Certified Investigator's Manual

A Guide to Conducting Critical Incident Investigations

PA Department of Human Services, Office of Developmental Programs

Through a contract with Temple University Harrisburg

2021 – Version 1.1

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<u>Overview</u>

The Commonwealth of Pennsylvania serves individuals with an intellectual disability or autism. These individuals receive services from a vast network of private and public service and support providers throughout the Commonwealth.

In accordance with the Office of Developmental Programs Bulletin on Incident Management, #00-21-02, issued by the Pennsylvania Department of Human Services, Office Developmental Programs (ODP), this manual was developed to provide continuing guidance to the Certified Investigator (CI), agency/organization Administrators and Managers, and others on how to conduct investigations properly.

The Office of Developmental Programs (ODP) mission is to support Pennsylvanians with developmental disabilities to achieve greater independence, choice, and opportunity in their lives. As part of this mission, ODP is committed to providing the necessary tools and resources to conduct quality investigations into incidents of abuse, neglect, and other significant events that occur in the lives of individuals with intellectual disabilities and autism.

Underlying the principles outlined in the Incident Management Bulletin, it is the expectation and responsibility that individuals supported through the ODP system deserve not only quality services and programs but are to be protected from harm, particularly from incidents involving abuse, neglect, exploitation, and rights violations. To accomplish this principle, the Incident Management Bulletin outlines key roles and responsibilities service providers must have in place to more effectively manage incidents involving harm, or the potential for harm, involving individuals receiving services.

ODP requires that a person be certified based on this manual's content to investigate critical incidents. An essential part of the incident management system is ensuring that trained CIs are available who possess technical competencies in conducting investigations and understand the protocols outlined in this manual and the CI course.

Qualities of CIs

The CI is of critical importance in any organization. As stated above, it is the expectation and responsibility that individuals supported through the ODP system deserve not only quality

services and programs but also protection from harm, particularly from incidents involving abuse, neglect, exploitation, and rights violations. CIs are critical to addressing incidents involving harm or the potential for harm, with individuals receiving services to accomplish this principle.

The CI must have a reputation for honesty and credibility and provide reassurance to individuals involved in the incident. The CI must possess critical thinking skills for creating an investigation that is planned, thorough, organized, and competently conducted. The CI may have to appear before a hearing officer, arbitrator, administrative law judge, or even a jury if litigation results. In this context, the CI must be able to present as an authoritative and credible witness.

Characteristics of a good CI include:

- High ethical standards
- Excellent critical thinking and problem-solving skills
- Ability to think ahead and plan
- Excellent communication skills
- Versatile interviewing techniques
- Curiosity
- A personality that doesn't need to be the most popular member of the organization
- Knowledge of DD/ID system
- Good judgment about when to call for the assistance of experts
- Understanding external reporting responsibilities

This list is just the start of what makes a good investigator. CIs should self-evaluate their strengths related to investigations and communicate their needs related to professional growth to their supervisor.


There is no perfect CI. Every person must assess their own skills for the role of CI. Just like in every area of our professional life, we must utilize our strengths effectively and find ways to improve in the areas that need growth.

Organizational Characteristics

Any internal investigation must have the support of senior management. In essence, the CI functions directly under the authority of the Chief Executive Officer of the organization. Service providers should carefully address policies and procedures relating to the kinds of information shared regularly with the board of directors regarding incident management and investigations. Employees also need to understand their roles and responsibilities relating to participation in the investigation process.

CI Sam is new to the agency. As part of their orientation, Sam went to ODP's CI course. Within the first month of the job, Sam was assigned a case that involved one of the most liked employees in the agency. This is a difficult situation as being a CI is only one part of Sam's job and the other parts demand effective team work and collaboration. It is important that Sam not be affected by the desire to be liked in the new job or their other roles. Sam should seek out supervisory and expert assistance to help remain objective during the investigation.
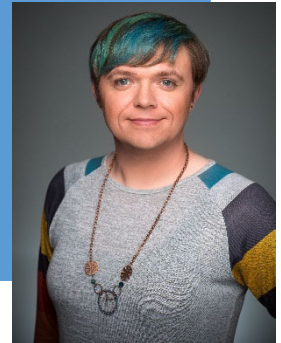
The CI must have the authority to manage the investigation process. Depending on the complexity of an organization, different departments and individuals may be involved in the investigation, which can sometimes result in more than one person attempting to direct the investigation.

At the same time, however, the CI should never feel alone in the investigation process. The organization's management must be willing to provide support when the CI encounters unique or challenging situations. For example, suppose the CI finds that they cannot collect testimonial evidence from the target, victim, or another witness for whatever reason. In that case, the CI may need their management's support in deciding when to move on with the remainder of the investigation without that specific piece of evidence. As much as is possible, the organization should support the CI to do an adequate number and frequency of investigations to keep their investigative skill set sharp, while at the same time not doing so many that they become overwhelmed.

On a practical level, the assigned CI must have and be provided the time to conduct a quality investigation. All principles of an investigation, including objectivity, speed, and thoroughness, can be compromised when the CI has overwhelming competing requirements on their time. Additionally, a CI should not be assigned who is expected to have an upcoming leave request that will interfere with their investigation's timeliness or thoroughness. In all situations, organizations should ensure that they have an adequate number of investigators on staff or through a contract to ensure all investigations can meet the investigation standards. When there are multiple CIs, either internal or external to the organization, involved in a specific incident investigation, it is critical to identify the person functioning as the "lead CI" and communicate that to the other parties involved in the investigation.

Whistleblower Law

The work of a CI is protected under Pennsylvania's Whistle Blower Law.[1] No employer may discharge, threaten, or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

Additionally, no employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing, or inquiry held by an appropriate authority or in a court action.

As recommended by the Pennsylvania Office of State Inspector General, specific questions about the applicability of the Whistleblower Law to any particular complaint should be directed to a properly licensed attorney.[2]

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[1] https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1986/0/0169..HTM
[2] https://www.osig.pa.gov/Pages/Whistleblower-Law.aspx

Chapter 1: Concepts and Definitions

ODP has defined critical incidents as a type of incident that has been determined to be a sufficiently serious indicator of risk that requires an investigation by CI. Critical incident investigations are part of the comprehensive quality management process that organizations providing services in Pennsylvania's intellectual disability and autism systems must have in place. The purpose of quality management in these systems is to advance the quality of life of individuals served and supported.

Risk management is the proactive and responsive management of potential risks to an organization, its employees, clients, customers, etc. Areas of risk management include incident management, complaints, satisfaction surveys, employee injuries, hiring practices, etc.

Incident management is part of the greater risk management process. Incident management is used to ensure that through the application of standardized processes, systematic safeguards are in place to protect individuals receiving services from events with the potential to place them at risk. The incident management processes include the expectation that CIs conduct investigations at the provider, administrative entity, and state levels. This expectation ensures that all critical incidents receive a systematic investigation that meets established standards. The illustration below shows the relationship between critical incident investigations, incident management, risk management, and quality management.

An incident is an event with the potential to adversely impact an individual's health, safety, or rights. A critical incident is a type of incident that has been determined to be a sufficiently serious indicator of risk that it requires an investigation by a Department Certified Investigator. The ODP Incident Management Bulletin identifies the types of incidents requiring investigations, provided in the following chart.

Primary Category	Secondary Category	Entity Responsible to Ensure Investigation
Abuse	All	Provider
	Misapplication/Unauthorized use of restraint (injury)	Provider and County ID Program/AE
Death	Natural Causes – Services Provided	Provider
	Unexpected – Services Provided	Provider
Exploitation	All	Provider
	Medical Responsibilities/Resources	Provider and County ID Program/AE
	Room and Board	Provider and County ID Program/AE
	Unpaid labor	Provider and County ID Program/AE
Neglect[3]	All	Provider
Rights Violation	All	Provider
	Unauthorized Restrictive Procedure	Provider and County ID Program/AE
Serious Injury	Injury Accidental	Provider
	Injury Unexplained	Provider
	Choking	Provider
	Pressure Injury (Decubiti, Pressure Ulcer, Pressure Sore, Bedsore)	Provider
Sexual Abuse	All	Provider
Suicide Attempt	All	Provider

An investigation is the process of identifying, collecting, and assessing evidence from a reportable incident in a systematic manner. The purpose of an investigation is to objectively describe and explain what did (or did not) occur at a given place and time, based on the applicable standard of evidence. For critical incident investigations, this standard of evidence is preponderance, which will be explained later in this chapter. In order for the CI to describe and explain what did or did not happen with regard to the reported incident, the CI must

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[3] This does not include incidents of Passive-Neglect and Self-Neglect

understand what did and did not happen as fully as possible. To accomplish this, the CI should strive for thoroughness in their investigation. Thoroughness will be explained in a later chapter of this Manual.

Identifying, Collecting, Sorting, and Classifying Evidence

One of the primary roles of a CI is to identify, collect, sort, and classify available evidence.

EVIDENCE

RELEVANT   IRRELEVANT
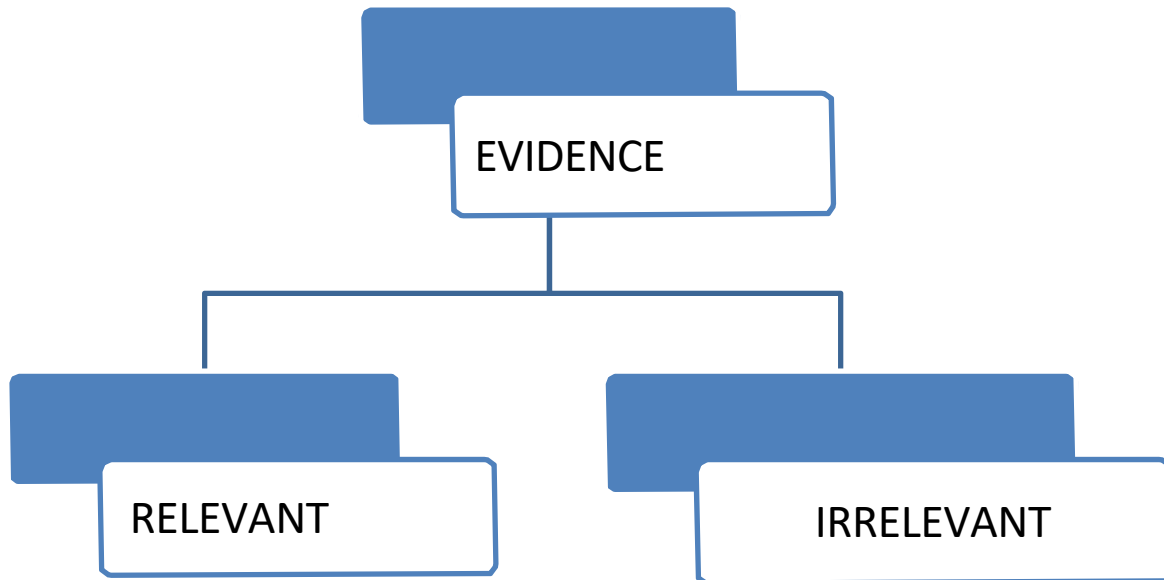
Evidence is defined as pieces of information that helps to tell the story of what did and did not occur. The CI identifies and collects all evidence available to the investigation. The process of sorting occurs when the CI reviews and reconciles all of their evidence. Sorting relates to determining what evidence is relevant to the investigation. Evidence is relevant if it potentially describes or explains an incident. Evidence is considered irrelevant if it does not have the potential to describe or explain an incident.

