



Identification and Referral of Potential
Child Abuse and/or Neglect Victims
before the
Executive Office for Immigration Review

May 23, 2017

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I. PURPOSE

Congress has recognized that “substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority.”¹ Child abuse and neglect have both immediate and life-long consequences for the child. Over 1,500 children die in the United States from child abuse and neglect each year, and most of those children are under the age of five. Immediate impacts include many types of physical harm, including death, while long term impacts can range from failure to thrive, delayed development, health issues and decreased life expectancy, learning disabilities, depression, and other psychological issues.²

All states, the District of Columbia (DC), and territories have laws for reporting child abuse and neglect to state or local officials. Further, some states require attorneys or other relevant categories of people, such as employees of public agencies, to report child abuse and neglect. There has been an exponential rise in the number of minor respondents in the immigration courts, including a significant increase in the number of unaccompanied children (UAC). This protocol is intended to provide immigration judges, Board of Immigration Appeals Members, and other Executive Office for Immigration Review (EOIR) personnel with tools to identify child abuse and neglect, and steps to take if they believe they have encountered such a victim.

The protocol contains resources to address both emergency and non-emergency situations for reporting child abuse and/or neglect. For purposes of this protocol, an emergency is defined as an immediate threat to a minor’s safety. If EOIR personnel encounter someone they believe to be a victim of child abuse/or neglect, they may be required to report under the state’s laws or ethical consideration for their license. If not required to report, EOIR personnel are strongly encouraged to report the instance consistent with this protocol.

II. BACKGROUND

A. Definition of child abuse and neglect

The Federal Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as follows:

- Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or
- An act or failure to act which presents an imminent risk of serious harm.³

The CAPTA definition sets a minimum standard for child abuse and neglect, but many states have

¹ Child Abuse Prevention and Treatment Act § 2, 42 U.S.C. § 5101, Note.

² Childhelp, Child Abuse Statistics and Facts, *available at* <https://www.childhelp.org/child-abuse-statistics/>; Center for Disease Control, *Adverse Childhood Experiences*, *available at* <http://www.cdc.gov/violenceprevention/acestudy/>.

³ CAPTA § 3, Pub.L. 111-320.

adopted more stringent definitions. CAPTA defines a child as an individual who is under eighteen years of age.⁴

It is important to note that each state has its own definitions for abuse and neglect located in the state's criminal or civil statutes, and child abuse and neglect cases are most often prosecuted under a state's statutes, not the federal one. Generally, state statutes recognize four types of maltreatment: neglect, physical abuse, sexual abuse, and emotional abuse or neglect.

B. Definitions of child, juvenile, and unaccompanied alien child

A child is defined in the Immigration and Nationality Act (INA) as an "unmarried person under 21 years of age." INA § 1101(b)(1). Further, a juvenile is defined in 8 CFR section 1236.3 as an alien who is under eighteen years old. An unaccompanied alien child is defined as a child who:

- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and
- For whom:
 - There is no parent or legal guardian in the United States, or
 - No parent or legal guardian in the United States is available to provide care and physical custody.⁵

Typically, DHS makes a determination of UAC status for a child who is in removal proceedings. For purposes of reporting child abuse and/or neglect, DHS' designation of a child as a UAC, or lack thereof, controls. This protocol outlines specific steps when a UAC is identified as a victim of abuse and/or neglect.

Unless otherwise noted or required by law, the protocol applies to all juveniles under the age of eighteen, including children who are apprehended with a parent (i.e., children who are accompanied).

C. Identifying abuse and neglect

There are many indicators of child abuse or neglect. The following are the most common types of abuse and symptoms to look for, divided by type of abuse.⁶ Many may not be readily apparent to immigration court staff or judges, as their encounters with a child may be brief and it may be difficult to notice changes in behavior or appearance over time. Also, symptoms may vary for children of different ages.⁷ The following is intended to give EOIR personnel a general

⁴ *Id.*

⁵ Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(g); 6 U.S.C. § 279(g)(2), Pub. L. 110-457 (2008).

