent removal.”²⁸

Social workers conduct an analysis to determine whether an in-home safety plan can be implemented or whether an out-of-home safety plan is warranted. An out-of-home safety plan may include a voluntary or involuntary placement of the child.

The following chart illustrates the decision points made during a safety plan analysis:

²⁷ 42 U.S.C. § 621 (2011); I.C. § 16-1601 (2009).

²⁸ LUND & RENNE, *supra* note 17, at 25.



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

Family and kin can:

- Serve as mentors
- Care for children until parental capacities have been strengthened
- 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)

- Removal of an offender through a Domestic Violence Protection Order – Idaho Code §§ 16-1602(31) and 16-1611(5)

In situations where a family refuses to work with IDHW on a voluntary basis and the threats of danger are not imminent, IDHW can contact the local county prosecutor and request that she file a petition seeking protective supervision of the child by the Department.²⁹

CONCLUSION

IDHW has a tremendous responsibility for evaluating referrals and reports of child maltreatment and taking further action where warranted. Further action includes working with a family voluntarily to resolve the threats to the child's safety. In situations where the threats to the child's safety cannot be resolved on a voluntary basis, IDHW works with the county prosecutor or deputy attorney general to initiate a child protection case.³⁰

²⁹ I.C. § 16-1619(5)(a) (Supp. 2014); I.J.R. 41(h).

³⁰ I.C. § 16-1610.