During the investigation, the CI should collect all available evidence that can help tell the story of what happened.

Once identified as being potentially relevant, evidence is classified to the type and form it takes. Every piece of evidence has both a type and a form.

Two **types of evidence** emerge in any investigation.

DIRECT EVIDENCE

Direct evidence is evidence in the form of testimony from a witness who was present for the incident and experienced any of the specific details of that incident through sight, hearing, touch, taste, or smell (e.g., the testimony of a witness that they saw the target having sexual intercourse with the individual or testimony of an individual that they felt someone hit them on the back of their head).

CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence is evidence that is not directly from an eyewitness or participant, and as a result, requires some reasoning to prove how it relates to other details of the incident (e.g., the testimony of a witness who did not see the actual sexual intercourse taking place, but saw the target pulling up his pants when they walked into the room). Circumstantial evidence is no less important than direct evidence.

Before going to bed, you look outside and the sky is perfectly clear. When you wake up the next morning and look outside, there is snow on the ground and your car is covered. Based on this, you can clearly conclude that it snowed overnight. You did not directly see it snow but you can infer that is snowed based on the conditions you observe. Just like in this example, we do not need direct evidence in critical incident investigations to determine what happened during the incident.

Evidence is also classified by the form it takes. The three major **forms of evidence** are testimonial, documentary, and physical evidence.

Physical Evidence

Physical evidence is an object or thing such as an injury, weapon, fluids, equipment, furniture, or environmental factors like noise levels, temperature, and lighting. Physical evidence relevant to the time/place of an incident's alleged occurrence is identified and preserved. Physical evidence is also the absence of things that otherwise should reasonably be present or available based on the testimony of witnesses, like the absence of an injury that should be present if the testimony is accurate. Spatial relationships among things are another kind of physical evidence available for assessment in an investigation. An example of this kind of physical evidence could be the location of people in a room or the distance of witnesses to the incident location itself. Physical evidence is preserved through photographs and/or diagrams.

Testimonial Evidence

Testimonial evidence is a witness' communication to a CI, in verbal form or the equivalent (sign language, gestures, behaviors, etc.), of their memories of their experiences or observations related to the incident under investigation - a story. All testimonial evidence is preserved in written format.

Documentary Evidence

Documentary evidence is anything written down, on paper, or electronically. Examples of relevant documentary evidence to be identified and collected during an investigation are the provider's business records, supports coordination, and other organizations (e.g., Individual Support Plans, medical records).

Sometimes even when a CI has a good understanding of the types and forms of evidence, they will encounter a piece of evidence that they are unsure how to classify correctly. In these instances, the CI needs to remember the purpose of an investigation: to objectively describe and explain what did (or did not) occur at a given place and time based on a preponderance of evidence standard. Classification of evidence as to its precise type or form is secondary in importance to the CI collecting and/or preserving the piece of evidence for use in gaining a complete understanding of the incident under investigation.

> *Classification of the piece of evidence as to its precise type or form is secondary in importance to the CI collecting and/or preserving the piece of evidence for use in gaining a full understanding of the incident under investigation.*

Legal Standards of Burden of Proof

Legal standards of the burden of proof define the level of evidence necessary to prove an allegation. CIs utilize the preponderance of evidence standard when conducting investigations. This standard of evidence generally applies to civil or administrative proceedings requiring that conclusions of fact be based on the *weight of the evidence*. Other definitions characterize the preponderance standard as being convinced that the conclusion drawn about the incident is *"more likely than not"* to have occurred or that 51% or more evidence supports one conclusion over another.

The CI utilizes this standard of evidence to evaluate which of two seemingly contradictory pieces of evidence gathered in the investigation is most likely to be a reflection of what occurred during the incident. Reconciling evidence will be further discussed in the chapter on Reconciling Evidence. Understanding the preponderance standard helps the CI to tell the story of what is more likely than not to have happened based on the evidence when writing the Certified Investigator Report (CIR).

> *The CI's role is not to find "the truth" or know what happen "for sure". The CI's role is to collect evidence that will tell the story and help the Administrative Review Committee make an investigation determination.*

The Administrative Review Committee uses the preponderance standard to determine the weightiness of the overall evidence to make a final determination regarding the incident. While the CI is not a member of the Administrative Review Committee for their case, it is essential to know what level of evidence is used before making a final determination. The Administrative Review will be discussed later in this manual.

Although it is not used in critical incident investigations, a second legal standard of burden of proof is beyond a reasonable doubt standard. This standard is the burden of proof needed to be

satisfied in criminal proceedings to determine a defendant guilty. It is generally defined to mean no "reasonable doubt" can exist in the mind of a reasonable person that the defendant is guilty. Doubt can still exist, but only to the extent that it does not affect a reasonable person's belief that the defendant is guilty.

The investigation process does not utilize a beyond a reasonable doubt standard. It is important, though, to understand this standard for cases that involve law enforcement. The CI should be careful about making determinations based on law enforcement's findings or decision to investigate. The criminal justice system utilizes a beyond a reasonable doubt standard of evidence, which is far higher than the preponderance of evidence standard used by CIs. Law enforcement may determine that they have insufficient evidence to pursue a case further or even refuse to investigate a case that could be confirmed to a preponderance of the evidence standard.

Jane is saying someone hurt her "down there". She doesn't know who the person was and does not want anyone to examine her. The police respond. They state that because she is not clear on what happened and won't go for an examination that there is nothing they can do. This is based on their need to find evidence at a beyond a reasonable doubt standard. CI Joe continues his investigation. Joe further interviews Jane and she repeatedly says "he touched me, he touched me". Joe interviews staff who state that Jane has no history of these complaints and are worried something happened to her. Joe also discovers that the day of her complaints was the last day of one of the only male staff at the house. Joe tries to interview that former staff person, but they won't return his calls. He follows up a few days after his initial interview with Jane, and she states "I am good. Things changed. He doesn't hurt me now." We don't know with certainty what happened, but we don't need to. Based on Joe's investigation, the Administrative Review Committee confirms this case as sexual abuse, as it is at least slightly more likely that it occurred than not from the story told by the evidence.

Chapter 2: Investigation Structure

Investigation Structure

There are generally four stages of activities occurring in any investigation of a critical incident: intake and preservation of evidence, identification and collection of evidence, the analysis and documentation of the evidence collected, and Administrative Review, including implementing recommendations and corrective actions.

STAGE OF INVESTIGATION	RESPONSIBILITY	KEY TASKS AND ACTIVITIES
Stage 1 **INTAKE** **PRESERVE EVIDENCE**	Organization Point Person Site Supervisors Agency Management	1. Ensure safety and well-being of people; provide medical treatment as necessary. 2. Separate target(s) from contact with individuals receiving services. 3. Preserve relevant evidence and, if possible, keep it unaltered. 4. Assign Certified Investigator.
Stage 2 **IDENTIFY** **COLLECT**	Certified Investigator	1. Create an investigative plan. 2. Check on the safety and well-being of the victim. 3. Review activities of intake and preservation with management. 4. Review incident with Reporter. 5. Identify and preserve physical evidence. 6. Sort, classify and interview witnesses. 7. Obtain written statements. 8. Identify and collect documentary evidence.
Stage 3 **ANALYSIS** **DOCUMENTATION**	Certified Investigator	1. Review and assess collected evidence. 2. Conduct background interviews when relevant. 3. Conduct follow-up interviews when relevant. 4. Conduct final reconciliation of evidence. 5. Complete the Certified Investigator Report (CIR).
Stage 4 **ADMINISTRATIVE REVIEW**	Administrative Review Committee Note: The CI should be involved in Stage 4 as needed to answer the committee's questions about the investigation.	1. Review competency and quality of investigation. 2. Make investigation determination: confirmed, not confirmed, or inconclusive. 3. Determine corrective actions. 4. Complete the Administrative Review section of the CIR. Note: Additional Administrative Review tasks are described in the Administrative Review Manual.

Chapter 3: Objectivity, Speed, and Thoroughness

Objectivity, speed, and thoroughness are three critical elements for every investigation. All three of these elements must be adhered to throughout the entire investigation process. If they are not, the quality of the Investigation suffers, which can lead to a myriad of issues, including:

- The final determination made by the Administrative Review committee may not be based on complete, objective, or accurate information.

- Corrective Actions may not be made with all the information necessary to ensure that the actions will have the best chance of mitigating future risk.

- The quality and validity of the investigation and the resulting follow-up actions could be called into question when reviewed by others in the ODP system, in grievances of employment actions, or even in legal proceedings.

Objectivity

A key element of quality investigations are considerations associated with objectivity. Objectivity in the broadest sense is the ability to describe or perceive something without being influenced by personal emotions, experiences, bias, or opinion. Investigators must conduct investigations with methods that will demonstrate to others that bias has not influenced their decisions. Investigation objectivity must

consider even unconscious bias, which is social stereotypes about certain groups of people that we form outside our conscious awareness.

The rules associated with objectivity in an investigation will be applied in several ways throughout the investigation process, including:

- Conducting investigations without conflicts of interest
- Identifying witnesses based on their relevance to the incident
- Reconciling evidence without bias toward certain witnesses
- Telling the story of what happened using a preponderance of the evidence standard

Efforts should be made to minimize bias as effectively as possible. If the CI becomes aware that there is a potential risk to their ability to be objective, they should immediately notify their organization's management. Their organization's management will be able to determine

the best course of action. The CI should take the same action if they think others may perceive them as not being able to be objective.

When the rules of objectivity are not appropriately applied, the quality of the investigation will be compromised. Individuals have the right to have investigations completed as objectively as possible. Objective investigations are critical to upholding the mission of ODP to support Pennsylvanians with intellectual disabilities and autism to achieve greater independence, choice, and opportunity in their lives. In addition, if investigations are not conducted objectively, we may fail to protect the people we support from harm in their everyday lives.