⁶ See Department of Justice, Federal Bureau of Investigation, *When You Suspect Child Abuse or Neglect*, available at https://www.fbi.gov/stats-services/victim_assistance/brochures-handouts/when-you-suspect-child-abuse-or-neglect.

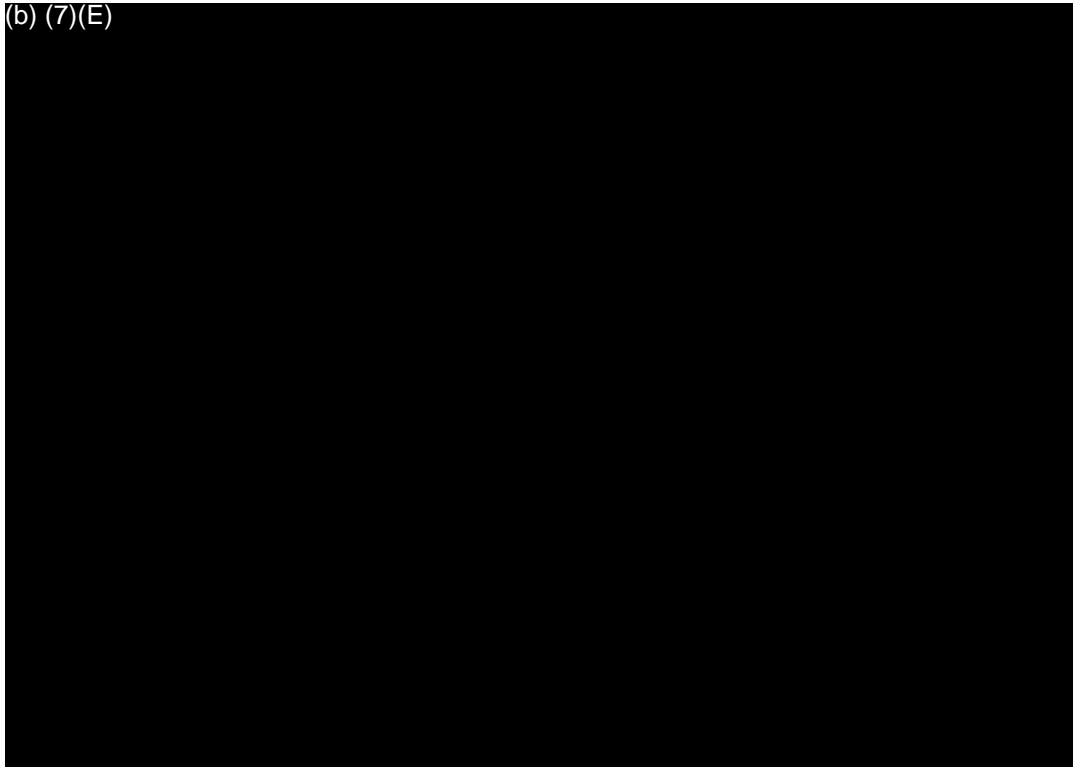
⁷ See Department of Justice, Office for Victims of Crime, Training and Technical Assistance Center, *Child Abuse and Neglect*, p. 7, available at https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents_NVAA2011/ResourcePapers/Col%20Child%20Abuse%20Resource%20paper%202012_final%20-%20508c_9_13_2012.pdf.

understanding of the different types of child abuse and neglect, as well as some of the common symptoms exhibited by children. For a more extensive explanation of the types of abuse and symptoms, please refer to the resources located at the end of the protocol.