> *All humans and therefore all CIs have bias. A CI must be self-aware of their bias during all aspects of the investigation and consult with the appropriate person(s) at their organization to help assess how bias might be affecting their investigative decisions.*

Key Indicators of Quality: Objectivity

1. CIs do not investigate any incident for which they may directly be involved or a perceived direct involvement by the CI.
    a. Avoid investigating any incident for which the CI is a potential witness.
    b. Avoid investigating any incident for which the CI is responsible for rendering, managing, or monitoring services for the victim(s).
2. CIs do not investigate any incident for which they have a close relationship with the target, victim, or other key participants in the incident.
    a. Avoid investigating CI's family members.
    b. Avoid investigating CI's friends.
3. CIs do not investigate any incident for which the target is considered in a supervisory, managerial or other position of authority/power over the CI.

Speed

Another critical value associated with rules of evidence that quality investigations are judged by is speed. The rules of evidence related to speed exist because of what is considered the *half-life* of evidence. The *half-life* of evidence refers to the fact that all evidence changes over time, and that the more time that passes, the more opportunity there is for any given piece of

evidence to change or be altered. The properties, characteristics, and conditions that a piece of evidence has today may become different tomorrow.

If asked the exact details of what happened 5 minutes ago, most people could recall with fairly accurate detail. But what about 48 hours ago? How accurate would the details of your day be after two days have passed? Our memories fade. And in the lives of the individuals we serve and the people who support them, details can fade quickly against the demands of everyday life. This is one of the reasons why it is so important to conduct our investigations timely in order to prevent losing evidence.

Rules of Speed for an Investigation

1. The first witness interview must occur no more than 24 hours after assigning the CI the investigation.
2. CIs should visit the alleged scene of the incident as soon as possible after the investigation assignment to identify, gather, and preserve evidence that could disappear or be altered.
3. All initial witness interviews should be completed within ten days of assignment.
4. The entire investigation (including the Administrative Review) must be completed as quickly as possible, but not to exceed 30 days from when the incident was recognized or discovered. ODP regulations require that the final section of the incident report, which includes the CIR and Administrative Review, be submitted through the Department's incident management system within 30 days of the incident being recognized or discovered.

Concerning the rule of speed, timeframes should be viewed only as maximum, the outer limits to conducting the investigation. Investigations should be done as efficiently as possible.

It is important to note that obtaining and analyzing health-related documents or other evidence may take several weeks to complete for some types of investigations. The CI may determine that the specific needs of an investigation will not allow the 30-day submission timeframe of the final section of the incident report through the Department's information management system to be met. In such cases, the CI should keep their organization informed of delays to the timely completion of their investigation. Notification of an extension is to be made by the

organization responsible for the investigation to the Administrative Entity and the regional office of ODP using the Department's information management system before the expiration of the 30 days.

Speed in an investigation is critical for physical evidence. Delaying the observation of physical evidence and preservation through photographs can result in the evidence changing or even disappearing. Sometimes physical evidence is altered unintentionally due to a person's actions, often because of prior training that conflicts with rules for preserving evidence in an investigation. For example, cleaning the site before the CI arrives at the scene alters and possibly destroys potential evidence that may be crucial to the investigation.

Another example about physical evidence and the speed of an investigation is the potential that individuals may deliberately alter or destroy physical evidence to redirect blame or to protect another person(s). When an investigation is delayed, more opportunity arises for this type of behavior to occur.

Witness testimony may also be altered or lost when investigations are delayed. Witness memories change or fade over time. As humans, we can replay memories in our minds. As a result, those memories can inadvertently be altered over time, causing the actual experiences/observations to be changed. Discussing the incident with others can also inadvertently cause memories to change, as well as intentionally colluding with another person to "get the stories straight." Collusion is the secret agreement between two or more people for a fraudulent, illegal, or deceitful purpose. Because of these factors, it is critical to initiate witness interviews as close to the time of assignment as possible.

The first witness interview must occur no more than 24 hours after assigning the CI the investigation. The CI must complete all initial witness interviews within ten days of assignment. As noted previously, timeframes should be viewed only as the outer limits to conducting the investigation. Interviews should be done as efficiently as possible. Some incident investigations identify problems related to clinical or direct support staff failure to communicate and document information such as progress notes, shift logs, behavioral data, etc. The failure of staff or a consultant to perform their jobs correctly may directly contribute to or may even cause the incident under investigation. Delays in an investigation give people the opportunity to "cover their tracks" and get the necessary paperwork in place that

otherwise would not have been there if the investigation began sooner. Delaying an investigation also provides an opportunity for documents to disappear or to be altered.

In an investigation, one cannot predict with certainty that any of the above will occur. Yet, the consequences are significant when delays happen. Allowing the question to be raised about whether evidence may have been altered or changed because of delays in the investigation creates more significant uncertainty than an investigation initiated and completed within reasonable time frames.

In addition to the possibility of evidence changing over time, there are other reasons why it is important to complete every task in an investigation as quickly/efficiently as possible. One of these is that, typically, it is not until the Administrative Review stage of the investigation that corrective actions and other changes aimed at keeping people safe are developed and implemented. If there are actions/changes that can help keep people safer, it is important that they are identified and implemented as soon as possible. The CI adhering to the rule of speed/timeliness helps to facilitate this.

A critical incident investigation may be conducted when law enforcement, protective services, and/or licensing investigation is being conducted. The fact that another investigation is conducted in no way affects a CI's obligation to utilize the principle of speed. The only time that a CI should deviate from the investigative timeline is when the other investigative body specifically requests the CI to pause their investigation or to delay a particular step so as to not interfere with the other investigation, or when the CI and the other investigator decide to collaborate with their investigations, resulting in a delay.

When working with victims of trauma, it is important to reduce the amount of times that the person is interviewed for the investigation. The CI should work with law enforcement and other investigators to coordinate efforts to interview the victim. This could result in delay or a break from the typical process for the CI. This is ok as it is being done for a logical trauma-informed investigative reason. The CI must document the change of investigative methods and an explanation as to why it occurred.

In these situations, the CI should keep in regular contact with the other investigator(s) to know when they can complete their investigation. The fact that someone else is investigating does not eliminate the need for all investigative steps to be conducted by the CI as timely as

possible. Additionally, the CI should document all attempts at contact with the other investigative body, including the reason for any deviation from the investigative timeline.

Key Indicators of Quality: Speed

1. The CI visits the alleged scene of the incident as soon as possible after assignment.
2. The CI completed the first witness interview within 24 hours of assignment.
3. The CI completed all initial witness interviews within ten days of assignment.
4. The final section of the incident report is submitted through the Department's incident management system within 30 days of the incident being recognized or discovered.

Thoroughness

The thoroughness of an investigation relates to the level of detail generated by the CI throughout the entire process of identifying, collecting, preserving, analyzing, and presenting evidence. All potentially relevant evidence should be identified by the CI, collected and/or preserved, considered in the evidence analysis process, and presented in detail in verbal reports and the CIR. Producing an investigation considered thorough can be measured in several different ways. These are addressed throughout this manual. Some examples of how thoroughness is judged in an investigation include preserving evidence, collecting evidence, analyzing evidence, and writing the CIR.

Preserving Evidence

- Could the physical evidence at the scene of the incident have been altered, unintentionally or intentionally, before the CI arrived? If so, how does this affect the steps in the investigation?
- Did the CI take photographs of physical evidence properly? Did the CI take enough photographs to tell the story about all the relevant physical evidence available for the incident?
- Did the witness have the opportunity to collude about the details of an incident? If so, how does this affect the questions that need to be asked during the interviews?

Collecting Evidence

- Did the CI visit the scene for physical evidence? Were diagrams of the scene used when helpful to understand what happened?
- Did the CI identify all witnesses with potentially relevant evidence and interview each individually?

- Did the CI personally review relevant documents for evidence of what happened with the incident based on all of the relevant evidence?

Analyzing Evidence

- Did the CI consider all relevant evidence in their analysis and reconciliation process?
- Did the CI explore any changes to the stories being offered by the victim or other witnesses?
- Did the CI use a preponderance standard of evidence to establish what was more likely than not to have occurred in this incident?

CI Sarah is investigating a report that a staff member stabbed an individual with a pencil while sitting next to them during a transport in the program's van. When interviewing the witnesses, Sarah uses a diagram of the van. Each witness not only states where each person was on the van but marks on the diagram as well. From the diagrams, Sarah is able to identify that, while something happened to the individual that needs to be further investigated, the staff person was not sitting next to the victim and in fact was three rows behind making it not very likely that they stabbed the person with a pencil during the transport

Writing the CIR

- Did the CI thoroughly examine conflicting evidence so that the Administrative Review Committee can effectively weigh the evidence to make a final determination?
- Did the CI write a summary of the evidence that adequately describes all relevant direct and circumstantial evidence available to answer what most likely happened in the incident?
- When providing information regarding the investigation methodology, did the CI document logical exceptions to the investigative practices detailed in this manual?
- Did the CI prepare a report that is clear, concise, and logical with appropriate detail to tell what most likely happened based on the evidence?
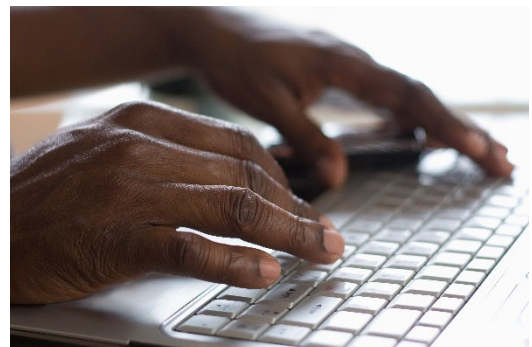
When conducting investigations, the CI may come across situations in which they cannot collect a specific piece of potentially relevant evidence. For example, the CI may decide not to interview an individual's friends if doing so may alert the friends to the fact that the individual is a service recipient when they did not previously know that, thus jeopardizing the individual's confidentiality. In situations in which the CI is not able to collect a piece of evidence, the CI should document their reasons and continue their investigation, being as thorough as possible in identifying, preserving, and collecting all other potentially relevant evidence. This way, they will still be able to develop a comprehensive understanding of the incident even in the absence of that evidence. The absence of specific evidence does not negate the CI's responsibility to conduct an investigation that is as thorough as possible. The CI's attempts to collect the evidence, even when unsuccessful, should be described in the CIR.