1. Common types of physical abuse:

<ul style="list-style-type: none">• Hitting/Punching• Kicking• Beating• Biting• Shaking	<ul style="list-style-type: none">• Throwing• Stabbing• Choking• Hitting• Burning
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Symptoms of physical abuse:

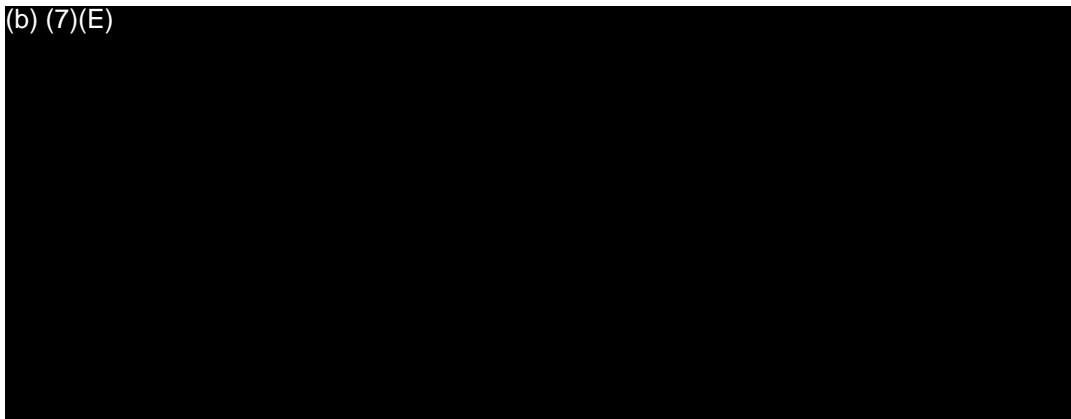


2. Common types of neglect:

<ul style="list-style-type: none">• Physical neglect: Failure to	<ul style="list-style-type: none">• Emotional neglect-
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provide basic necessities <ul style="list-style-type: none"> • Child abandonment/runaways • Inadequate supervision • Educational neglect- failure to enroll in school or ensure that child attends school regularly 	ignoring, rejecting, isolating <ul style="list-style-type: none"> • Medical neglect- failure to provide adequate health care although financially or otherwise able to do so • Working against state minimum age requirements
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Symptoms of neglect:



3. Common types of sexual abuse:

<ul style="list-style-type: none"> • Fondling • Lewd and lascivious behavior • Intercourse • Sodomy • Oral sex 	<ul style="list-style-type: none"> • Penetration of genital or anal opening • Child pornography • Child prostitution • Other sexual conduct harmful to the child's wellbeing
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Symptoms of sexual abuse:



(b) (7)(E)

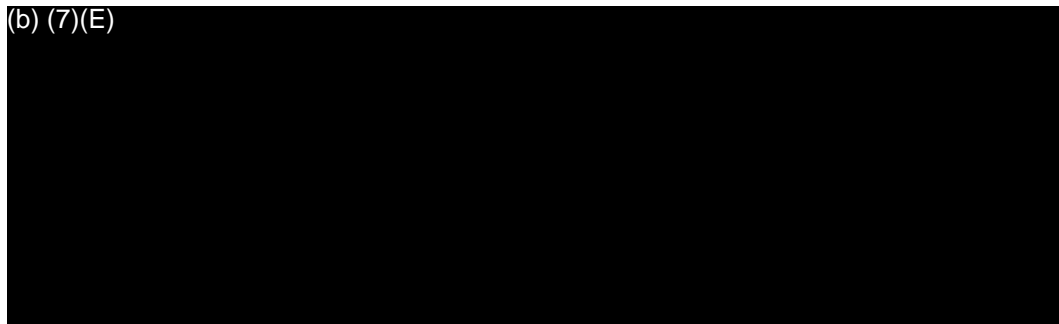


4. Common types of emotional abuse:

<ul style="list-style-type: none">• Constant blaming• Verbally assaulting/berating• Belittling• Extremely unpredictable responses of caregiver• Ignoring child• Rejecting child	<ul style="list-style-type: none">• Emotional deprivation by withholding affection, attention or approval• Caregiver's unreasonable demands• Threats/terrorizing• Corrupting or exploiting (encouraging destructive, illegal or antisocial behavior)
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Symptoms of emotional abuse:

(b) (7)(E)



D. Mandatory Reporters

All EOIR employees must report child abuse and neglect in accordance with state law. As noted above, all states, the District of Columbia (DC), and territories have laws for reporting child abuse and neglect to state or local officials. Each state, DC, and the territories require that certain categories of individuals report child abuse and neglect, such as teachers, social workers, or emergency personnel (called mandated reporters). Many states also require that all individuals located in the state report, regardless of their professional status.

Further, some states require attorneys or other relevant categories of people, such as employees of public agencies, to report child abuse and neglect. For example, Nevada law states that an attorney “who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall . . . report the abuse or neglect” to child welfare services or law enforcement.⁸ Ohio and Oregon also maintain statutory requirements that require attorneys to report.⁹ There are civil and/or criminal penalties that attach if a mandatory reporter fails to report. If the mandatory reporting requirements do not apply, every state has a law that permits reporting.

Attached in Appendix B is a chart listing all of the mandatory or permissive reporting requirements by state. The chart includes the standard for reporting, who is a mandated reporter in each state, and whether there is an individual reporting duty or whether the EOIR employee may report the abuse and/or neglect concern to a supervisor or another individual within EOIR and have that person make a report on behalf of the institution (called “institutional reporting”).

E. Special considerations: Confidentiality and Ethical Obligations

1. Confidentiality

EOIR personnel are permitted to release information about suspected child abuse or neglect victims to law enforcement or child protection services pursuant to state law, subject to the confidentiality requirements set out below. The Director of EOIR has provided a waiver to permit release of information that is contained in the records of proceedings, was disclosed at a hearing, or was otherwise learned through the course of an EOIR employee in their official capacity. *See* Appendix C. The following subparts outline the confidentiality provisions in the asylum regulations and Violence Against Women Act (VAWA) that all EOIR employees must follow when releasing such information.

a. VAWA Confidentiality: 8 U.S.C. § 1367

VAWA prohibits any federal employee from disclosing information outside of his or her agency that relates to an applicant for a U Visa, a T Visa, or VAWA relief under sections 204(a)(1) or 240A(b)(2) of the INA.¹⁰ However, EOIR employees are permitted to disclose this information to a law enforcement official to be used solely for a legitimate law enforcement purpose if the disclosure is done in a “manner that protects the confidentiality of such information.”¹¹ Therefore, if the information leading an EOIR employee to believe that a minor is the victim of child abuse and/or neglect is related to a petition for VAWA, U Visa, or T Visa, that information may not be disclosed to a state’s child protective services. Instead, the EOIR employee will need to report the suspected abuse to law enforcement, such as the local police or ICE.

⁸ Nevada Rev. Stat. (NRS) § 432B.220.

⁹ Ohio Rev. Code § 2151.421; Oregon Rev. Stat. §§ 419B.005, 419B.010.

¹⁰ 8 U.S.C. § 1367(a)(2).

¹¹ 8 U.S.C. § 1367(b)(2). There is also an exception under 8 U.S.C. § 1367(b)(4) that allows for a waiver of confidentiality by the battered individual, but it only applies if all battered individuals in the case are adults, which would necessarily not be the case when reporting child abuse or neglect.

b. Asylum Confidentiality: 8 CFR § 1208.6

The regulations governing asylum adjudications have similar confidentiality provisions. EOIR employees are prohibited from disclosing any information contained in or pertaining to an asylum application, or records pertaining to a credible fear or reasonable fear determination. EOIR employees also may not disclose the fact that the individual has applied for asylum, or received a credible or reasonable fear interview. Such information may be disclosed with the written consent of the applicant or for any federal investigation concerning any criminal or civil matter. Therefore, to the extent that information about a child abuse situation is “contained in” or “pertaining to” an asylum application, or if disclosure of the child abuse situation cannot be made without disclosing the fact that an individual has applied for asylum, disclosure is only permitted if written permission is obtained from an adult asylum applicant or if the disclosure is made to federal law enforcement, such as Immigration and Customs Enforcement (ICE) or the Federal Bureau of Investigations (FBI). Disclosure would not be permitted to state child protective services, or state or local law enforcement, without the written consent of an adult asylum applicant. However, care should be made in determining whether to seek permission from an adult asylum applicant if the adult is suspected of causing the abuse or neglect to the child, or if their interests are otherwise not in line with the child’s.