At times, a critical incident investigation will be conducted when law enforcement, protective services, and/or licensing investigations are being conducted. The fact that others are investigating in no way affects a CI's obligation to conduct a thorough investigation. When evidence is not available to the CI due to another investigation, the CI should document this and refer to the other investigator's report as documentary evidence. It cannot be assumed that other investigators have thoroughly examined the scene for physical evidence, collected the appropriate testimonial evidence, or obtained relevant documentary evidence. Different investigative entities have different goals and even different investigatory techniques. The CI is responsible for utilizing thorough evidence collection techniques for the incident investigation. This responsibility includes remaining in regular contact with the other investigator(s) to determine when the CI can complete their investigation and thoroughly documenting all attempts at contact with the other investigative body.

Key Indicators of Quality: Thoroughness

1. The CI created an investigatory plan.
2. The CI documented deviations from the processes outlined in this manual. To include, at a minimum, an explanation of:
    a. A witness was not interviewed in person.
    b. A witness was not interviewed.
    c. A victim was not interviewed.
    d. The first witness interview was not able to be completed within 24 hours of assignment.
    e. All initial interviews were completed within 10 days of assignment.
    f. The CI was unable to visit the alleged scene of the incident.
    g. Target(s) were not identified.
    h. Identified targets were not interviewed.

> i. There was not any physical and/or documentary evidence identified.

3. The CI conducted follow-up interviews, when applicable.

4. The CI collected and/or preserved relevant evidence and summarized it in the CIR.

5. In the CIR, the CI told the story about what is more likely than not to have happened, based on the relevant evidence.

Chapter 4: Investigative Planning

Create Initial Investigative Plan

- Gather Information about Initial Incident Report
- Establish Ideal Investigation Timeline
- Create Investigatory Question
- Identify witnesses
- Plan Order of Witness Interviews
- Weigh community interview considerations
- Identify and prepare for communication needs/preferences of witnesses
- Have supplies (tool kit) available
- Create List of Possible Evidence to Collect
- Determine how evidence will be preserved
- Identify parts of investigation that could cause trauma or discomfort

Implement Investigative Plan

- Check on safety of victim
- Review activities of intake and preservation
- Review incident with reporter
- Begin and complete Initial Witness Interviews within prescribed time frames
- Preserve testimony from all interviews in written format
- Conduct Background and Follow-up Interviews
- Collect/preserve Physical Evidence
- Collect Documentary Evidence
- Modify Investigative Plan as Needed
- Identify concerns

Document Investigative Plan and Methodology

- Document deviations from ideal investigation processes
- Document choices made; such as who was interviewed; pictures that were/were not taken
- Ensure investigative plan logic is documented in the CIR

Developing an Investigative Plan

An investigation must be systematic, which means it must be planned and not haphazard. Immediately upon assignment, the CI should develop a plan for a systematic approach to the investigation. While no two investigations are alike, starting with a general plan helps organize the investigator's work.

The CI should identify the required tasks that need to be completed, generally in a sequential manner, for the investigation, and they should be aware of how each task in the plan leads to or supports other steps in the process.

At the very least, the investigative plan should include:
- Gather Information about Initial Incident Report.
- Establish ideal timelines for the process, including the steps to be taken and projected completion dates for each step and for the entire process.
- Create the investigatory question(s) based on the description of the incident contained in the initial incident report.
- Identify the witnesses to be interviewed. Potential witnesses may be identified in the Incident Report or other documents, or mentioned by other witnesses.
- Plan the chronology of witness interviews; identify potential witnesses and classify them according to their relationship to the incident.
    - In general, the victim or initial reporter is interviewed first (many times the victim is the reporter.) When considering who to interview first, the CI should prioritize the needs of the victim. The victim holds critical details about the incident that could be forgotten if significant time passes. Interviewing the victim first also allows the CI to check on their safety, improve their chance of accurate recall, and reassure them that the incident is being taken seriously.
    - The CI may choose to interview the reporter, who is not the victim, first when they require a greater understanding of the incident report to get more background information about the incident and formulate a clear investigative plan. This decision and the investigative-based reason to interview the reporter first should be documented in the CIR.
    - After the victim (and initial reporter as needed) is interviewed, the CI's next group of interviews should generally be of witnesses with direct evidence, since memories of an incident can change quickly as time lapses after the incident. Witnesses with circumstantial evidence should come next as they can provide critical information that will assist with the last interview, which is the target(s). The reason for the target(s) being last is that knowing what questions to ask during this interview is often heavily dependent on the evidence gathered previously by the CI.

- o The CI may decide it's their best course of action to talk with other witnesses before the victim. For example, the victim may not be immediately available; the victim may be experiencing trauma associated with the incident; there is a need to coordinate interviews with other investigative entities; or the CI may need to immediately limit opportunities for witnesses to influence one another's testimony. This decision and the investigative-based reason to interview the reporter first should be documented in the CIR.
  - o Background interviews can be conducted whenever the CI recognizes a need for them. However, when scheduling background interviews the CI should take into consideration the importance of interviewing the victim, initial reporter (as needed), and witnesses involved in the incident as soon as possible in order to maximize the chance that they will be able to convey accurate and complete memories of the incident.
- Put together an investigative toolkit before starting the investigation. The kit should contain items that the CI will need during their investigation. Items for the tool kit include but are not limited to a digital camera and body chart forms to preserve physical evidence, witness statement forms to preserve testimony, and pen and paper to take investigatory notes or create diagrams.
- Create a list of possible evidence to collect, including specifics on how the evidence will be collected and preserved.
- Anticipate parts of the investigation that could cause further trauma or discomfort to the victim or other witnesses, or that could cause risk to the victim or other witnesses. Develop a plan to address how evidence can be collected without causing trauma or risk to the victim or other witnesses, and with minimal disruption to their lives. Conducting joint interviews with other investigative agencies is an example of minimizing the impact of the investigation on the individual. Refer to the Trauma, Trauma-Informed Interviewing, and Trauma and The Investigation Process portions of this manual for further guidance.
- Weigh the necessity of interviews in the community (e.g., at an individual's place of employment) when they risk violating the confidentiality of the individual. The CI should base investigative steps in the community on what is respectful to the individual's everyday life. The CI should give close consideration to the individual's privacy when deciding on the location and time of all interviews in the community.

Allow for flexibility to plan. The need to modify the investigation plan may occur based on the progress and feedback received during the investigation. Modifications may include:
- Attending to the timing of the investigation, being aware of delays that could lead to the destruction of evidence or loss of key witnesses.
- Determining whether new leads must be investigated.
- Filling gaps and oversights in the CI's plan.

- Reporting incidents that may not have previously been reported. The CI may uncover evidence of other incidents or misconduct. The CI is required to report an incident that has not been previously reported. Separate incidents cannot be "rolled" into the same investigation unless they are directly related to the incident being investigated.

Writing the Investigatory Question

The investigatory question serves two purposes in the investigation: 1) provide a general guide to the parameters of the investigation and 2) assist the CI in avoiding tunnel vision. The allegation, not the question, is what gets confirmed or unconfirmed by the Administrative Review committee in the final determination. The investigatory question is simply an investigative guidance tool. It can help the CI and others who review the investigation remain aware of and focused on the goal of the investigation, which is to as fully as possible understand what happened related to the reported incident.

While there may be circumstances needing multiple investigatory questions, most investigations require only one properly written investigatory question. When a CI believes there is a need for multiple investigatory questions, they should review the incident allegations to ensure that they are not actually attempting to investigate multiple incidents that require separate investigations.

The investigatory question should be generic as to the allegation. If possible, it is:
- Linked to the victim (includes their name)
- Anchored to a general time frame
- Linked to the general location of the incident

The right question anchors the investigation to the victim, the date of the incident, and general location without creating the tunnel vision. Tunnel vision is a natural human tendency that leads CIs to focus on specific theories, then select and filter evidence only through those preconceived theories. Tunnel vision includes ignoring or suppressing evidence that does not fit with the preconceived ideas.

To decrease the chance of tunnel vision, the investigatory question should not include the name of the target(s), specifics of the allegation, reported motive, or specifics of time or place.

A properly written investigatory question follows this format:

> **What happened to *[insert name of victim]* at *[insert general location of incident, if known]* on *[insert date of incident, if known]*?**

The investigatory question is the only part of the investigation process in which the CI should err on the side of being more general, rather than more detailed. The more details that are included in the investigatory question, the more chance there is of tunnel vision occurring. If the CI is not completely certain about the incident date or location, or if the incident had no direct adverse effects on the victim (such as an allegation of neglect through not maintaining required level of supervision, during which the individual experienced no harm or stress), the investigatory question should be written as follows:

- If the date of the incident is not known, the date of the incident report should be used instead.
    > Example: *What happened to Mary at her home that led to the incident report of July 1, 2021?*

- If the incident location is not known, any reference to location should be left out of the investigatory question.
    > Example: *What happened to Mary on July 1, 2021?*

- If the CI feels it is more appropriate, the word "to" can be replaced with the word "involving."
    > Example: *What happened involving Mary at her home on July 1, 2021?*

<u>Chapter 5: Physical Evidence</u>

Physical evidence is defined as things themselves (e.g., an injury, weapon, a piece of furniture, environmental condition, etc.) or the absence of things, as well as the spatial relationship among things that have the potential to describe or explain an incident under investigation.

Physical evidence includes:

1. *The presence of things such as injuries or objects*
2. *The absence of things such as injuries or objects*
3. *The spatial relationship between things*

As previously stated, all physical evidence should be identified and preserved as quickly as possible during an investigation. When creating the investigative plan, a preliminary assessment about potential physical evidence and how to preserve it should be made from the incident report.

Injuries

Whether or not an individual has sustained injury is very relevant in the ODP incident management system. If an injury exists, the CI will need to assess how the injury was sustained and whether or not it is related to the incident under investigation. For example:

- The type of injury sustained could help determine how an incident occurred.
- The appearance and size of an injury can be critical to assess how the injury occurred.
- The presence or the absence of an injury could help determine what happened.

CI's Role Related to Injuries

When appropriate, the CI should attempt to observe, document, and photograph the injury or absence of injury. Photography should be done as soon as possible. Even if no immediate injury is identified, it is recommended the CI observe, document, and photograph the absence of the injury. In the absence of a visible injury or in instances of injuries such as bruises that don't become fully visible right away, the CI should return to take additional photographs after allowing for some time for the injury to present itself fully.

If there is an injury on a genital area of the body or a part of the body that requires the person to disrobe, or if, for any reason, showing it to the CI could be traumatic to the victim, the CI should not ask or agree to see it. This shows respect for the individual's privacy and reinforces the importance of privacy boundaries. Instead, the CI can rely on the evaluation of a physician through medical documentation, representation of the injury on body charts, and/or interviews.

CIs should always ask permission before taking pictures of an individual. If the CI is unsure if

the individual consents to having a picture taken of an injury (or absence of injury), the CI should not take the picture.

When conducting witness interviews, it is also appropriate to focus questions on observations made by the witness regarding the victim's physical condition before, during, and after the incident, but before any medical interventions and/or physical examination.

Physical Environment

The environment where incidents occur, including the location, physical layout, properties (e.g., temperature, visibility, noise, weather conditions, etc.), and spatial relationships among things (e.g., furniture, other items in the environment, even people) may provide crucial evidence in an investigation.

Photography

Preserving the condition of physical evidence through photographs is an important aspect of the investigation process. Photographs can be vital to telling the story of what happened by preserving the presence or absence of physical evidence.

When photographing the victim, it is important to always ask their permission to take pictures. If they refuse to allow for photographs, the CI should consult their supervisor or the person within their organization who oversees investigations for guidance on how to proceed with preserving the physical evidence. The CI should also document the refusal to be photographed in the Certified Investigator Report (CIR).

The first step in photographing an injury is for the CI to take a photo that shows the entire body and face of the individual. Photographing the individual's face provides verification of who the photos are of. If possible, the location of the injury should also be in this photo. The CI should then take close up photographs of the injury.

If evidence is available in an individual's genital region or requires the individual to partially undress for the picture to be taken, as noted above, the CI should not ask or agree to see or photograph the area. Instead, the CI should use documentation of an examination by a certified medical professional or testimonial evidence from a witness who saw the evidence instead of taking photographs. If the documentation or witness interview is not sufficient, the medical professional who conducted the examination should be interviewed. If photographs were taken by someone other than the CI (e.g., a medical photographer or law enforcement officer), these pictures could be used as evidence for the investigation.

Using the initial incident report for reference, the CI should consider taking photos of any

physical locations and/or objects identified in the report that would help tell the story of what happened. For example, suppose the report indicated the individual tripped and fell on a piece of rug that wasn't tacked down properly. In that case, the CI should observe the flooring material at the location and take photos regardless of whether it has wall-to-wall carpeting, a throw rug, or a wood floor with no rugs over it.

When photographing the location of the incident or specific pieces of evidence in that location, the CI should begin by taking photographs of the entire incident scene from various perspectives/angles. They should then take progressively closer photographs from those perspectives, culminating with the piece of evidence. Taking photos in this way can assist the CI in visualizing what a witness has observed when the witness describes what they observed from a specific spot in the scene.

As photos are taken, the CI should keep a photo log identifying each photo, adding notes including the date, time, and any other relevant information. The vast majority of cameras used to take evidence photos today use digital technology. The CI should follow agency protocol for storing investigation photographs and keeping them on a secure storage device with the case file.

Diagrams

After completing the taking of photos, a diagram of the environment where the incident occurred is recommended. Diagrams are the CI's most effective tool to demonstrate spatial relationships, distance, and movement and are a tool that can assist in interviewing witnesses. Diagrams do not need to be to scale, yet at the same time, the diagram that is created should be clear.

Diagrams are beneficial tools to help witnesses describe what they observed or experienced. Therefore, the CI can use a diagram of the incident location and body charts in interviews. If the CI creates the incident location diagram before the interview, they should only draw non-moveable features of the location. During the interview, the witness will add the locations of people, furniture, etc. Objects and people represented in a diagram need to be identified by use of a key. This will allow anyone reviewing the diagram to understand it. At the end of the interview, the diagram needs to be signed and dated by the people involved in creating it, the CI and the witness.

Since diagrams and photographs are used to preserve physical evidence, they are entered in the physical evidence section of the Department's information management system.

Chapter 6: Testimonial Evidence

Interviewing witnesses, including victims, individuals, targets, staff, physicians, family members, etc., at its simplest level, is the process of two people communicating and sharing information. Interviewing is an art and not a science, but several guidelines can assist the CI in being an effective interviewer.

Providing Testimony

The ability of a witness to provide testimony on the topic of an investigation is based on their ability to make observations and being provided the opportunity to communicate those observations effectively.

Regarding the witness' ability to make observations, it is essential to remember that the observation is based on the senses: sight, hearing, taste, touch, and smell. The CI should never assume someone cannot be a witness. An individual can have one or more senses impaired and still be a witness for an investigation into a critical incident.

The CI is responsible for assuring the witness is given the opportunity to effectively communicate memories of their experiences/observations during the interview. To do this, a CI may need to provide accommodations to meet the witness' communication needs by providing sign or spoken language interpreters, communication boards, etc. The witness is thereby able to communicate in the most effective manner possible. This approach will help improve the testimony's overall quality and minimize the risk that the testimony is seen as compromised or tainted. To best provide these accommodations, the CI must research their communication needs before the interview. The CI must understand that people can communicate without the use of words. Information suggesting that a witness does not use words to communicate (is "non-verbal") is not sufficient justification for not interviewing the witness.

In addition to the accommodations, the CI must assess other communication preferences of the witness. For example:

- The victim may have certain times of the day that they are better able to communicate than others.
- The individual may have non-verbal gestures that have specific meanings only understood by those who know them well.
- All witnesses will use a specific set of vocabulary. Definitions and meaning of words are not necessarily consistent and can vary based on local colloquialisms, cultural diversity, educational level, professional jargon, etc.

Documentation of Communication Abilities

The CI is responsible for providing documentation in the CIR related to an individual's communication abilities. Suppose a CI attempts to interview an individual and is unable to

obtain testimonial evidence due to the individual's communication abilities. In that case, the evidence must be in the CIR that explains the individual's communication abilities.

Tip for communication ability documentation in the CIR:

- The term "non-verbal" does not mean that the person is unable to communicate. Significant changes in a person's usual demeanor are a form of non-verbal communication that can indicate something has occurred.

Cultural Awareness

Every person communicates differently based on their personal communication history and their cultural communication patterns. In communication, cultural differences can arise in definitions of words, body language, amount of detail in answers, views of authority, and perspectives on caregiving. All of these differences can result in the inaccurate recording and analysis of testimony.

A CI needs to be aware of communication differences that may be occurring due to cultural differences. When the CI believes that there is a cultural difference in the communication patterns during an interview, the CI should practice cultural inquisitiveness and ask the individual about their unique communication patterns. For example, if the CI notices that the person is not maintaining the eye contact that is typically expected, the CI should not assume that the person is lying. The CI should ask the person a question like, "I notice you are not looking at me when you answer my questions. Can you tell me why that is?"

It is also appropriate for the CI to ask questions that address potential cultural differences as part of their investigation. For example, the CI can say, "Please tell me your definition of 'bad care'." or "What was your intention by using the term?"

The CI should avoid overgeneralizing cultural differences and assuming cultural communication "rules" apply to everyone from that particular culture. Many people teach that individuals from an Asian culture do not utilize the same level of eye contact used in the United States, especially to someone in "authority." This idea is highly dependent on what part of Asia an individual is from, Hong Kong, rural China, Vietnam, etc. It is also very dependent on the acculturation level of the person, like first-generation vs. third generation.

In other words, cultural patterns of communication are very individualized. Just because

someone appears to have a specific cultural background, the CI should not assume how they will communicate. As noted, the CI needs to identify when there may be cultural differences in the interview and then address them through questions that help clarify whether cultural differences are affecting the interview. This assessment can be done in the initial interview but will often occur in the follow-up interview after the CI has had a chance to review the evidence from the initial interviews.

Trauma

The CI should be sensitive to the fact that many individuals and their staff have experienced trauma. In general, trauma can be defined as a psychological, emotional response to an event or an experience that is deeply distressing or disturbing. When loosely applied, this trauma definition can refer to something upsetting, such as being involved in an accident, having an illness or injury, losing a loved one, or going through a divorce. However, it can also encompass the far extreme and include severely adverse experiences, such as rape or torture.

Trauma-Informed Interviewing

Another guiding principle for critical incident investigations is the use of trauma-informed approaches. At the core of a trauma-informed approach is the idea that every person should be treated in a way that is sensitive to their trauma, whether that trauma has been experienced recently, or whether it was experienced in the person's more distant past.

The U.S. Office of Justice Programs states that investigators should not be surprised if victims:

- Deny they are a victim
- Show fear of what will happen to them
- Show fear of the investigator
- Change or vary their story or how they tell the story
- Become distracted, angry, reluctant, or concerned about their own needs
- Express fears about safety and privacy, particularly for the interview
- Do not remember all details

A trauma-informed approach is gradual and nonthreatening. It focuses on showing empathy and decreasing anxiety. The CI must be patient and willing to end an interview if the person shows signs of being traumatized by questions or is becoming frustrated by their inability to recall details. When working with trauma victims, the CI must be willing to do follow-up interviews to gather their testimony over time.

The CI should examine their approach to all aspects of an interview through the lens of being trauma-informed. How the CI asks the questions, what the CI is wearing, where the interview occurs, and who else is in the vicinity can all be things that can potentially affect the interview

with a victim of trauma. The CI should think through, in their investigative plan, how to ensure a trauma-informed approach and adjust when someone shows signs of trauma during an interview. It is almost always best practice not to interview the victim of trauma multiple times and make them retell their story over and over to different professionals investigating the incident. If the CI can collaborate with law enforcement and other investigators to minimize the number of times the victim needs to tell their story, the CI should do so. If this happens, documentation must exist as to why the CI is not conducting the investigative step following the standards of evidence collection provided in this manual.

One night when Ron was sleeping, he woke up to one of the staff on top of him. That is the only thing Ron can recall. When Ron wakes up the next morning, he complains of rectal pain. Upon medical evaluation, the physician believes that Ron was sexually assaulted. When interviewed Ron is not able to recall specific details about what happened.

Research has shown that sexual abuse is often a traumatic incident for a person. We are only beginning to learn about the effects of trauma on the senses. We know even less about the effects of trauma on people with intellectual disabilities and autism. CIs must be aware of the effects of trauma on a victim's ability to recall and not discount their story if they cannot recall what happened after a traumatic incident.

Trauma and the Investigation Process

After an incident, responses and services can be stressful and confusing for most people. All of this can influence to what extent a victim is willing and/or able to participate in an investigation. CIs should be mindful of the following[4]:

- Participation in investigations can be difficult for victims who have experienced trauma because the services, investigations, law enforcement, and legal action(s) throughout the process can bring up the traumatization experience. When victims see the people or pictures of the places or scenes of incidents, it can bring up the feelings and sensations

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[4] Adapted from *Enhancing Victim Advocacy Through a Trauma-Informed Approach* By Olga Trujillo, JD & Patricia Moen Tip Sheet #3 August 2019

associated with those traumatic events. This, in turn, can cause flashbacks, in which a victim/survivor re-experiences the incident.