2. Attorney ethical obligations

There are many attorney ethical issues that arise when dealing with reporting child abuse and neglect, and this section is intended to highlight some of the main concerns. The information presented here is based on general advice from the Department of Justice’s Professional Responsibility Advisory Office (PRAO), using the American Bar Association (ABA) Model Rules of Professional Responsibility (Model Rules). The Model Rules are not binding on Department attorneys, but are general guidelines that most state Rules of Professional Responsibility follow. Immigration Judges and other EOIR attorneys are encouraged to consult with PRAO for advice about the specific professional responsibility and ethical obligations for the state(s) in which they are licensed and practice. PRAO can be reached by sending an email to: DOJ.PRAO@usdoj.gov.

a. Mandated reporting laws

If an attorney is a mandated reporter, and the state’s reporting statute carries criminal sanctions for failure to report, it may be professional misconduct for an attorney to fail to report child abuse or neglect if such failure would constitute a “criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.”¹² Further, a failure to report could be considered professional misconduct based on “conduct that is prejudicial to the administration of justice,” as it could hinder the administration of justice in another proceeding, such as one for child abuse or child custody.¹³

b. Client confidences

Under Model Rule 1.6(a), Department attorneys are prohibited from “reveal[ing]

¹² Model Rule 8.4(b).

¹³ *Id.* 8.4(d).

information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).” For Department attorneys, the client is considered to be the United States. Therefore, Immigration Judges and other attorneys at EOIR provide representation to the “client” during the normal scope of their duties. A client confidence is defined broadly, and includes “not only matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.”¹⁴ Therefore, information learned from a respondent or another during a hearing would be considered confidential information.

EOIR’s Director or his designee has the authority to give informed consent to the disclosure of confidential information on behalf of the United States. Appendix C contains a memorandum authorizing disclosure of confidential information by EOIR employees for purposes of reporting child abuse and neglect, or human trafficking concerns.

c. Ex parte communication and represented individuals

There may be circumstances when it may be appropriate or safer to question a victim of child abuse and neglect *ex parte* outside the presence of counsel. For example, cases have arisen where an immigration judge was concerned that the attorney representing a child was employed by a human trafficking cartel and was in court without the consent of the respondent. In such cases, the respondent may be too afraid to speak about their concerns in front of their attorney.

EOIR’s Ethics and Professionalism Guide for Immigration Judges addresses these types of situations. Although generally disfavored, judges are permitted to engage in *ex parte* communication for “emergency purposes,” when such communication “does not address substantive matters” if the judge “reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication.”¹⁵ As long as such factors are taken into consideration, the Immigration Judge may therefore be able to speak to the respondent outside of the presence of counsel or the opposing party. A best practice would be for the Immigration Judge to request permission of the attorney on the record to speak to the child outside of their presence to make a record before requesting that the child’s attorney leaves the courtroom.

III. PROCESS TO REPORT- IMMIGRATION COURTS

A. Overview

EOIR personnel should familiarize themselves with the child abuse reporting laws for the state in which they reside or from which they are hearing cases, paying particular attention to whether they fall into a category of mandated reporters in their state, as discussed above in the “Background.” For more information, please refer to the child abuse reporting laws chart located in Appendix B.

¹⁴ *Id.* 1.6, Comment 3.

¹⁵ Article XXXII.

All EOIR employees are strongly encouraged to report child abuse or neglect whether they fall into a mandatory reporting category or not. Immigration Judges and other attorneys should keep in mind the professional responsibility rules discussed above, as their license may be affected by a failure to report even if they are not a mandated reporter under the state's law.

If EOIR personnel encounter a minor respondent whom they believe is a victim of child abuse or neglect, the following process must be followed when reporting the abuse or neglect. First, the individual who identifies the child abuse or neglect should fill out the Child Abuse/Neglect Referral Form as soon as practicable, located in Appendix A, and provide it to the Court Administrator. The Court Administrator and/or individual who encountered the child abuse or neglect should then take the steps outlined in the sections below.

These procedures also apply in the unlikely event that a child is abandoned at an immigration court. In such an occurrence, the Court Administrator should be contacted immediately, and the Court Administrator should assign two EOIR employees to remain with the child until local or federal authorities respond to take custody of the child.

B. Reporting During East Coast (EST) Business Hours

If the concern regarding the child abuse or neglect occurs during East Coast business hours: 8:00 am – 5:00 pm EST, the Court Administrator should immediately contact the Duty Attorney at the Office of the General Counsel and report the information located in the Child Abuse/Neglect Referral Form to them. The Duty Attorney will then provide assistance in determining whether and where a report should be made, what information can be disclosed in the report, who should make the report, and the timeframe for reporting.

The General Counsel's Office Duty Attorney can be reached at:

703-305-0470.

This procedure should be followed for emergency and non-emergency cases if they occur during 8 am – 5 pm EST, and should be followed for all types of cases.

C. Emergency Reporting Outside of EST Business Hours

1. Emergency Reporting for UACs Outside of EST Business Hours

For purposes of reporting under this protocol, an emergency is defined as an immediate threat to a minor's safety. If an emergency situation is identified regarding a minor who has previously been designated as a UAC outside of normal business hours and an OGC Duty Attorney is not available to provide assistance, the Court Administrator should contact the ICE Homeland Security Investigations (HSI) Tip Line at:

844-421-3857

ICE has created this dedicated line for use by EOIR personnel in case of an emergency situation.

The Court Administrator will relay the information in the Child Abuse/Neglect Referral Form to the HSI Tip Line analyst. Calls from EOIR to this number will be routed to the top of the queue for the analysts answering calls. The HSI Tip Line analyst will use the information provided by EOIR to contact an ICE HSI Victim Assistant Specialist (VAS) and the HSI Special Agent on duty who has jurisdiction over the area where the immigration court is located.

The VAS will personally respond to all cases involving a UAC, and will physically come to the court to interview the potential victim. The VAS will coordinate with the Department of Health and Human Services (HHS) and the Enforcement and Removal Operations (ERO) Juvenile Coordinator to determine the best course of action, and to take the UAC back into governmental custody if necessary.

Once the report has been made to the HSI TIP line, the Court Administrator should then scan and email the Child Abuse/Neglect Referral Form to the OGC dedicated email address for reporting child abuse or trafficking concerns: EOIR.OGCDutyAttorney@usdoj.gov. The OGC Duty Attorney will determine whether any further steps to report the abuse or neglect need to be taken, and will contact the Court Administrator and the individual who identified the concern with further information and instructions.

EOIR personnel are reminded to keep the VAWA and asylum confidentiality provisions in mind when making a report. If these confidentiality provisions apply, EOIR personnel must make the referral in a way that does not violate the confidentiality provisions. For example, if the VAWA confidentiality provision applies, the EOIR employee may only disclose the information to ICE in a manner that protects the confidentiality of the information. The asylum confidentiality provisions have an exception for reporting to federal law enforcement, such as ICE.

2. Emergency Reporting for Other than UAC Cases Outside EST Business Hours

If an emergency child abuse situation is identified for a juvenile who has not been designated as a UAC, the Court Administrator should make a report to the local law enforcement entity or child protective services in their jurisdiction using the Child Abuse/Neglect Referral Form. To help facilitate the report, Appendix D contains the HHS State Child Abuse and Neglect Reporting Numbers for each state, which is current as of the date of the publication of this protocol.¹⁶ Additionally, the Court Administrator should refer to the mandatory reporting chart to determine whether their state requires a report to be made to their state's child protective services department or whether a report can be made to law enforcement. If the state's law allows a report to be made to either, the Court Administrator may determine which is more appropriate.