- This re-experiencing may cause feelings of panic, anger, disorientation, physical pain, grief, or numbing and shutting down. These traumatic reminders are referred to as "triggers." When a person experiences a "trigger" of a traumatic event, they may become unable to participate in the investigation process fully. The experience may require the CI to extend interview timelines, arrange for additional interview times or even halt the interview process if the individual is experiencing a level of re-traumatization that outweighs the benefit(s) of obtaining their testimony. This is not to say that a CI should assume that all individuals will be unable to participate in an investigation due to trauma triggers. Each case should be evaluated, and care must be taken to afford each individual the opportunity to participate in an investigation to the fullest extent possible.

- Credibility determinations of whether the victim is truthful are often made by people with positions of authority in our systems, without recognizing the impact of trauma on victims. A great deal of our system response is based on proving that something did or did not happen. Most people's lives aren't like that. When an individual reports an incident or provides witness testimony about an incident, their credibility is constantly being assessed. This situation can be very stressful and may lead an individual to refuse to participate in an investigation and/or recant their statement.

  a. The problem of making accurate credibility assessments is that determining whether a person is truthful is often based on the CI's or other professionals' sense of what a reasonable person can remember or how they believe a victim should look or sound when talking about life-threatening events. However, traumatic events can alter how a person thinks, talks, and even remembers an incident.

  b. To survive, victims may dissociate, allowing them to experience the incident without actually feeling the full effect. For example, someone who experiences a near-deadly car crash caused by a driver under the influence may dissociate, so they don't feel all the pain and terror associated with the incident. The victim may talk about the car accident in a flat and scattered manner. Without knowing dissociation is typical for trauma, a CI or other professional can find it hard to believe a victim who is showing signs of trauma, which may make it hard to believe a victim is credible.

What Can CIs Do to Help Victims Experiencing Trauma?

- If you are interviewing individuals in a space over which you have control, review the space and decorum:
  - Ensure it is not chaotic, overstimulating, and noisy.

- - Make sure the space you meet with victims is not too small or crowded with furniture.
  - Make sure the victim has easy access to the door and feels they can leave at any point.
  - Ensure victims are clearly and kindly directed to your office or meeting room when they arrive for the interview.
- Take time to develop a rapport with the victim before you have them discuss or recount traumatic experiences.
- Talk to victims about what helps them when they are triggered or reminded of traumatic experiences.
- Incorporate a what-to-expect discussion into every meeting with the victim. Predictability, to the extent possible, helps alleviate a victim's fears.
  - Explain and walk victims through the process of your interview, so they know what to expect. Talk them through the process step-by-step.
  - When arranging the interview, go over details such as where you will meet, who they will talk to, the purpose of the discussion. As appropriate, have this material available in many formats: e.g., a pamphlet, a graphic, a simple step-by-step instruction page, available in different languages as needed.
  - Remind them that they can ask for breaks and show them the location of restrooms or how they can get something to drink or eat if needed.
  - Be clear about the limitations of your role.
  - Be clear about the role you can play.
  - Agree on a simple cue to let you know they are feeling overwhelmed or triggered.

Types of Investigative Interviews

In any investigation, there are generally three types of interviews used to obtain testimony from potential witnesses. The three types to be explored in this chapter are initial incident interviews, background interviews, and follow-up interviews. All of these interview types require basic guidelines for the interview process.

Basic Guidelines for the Interview Process

The purpose of the incident interview is to allow a witness to communicate memories of their experiences or observations relating to a specific environment over an identified time period.

Conducting interviews that gather thorough testimonial evidence is a critical skill CIs must develop. Even before meeting with a witness to conduct the interview, there are several guidelines CIs should follow to prepare for the interview:

- Collect information regarding the communication needs of the witnesses. The

Individual Support Plan is a place to find this information for people receiving services. Talking to people who know a witness is another way to learn about their communication needs, regardless of whether the witness is someone receiving services, staff, family members, etc. Provide proper accommodation of communication needs (e.g., professional interpreters and communication devices such as picture books and other technology used to facilitate communication).

- Conduct interviews individually with witnesses, not in groups. The general rule is that witness interviews are conducted on a 1:1 basis. Not only can group dynamics or peer pressure discourage or even suppress responses. More importantly, the CI runs the risk that witness testimony will be seen as unreliable.

- Does the witness (individual[s] receiving services and/or employee[s]) require a third party to be present? If so, make arrangements to accommodate needs. Some examples of third-party representation may include:
  - A person the individual receiving services feels safe with (e.g., staff person, family member, etc.). Care must also be taken to ensure this person is not the target or any other potential witness for the investigation.
  - A union representative for employees with the right to representation when the representative is not a target or any other witness to the incident.

- Interview in a private place if possible.

- When relevant, prepare diagrams for use during the interview to help document the described movement, spatial relationships, distance, etc.

- If you are planning to interview several witnesses in one day, schedule sufficient time to complete each interview and allow a cushion of time between each interview for writing any notes that the interview prompted. This cushion of time will also help prevent one witness from coming into contact with another when arriving for or leaving the interview. This decreases the potential for retaliation from one witness toward another.

- Maintain the appearance of objectivity and neutrality. Convey to all witnesses that the organization takes the allegation seriously.

- Clearly explain the purpose of the interview. The CI may inform witnesses about why they are being asked questions as long as it doesn't violate the confidentiality of the reporter or another witness.

- Be cautious about providing any details of the incident. Doing so could cause the witness to incorporate those details into their memories of the event, thus making their testimony less representative of what they truly observed or experienced.

- Do not promise confidentiality but maintain it. You can tell the witness that you will only share information with management or others who need to know.

- Generally, do not tell the witness being interviewed what was said by other witnesses. Exceptions to this rule might involve follow-up interviews where there is a need to reconcile conflicting testimonial evidence or interviewing the target. Do not provide if

sharing that information will put the victim or another witness at risk of harm. If you must share information obtained from other witnesses, it is important not to name the witness who gave you the information and convey it in very general terms.

- Do not discuss your own opinions or conclusions.

- Do not make promises to witnesses, such as offering a bargain or favor in exchange for testimony (e.g., change of shift or immunity). Avoid at all costs any oral agreements.

- Focus on using nonverbal communication in assisting your interview process. For example, the SOLER method is an effective nonverbal communication structure to use in interviewing:
    - S-Sit squarely
    - O-Open posture
    - L-Lean forward
    - E-Eye contact
    - R-Relax

- Use disability etiquette when interviewing.
    - Assume nothing. If you have a question about what to do, how to do it, what language or terminology to use, what assistance to offer, ask the individual with the disability.
    - Do not overgeneralize. Just because an individual has a particular form of disability does not mean they share the exact needs of someone else with that disability.
    - Use a normal tone of voice. Avoid altering your volume unless asked to do so.
    - Never lean on or touch an individual's assistive device (e.g., wheelchair, walker, etc.).
    - Even when the individual has a support companion or interpreter, talk directly to the individual.
    - Offer assistance but do not insist on assisting.
    - When speaking with someone who uses a wheelchair, sit down or kneel to maintain eye-level contact with them.
    - When someone may be lip-reading, look directly at the person, speak normally but slowly, avoid talking with your hands, and grant permission for them to let you know if they can't understand you.
    - When speaking with individuals with an intellectual disability, use simple and straight forward but not childish language or tone
    - When the CI has difficulty understanding someone's communication, be very patient, give undivided attention, ask shorter questions that require shorter answers, and ask for clarification when you don't understand. Do not finish their sentences or assume you know what they meant.
    - Be open to the use of alternative communication methods, including those

documented for the person and their stated preferences of ways to communicate during the interview.

When CIs spend time upfront addressing potential issues like those identified above, the opportunity has been created for a more objective and thorough interview.

There is no perfect interview. Interviews are hard and require full attention of the CI. The CI needs to always be able to conduct that interview without distraction to allow full concentration on all the factors affecting the interviewing, like word choice, cultural influences, nonverbal behavior, disability etiquette, what is being said and what is not being said.

Initial Witness Interview

Initial interviews are conducted with people identified as potential witnesses who have either direct or circumstantial evidence about what happened. The CI's goal during the initial interview is to help the witness elicit relevant, detailed information regarding their memory of their experience or observations relevant to the incident under investigation.

The following provides a framework by which to structure the initial incident interview:

1. Introduce yourself and generally describe the purpose of your interview.
When initially meeting with the witness, the CI needs to introduce their investigative role, even if they already know the witness. The CI should also provide a brief description of the purpose of the interview; this is done to establish a clear understanding, especially from the witness' perspective, about the seriousness of the process they're about to undertake and to minimize potential misrepresentation of the interaction and roles between CI and witness. The CI should then outline the interview process by explaining what the witness can expect to happen (that the witness will be providing testimony, and then the testimony will be preserved in writing). The introduction may reduce the fear of the unknown that the witness may be experiencing.

2. Build Rapport
Every interview should include time to build rapport between the CI and the person being interviewed. Rapport comes from the Latin word "portare", which means "to carry". CIs must develop a connection with the person that allows them to carry the interview forward and encourage maximum recall of information. Rapport affects the quantity and quality of

testimonial evidence gained from an interview.

One of the primary goals of building rapport is to reduce anxiety about the interview. Decreasing anxiety is necessary for the person being interviewed to recall information. Recalling information is challenging for everyone, and anxiety detracts from the ability to do this. For rapport, the CI should frame their initial greeting and conversation to decrease any anxiety that the person may be experiencing about the interview.

To build rapport, the CI should immediately tune in to the person they are interviewing. A few minutes of discussing neutral topics not related to the incident helps to establish rapport for many people. For others, they may want the CI to go directly to the incident, and rapport will be broken if the CI discusses unrelated topics. Meeting the person where they are at is critical to building rapport and successfully starting the interview.

In interviews, especially initial interviews, rapport building for the CI does not just occur at the beginning of the interview. Rapport building is necessary from the beginning to the end of the interview. The CI must demonstrate that they are not just an "investigator" but genuinely interested in what the person has to say. Even at the end of the interview, the CI can continue building rapport by making sure to end the interview positively, which increases the likelihood of a more successful follow-up interview.

3. Start with an open-ended introductory question

When the CI starts to ask questions related to the investigation, they should let the person know that there are no wrong answers and that they should share all details that come to their mind. Generally, the CI should start by asking a general open-ended question to explore for detail:

"What can you tell me about your shift yesterday?"

The purpose of asking an introductory open-ended question at the beginning of an interview is to provide the CI an opportunity to assess the level of knowledge the witness may have about the incident, decide where to begin the interview process, and allow the witness the opportunity to become comfortable with the process.

It is important to note that witnesses may feel compelled to answer every question asked, even if they do not know the answer. There are a variety of reasons for this phenomenon. Things, such as a desire to please people and to be believed, often influence a witness's answers during an interview.

The way the CI phrases questions may influence the quality and accuracy of the information

received. Using phrases such as "tell me anything you remember" and "no detail is too small" removes the pressure on the witness to have a "right or wrong" answer to a question.

<u>4. Begin to structure and organize the interview</u>.

After listening to the witness's response to the introductory question, the CI's goal is to begin to gather as much detail as possible from the witness. To do this effectively, the CI needs to focus on using directed open-ended questions to learn about the who, what, when, where, and how of an incident. This technique generates more complete information and encourages the witness to answer questions with more than a "yes" or "no" answer.

Leading Question: So, the staff call you a bad name that made you upset, didn't it?

Compound Question: What time did you arrive and who was there when you got there?

Accusatory Question: Why did you hit her?

Loaded Question: Are you still coming in late every day?

Supposition Question: Why do you think Jim hit you?

By asking open-ended questions, the CI also minimizes the risk of asking *leading questions*. Leading questions indicate CI bias by implying answers the CI is hoping or expecting to get.

Other types of questions to avoid using include:

- Compound questions – questions that combine multiple issues into one question.
- Accusatory questions – questions containing accusations or referencing incriminating evidence.
- Loaded questions – questions that give the witness only negative answer choices because of an assumption that is in the question.
- Supposition questions – questions that ask the victim to guess about someone else's motives.

<u>5. Elicit relevant chronological detail from the witness</u>

The job of a CI is to help the witness tell every relevant fact they experienced or observed so that a complete and detailed account of all the evidence and known circumstances are preserved in the record.

Another one of the CI tasks is to help the witness tell the story of what he or she experienced or observed in chronological order. Witnesses often do not think in chronological detail. They may be focused on irrelevancies and may tell the story in any sequence that comes to mind.

The CI needs to ensure that they have conducted the clearest, detailed, comprehensive interview possible of a witness. One example of the importance of detail is that people use different words to mean different things. For instance, a witness may use emotional words that have various meanings. The word "upset" means something different to different people. Asking what that looked like may help obtain the detail necessary to understand what the witness observed.

> *People don't necessarily open up about details generally. It is important that the CI invite the detail. A small tip that can significantly increase the amount of details is to give permission to provide those details. Open interviews with, "I am going to ask you a few questions. I want you to answer with all the details that come to your mind. No detail is too small. I want to know everything."*

To effectively interview, the structure of the interview becomes important in helping to organize and elicit that detail. Once the introductory questions have been asked of a witness, an opportunity is created to help a witness:

- Remember more detail

- Focus on what is relevant

- Organize their memories chronologically

The interview should be structured using chronological "building blocks" (or slices) of time. Begin by determining the time and place *before the incident* where you believe the witness' testimony becomes relevant to the investigation.

"X" represents the point in time when the incident occurred.
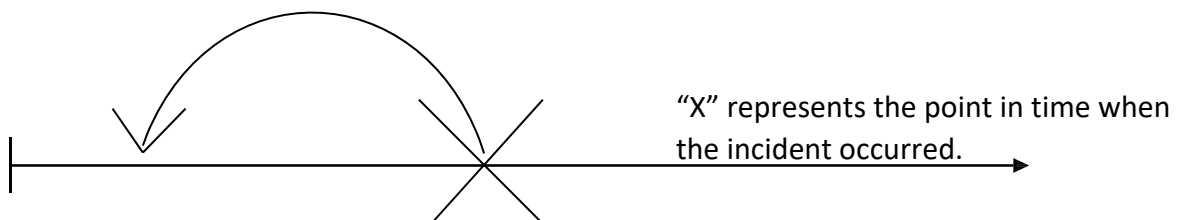
Since the functional aspects of testimony are based on the witness's experiences or observations stemming from their senses, the questions asked of the witness for each "block" should initially be focused on their observations through their senses.

Based on the witness' response to these questions, the CI should ask relevant follow-up questions. In essence, the witness' answer determines the next question. Follow-up questions to be considered relevant to each block of time may include:

- What time was this?

- Where did this happen?

- Who else was there?

- What is your relationship with that person?

- Who else may know relevant information?

- What occurred?

- How did it happen?

- Who did (or said) what? In what order?

However, the CI must be cautious in their use of these questions when interviewing victims. Research has shown that these types of questions tend to leave victims feeling doubted, like a failure, etc., if they don't know the answers. In addition, victims and potentially other witnesses will sometimes make up answers to these questions to get approval from the interviewer and feel more believed.

Do not leave the chronological block until all of the details necessary to recreate the incident are established. To help ensure this, before moving on to the next block of time, ask the witness "what else" they have to tell you about the block that is being discussed. The witness may have relevant information they are not sharing because they think it must not be significant since you do not ask about it. Asking "what else" invites the witness to share this information.

Remember to introduce and use diagrams of the environments to help witnesses describe their observations/experiences during the interview. This helps clarify issues such as spatial relationships and movement being discussed.

6. Other Initial Interview Tips

Here are some additional tips for a successful initial interview:

- Give the witness time to think before responding; do not rush them.

- Do not interrupt and cut off the witness when they are providing an answer.

- Use silence to encourage a witness to provide you with additional information. Silence can be a helpful technique if the CI feels a witness avoids a question or is being vague.

- Restate what the witness has said by periodically summarizing and reviewing. Restating is helpful to determine whether you've heard the witness correctly and ensure the witness they're being understood.

- Before ending the interview, always allow the witness to disclose anything else they want the CI to know. Inform them of the goal of conducting a thorough, complete

investigation that tells the most accurate story. Ask each witness whether they know of additional evidence or relevant situations that were not discussed during the interview.

- Before ending the interview, be sure to give them a way to get in touch with you and invite them to do so if they think of anything else.

Interviewing Family Members of an Individual

As part of an investigation, it may be necessary to interview family members of the individual either as witnesses with direct evidence, witnesses with circumstantial evidence, or background information. The interviewing techniques described above can be utilized for family members as well as other witnesses.

While many family members will be eager to participate in your investigation, family members, unlike staff, can decline to be interviewed or cooperate during the investigation. There also may be times when it is not appropriate to interview family members due to confidentiality, safety concerns for the individual, or sensitivity to the family's current situation. In these cases, the CI should note the reason that they did not interview the family member in their report.

If that family member is a paid caregiver by your agency, they do need to participate in the investigation. Regardless, CIs should use effective interviewing techniques, such as building rapport and trust, to mitigate the family's concerns about participating in an investigation.

If a family member is willing to speak with you but not willing to complete a witness statement, you cannot force them to do it. At that point, you should, at the first opportunity, create a written summary of the interview in your case documentation. These notes will be the preservation of the family member's testimony, so the notes should capture what the witness said as accurately and as thoroughly as possible.

Background Interviews

Background Interviews are used to generate evidence considered relevant but not specifically originating from the incident itself. Background Interviews can be conducted with witnesses identified as being present at the scene when the incident occurred or with other individuals who were not present when the incident occurred but who have the potential of providing relevant background information. Purposes of background interviews include:

- Reviewing and/or discussing policies and procedures used by the organization about issues of actual "practice" that emerged related to the incident. For example, a psychologist who developed a behavior support plan might be interviewed to discuss how and/or why the plan was developed, what training was provided to staff regarding the plan and its implementation, and what observations the psychologist made of staff and the individual since the plan was implemented. This interview is relevant even

though the psychologist was not present when the incident under investigation occurred and has no knowledge of it.

- Collecting information about medical issues that the CI uses to support or dispute other evidence in the investigation (e.g., standards of care or "best practice" considerations).

- Collecting information about relevant performance issues involving the target(s) or other employees.

  Note: The CI must exercise caution in the use of employee disciplinary/commendation histories, as a person's past actions do not necessarily reflect their role, if any, in the incident under investigation. Reliance on these records could create bias either for or against a person.

- Collecting and assessing information about relationships among individuals considered principal to the incident (e.g., victim(s), target(s), or other key witnesses).

CI Ashley interviews the Target who states that the reason Susan was crying was not because he was mean to her but that is how she always acts when staff say something she doesn't like. For background interviews, Ashley talked to people on other shifts and asked them how Susan acts when they say something she doesn't like.

The structure of a background interview generally consists of focused questions. As a result, care must be taken, so the questions don't become leading. Otherwise, the evidence generated from this kind of interview may be viewed as biased or prejudicial. The use of this evidence should be carefully weighed with other relevant pieces of evidence identified in the investigation.

The CI should make sure that background interviews with community witnesses are relevant and necessary to the investigation. While a thorough investigation is necessary, the CI should demonstrate sensitivity and confidentiality to the individual by not conducting interviews that are not necessary to the outcome of the investigation. For example, the CI may choose not to interview an individual's coworkers at a community work setting if the CI does not have reason to believe that the coworkers may have new evidence to contribute that has not already been obtained from the victim or other witnesses. When the CI chooses not to interview a potentially relevant witness due to these considerations, they should document why in the CIR.

Follow-up Interviews

Follow-up Interviews are generally conducted with identified witnesses and used primarily to reconcile conflicting evidence, ask about new evidence emerging in the investigation, or ask questions the CI failed to ask during earlier interviews with a witness. Examples of issues addressed during a follow-up interview include:

- Asking a witness to clarify inconsistencies in the testimony they provided during the initial interview.

- Generating additional detail related to a witness' testimony because the CI did not get this during earlier interviews.

- Asking specific questions related to newly identified and/or conflicting evidence that has emerged in the investigation in order to better reconcile these conflicts or gaps in understanding.

The structure of a follow-up interview generally consists of focused questions. As a result, care must be taken so the questions don't become leading. Otherwise, the evidence generated from this kind of interview may be viewed as biased or prejudicial. The use of this evidence should be carefully weighed with other key pieces of relevant evidence identified in the investigation.

Have you ever been asked a question and you only think of important details to the answer after the person who asked the question is gone? How often did you track down that person to make sure they knew the other details? Probably not often. This illustrates the importance of giving important witnesses a second chance to provide details about the incident in a follow-up interview.

Personal Safety

While safety issues can occur in several areas, the most significant risk posed to CIs is during the interview process. The following guidelines are meant to help CIs begin thinking about safety during interviews.

- The first and most important guideline is "When in doubt, get out." Whenever the CI senses that an interview could get dangerous, the CI should end the interview immediately.

- The CI should never assume someone cannot be a risk to a CI's safety.

- People being interviewed will get frustrated and angry at times. But the CI does not need to tolerate prolonged screaming, yelling, or personal attacks.