If an institutional report is not allowed, the individual who discovered the child abuse or neglect must make the report directly. The individual, with the Court Administrator's assistance, must determine whether to make the report to the state's child protective services or law enforcement.

¹⁶ The HHS State Child Abuse and Neglect Reporting Numbers list can be found here: https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspROL&rolType=Custom&RS_ID=5.

As with emergency reporting on behalf of a UAC, EOIR personnel are reminded to keep the VAWA and asylum confidentiality provisions in mind when making a report. If these confidentiality provisions apply, EOIR personnel must make the referral in a way that does not violate the confidentiality provisions. For example, if the VAWA confidentiality provision applies, the EOIR employee may only disclose the information to law enforcement in a manner that protects the confidentiality of the VAWA-related information. If the asylum confidentiality provision applies, the EOIR employee may only disclose the information to federal law enforcement or with the written permission of an adult asylum applicant. Please refer to the “Special Considerations” section above for more details on what the asylum and VAWA confidentiality provisions cover and how to apply the exceptions.

D. Report to EOIR

In addition to the steps outlined above, the Court Administrator must immediately report the concerns and steps taken to:

- The Assistant Chief Immigration Judge overseeing their court,
- The Assistant Chief Immigration Judge for Vulnerable Populations, and
- The Immigration Judge assigned to the case, if they are not already aware of the situation.

IV. PROCESS TO REPORT- BOARD OF IMMIGRATION APPEALS

Board of Immigration Appeals (Board) Members, attorneys, and other staff should also familiarize themselves with whether they fall into a mandatory reporting category.¹⁷ Board Members and Board attorneys should keep in mind the professional responsibility rules discussed above, as their license may be affected by a failure to report.

If Board personnel encounter a minor respondent whom they believe is a victim of child abuse or neglect, and that abuse and neglect was not already reported by the immigration court staff, the following process must be followed when reporting. First, the individual who identifies the child abuse or neglect should fill out the Child Abuse/Neglect Referral Form, located in Appendix A, and provide it to a Senior Legal Advisor. The Senior Legal Advisor will then call the main OGC number at (703) 305-0470 and ask for the duty attorney, or email the Child Abuse/Neglect Referral Form to the OGC dedicated email address for reporting child abuse: EOIR.OGCDutyAttorney@usdoj.gov. The OGC Duty Attorney will determine whether any further steps to report the abuse or neglect need to be taken, and will provide advice to the Senior Legal Advisor and the individual who identified the concern further information and instructions.

¹⁷ See Appendix B.

V. RESOURCES

A. Further education

HHS maintains extensive information about child abuse and neglect. For more information, please visit: <https://childwelfare.gov/topics/can/?hasBeenRedirected=1>.

The Department's Office for Victims of Crime Training and Technical Assistance Center has a comprehensive resource paper on child abuse and neglect: https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents_NVA2011/ResourcePapers/Color_Child%20Abuse%20Resource%20paper%202012_final%20-%20508c_9_13_2012.pdf.

Childhelp, which maintains the National Child Abuse Hotline, also has many resources regarding child abuse and neglect on their website: <https://www.childhelp.org/childhelp-approach/>.

Quick reference guide for types of child abuse or neglect, with physical and behavioral indicators of abuse: http://www.preventchildabusej.org/documents/parents_informational_brochures/Physical%20and%20Behavioral%20Indicators%20of%20Child%20Abuse%20and%20Neglect.pdf

B. Resources for victims

EOIR personnel can provide the National Child Abuse Hotline number to victims and those seeking assistance for victims of child abuse and/or neglect:

1-888-4-A-Child (1-800-422-4453)

More information regarding the hotline is available here: <https://www.childhelp.org/hotline/>.