- The CI should position themselves with a line of escape if they need to exit the interview.
- When traveling to a site to do an interview, the CI should park the car where there is a clear pathway to escape.
- The CI should have an emergency # preset on the phone that requires only one button to initiate.
- When traveling outside the agency, the CI should report to a supervisor the interview location and establish a check-in system with a supervisor.
- The CI should conduct interviews where the privacy of the conversation can be ensured, but support and assistance are nearby.
- When someone threatens physical violence, the CI should stop the interview immediately. The highest predictor of imminent violence is the verbal threat of physical violence.
- The CI should consider cyber-security. For example, think about identifying information in the public space and consider ways to reduce that risk (e.g., privacy settings on social media sites).
- The CI should be mindful of the clothing they wear. For example, high heels can encumber a quick getaway; neckties can be used to choke.
- When going into the community, the CI should be aware of safety risks such as weapons, pets, etc. Do not conduct investigations when weapons are present and in easy access of people in the house.

Preservation of Testimonial Evidence: Witness Statements

All potentially relevant witness testimony must be preserved in written format. The ideal way, but not the only way, to preserve witness testimony in written format is in a witness statement. The purpose of preparing witness statements is to preserve the witness' communication of their memory of experiences they had or observations they made. Other purposes include:

- Refreshing the memory of the witness at a later time.
- Analyzing the accuracy of contradictory testimony.

The preferred method of taking a statement is with a narrative format. In the narrative format, the witness does the actual writing of the document. The witness writes in the first-person ("I", "me", etc.) and produces their story of what is recollected of the event.

It is important when preparing written statements reflecting the investigation interview with a witness that their statements are produced verbatim. There is no altering or editing of the

actual language used by the witness. For example, the CI may not insert employee numbers in the statement, change wording or spelling, or take out the full names used by the witness.

When using the narrative format:

- The CI should use the witness statement format provided in this manual.

- The CI should review the testimony with the witness, asking similar questions as they did during the first level of the interview. In essence, the CI recreates the chronological sequencing of the witness' movement through time.

- As a question is re-asked, the witness would restate their answer and write their answer on the witness statement form, using complete sentences when possible.

- The CI would continue in this manner. CI asks the question; witness restates their answer; witness writes down their answer, until the CI is satisfied sufficient detail has been created and the interview can be concluded.

- Before concluding the interview, the CI asks the witness to read their entire statement, preferably out loud. The CI should also direct them to consider any other changes they'd like to make before signing the statement.

- The CI should review the statement for any parts that appear illegible and ask the witness to rewrite if necessary.

- The CI should also review the statement to make sure there is nothing in it that contradicts the testimony provided by the witness. If there is, the CI should ask the witness about the contradiction immediately.

- The witness should always initial and date any changes made to the statement to show it was the witness who actually made the changes and no one else.

- After this process, the witness should sign and date the statement, along with the CI and any other 3rd party that may have been present during the interview process. If a 3rd party is present, a note should also be added to the statement referencing the role and function played by that 3rd party. Ensure that all other identifying details (e.g., time and place of interview, etc.) are filled in on the witness statement form.

Other Rules for Witness Statements

The CI should also consider the following rules for witness statements.

- The CI must be present when the written statement is created. This is to ensure the validity of the conditions of how the document itself was prepared.

- Written statements should not be taken unless witnesses have first been interviewed.

- Statements should never be edited for incorrect grammar, spelling, syntax, etc.

- Handwritten statements are the preferred method of collection of witness statements.

Recording Interviews

There may be situations in which the CI determines that recording an interview would be a beneficial option. For example, when interviewing a family member or an individual with intellectual disability or autism, the witness may prefer to have their testimony recorded rather than writing a statement. The CI should be cautious when considering recording someone's voice. Federal and State law protects someone's reasonable right to privacy and has strict rules about the recording of someone's voice. The CI should consult the person(s) within their organization who oversees incident investigations before recording someone's voice. Organizations should have policy/procedures in place that address the safeguarding of recordings to prevent inappropriate distribution, such as posting on social media.

If the interview is recorded, the CI should follow these steps:
a. Check state laws for any restrictions or procedural requirements.
b. Obtain any required consents from the witness prior to starting the recording. Maintain these consents (or copies of them) in the investigation file.
c. Always have the tape recorder or video camera in plain view.
d. When the recording begins, state the date, time, and place of the interview, and names of everyone who is present.
e. Record the witness confirming their knowledge of, and consent to, the recording.
f. Once the interview is concluded, identify and mark the recording as a piece of evidence.
g. Transcribe the communication preserved in the recording as soon as possible after the interview in completed. The witness should then review the transcription for accuracy, and sign the written statement. This signed document would be entered as a written statement in the investigation files.
h. Document the reason the interview is being recorded in the CIR.

Other Ways to Preserve Testimony in Written Format

There will be certain circumstances in which the CI is not able to obtain a narrative statement. In these situations, the CI has several options for preserving testimony in written format, depending on the exact circumstances they face.

One of these situations is when the witness cannot write their statement. In these circumstances, the CI may write down the witness' statement, read the statement to the witness, and then have the witness sign or mark to verify the statement is accurate. If the person cannot provide any kind of signature or mark, the CI should note this in the CIR.

Another circumstance is when a person who has been interviewed in person can only use an electronic method to provide their statement. In these circumstances, the CI can accept their statement by a digital method based on the same general guidelines outlined above.

Suppose the CI is not able to secure a witness statement by any of the above methods. In that case, they need to preserve the testimony through their written notes taken during or immediately after the interview. These notes should replicate the witness' words as closely as possible and describe in detail the witness' behavior, gestures, etc.

Whenever testimony is preserved by something other than a narrative witness statement, in the CIR, the CI should document the reason for preserving the testimony in the way they did.

Remote Interviews

Face-to-face interviews have advantages over remote interviews, including:

- The CI can be confident that there is no one present other than the CI, the witness, and any third party whose presence has been approved by the CI. The presence of another person or people at the witness's location that the CI is not aware of could compromise confidentiality. That other person could also be coaching or even intimidating the witness.
- The CI can see all of the witness's gestures and other body language. A witness's non-verbal communication can provide the CI with information regarding the witness's state of mind, including their level of comfort or anxiety.

Since remote interviews do not allow for the full use of effective interviewing skills, the CI should always attempt to do in-person interviews with witnesses who directly observed or have direct knowledge about the incident. Unless health concerns such as contagious disease or public health protocols are in effect, the face-to-face interaction between the CI and the direct witness is critical to conducting an effective interview.

In certain other situations, the CI can consider the use of a remote interview. These situations will most likely be for witnesses with relevant information that was not obtained by directly observing the incident or the circumstances before or after the incident. The CI should ask themselves the following questions to guide their decision about the appropriateness of a remote interview.

1. Could the answers the witness provides be affected if there is someone else in the room that I don't know about?
2. Could the witness be intimidated or vulnerable to being coached if someone is present for the interview?
3. Could there be a risk of the witness experiencing re-traumatization by the questions being asked?
4. Could observing nonverbal behavior be important in learning about their story of what happened during the incident?
5. Could there be any other reason to doubt that a remote interview could be effective.

If any of these answers are yes, the CI should do a face-to-face interview. If the answers to all of these questions are no, the CI can consider doing the remote interview. The CI should document their reason in the CIR for the use of the remote interview.

If an interview cannot be conducted in person, the CI should choose a remote interview method that approximates the in-person interview experience as closely as possible. Therefore, a remote interview that includes a video component is preferable to a telephone interview. Phone interviews should only be done when face-to-face interaction is unnecessary, and when use of a video component is not practical, such as calling a physician to get a report about an injury.

The table below shows some of the differences between remote phone and video interviews.

Phone Remote Interviews	Video Remote Interviews
Allows for more distractions	Increases potential for focus
Removes the ability to use and read body language	Allows for direct attention and reading of body language
Offers less opportunity for accommodations (i.e. sign-language, picture-based communication)	Allows for more accommodations to support the interview
Presents barriers for identification of the witness	Enables the interviewer to identify the witness

When using a remote interview, the CI should:
- Consider coordination issues in advance
- Identify best technology platforms for the remote interview and the specific abilities of the witness
- Address any logistical issues in advance
- Anticipate any threats to a confidential interview
- Plan for situations when the interviewer perceives or assesses that the witness does not feel safe in the remote interview
- Have alternative methods for the interview available

If a remote interview must occur, the CI should still attempt to have key witnesses document their testimony in writing in an email. If possible, the CI should stay with the witness in the remote interview as they type their email and confirm the statement's email receipt prior to ending the interview. When this is not possible, the CI should ask the witness to complete an email statement and send it immediately after the interview. The CI should also document the reason the interview could not occur in person.

<u>Chapter 7: Documentary Evidence</u>

As defined previously, documentary evidence is defined as evidence in written form, whether on paper or electronic. The business records of an organization, including the records of individuals receiving services, personnel records, policies and procedures, training records, time and attendance records, financial documents, meeting minutes, records of the governing board, etc., are examples of documentary evidence.

When conducting investigations, the CI must collect all documentary evidence that may be relevant to the incident. While it is usually not necessary to collect all progress notes ever written on an individual, the CI should always err, during the investigation, on the side of collecting too much rather than too little. During the Reconciliation of Evidence stage, the CI will determine what is relevant and what is not.

All CIs need to have a good understanding of the mechanics involved in the organizational process. Policies, procedures, forms used in the organization, ways people communicate and share information all produce potential evidence that may be relevant to discovering what happened.

There is an appendix in this manual with a list of examples of documentary evidence. The CI should consider any type of medical and program records, personnel records, fiscal records, or other administrative records that help to tell the story of what happened. At a minimum, the CI should collect and review the person-centered Individual Support Plan of the service recipient. The CI should review all potentially relevant documents and medical records maintained by the service provider, support coordinator, or external health care entities, including hospitals and outpatient medical providers. If possible, the CI should see the original of the document and make a copy for the investigation file.

Chapter 8: Evidence from Digital Sources

Digital evidence provides an increasingly valuable source of evidence to the CI. Digital evidence includes social media posts, blog entries, electronic communications such as text and instant messages and emails, digital photos stored on a smartphone or tablet, etc. Currently, there are over one billion users of social networking worldwide. Social media and networking became the primary form of electronic communication, surpassing email, all the way back in 2009. Best practice standards and case law are still being developed on the collection and use of digital evidence. CIs should consider evidence gathered from email, text messaging, and social media sites to be part of conducting a thorough investigation. In collecting evidence, the evidence collected must be relevant and authenticated.

Electronic communication is typically defined as text messaging or email communication. Social media has an evolving definition. Several types of social media exist such as Social Networks (Facebook, LinkedIn), Media Sharing (YouTube, Instagram, Snapchat, Tik Tok), Activity Training (FourSquare), Blogs and Microblogs (Twitter), Social News (Digg and Reddit), Discussion Forums, and Review Sites (TripAdvisor, Yelp).

Agencies should have strong "Acceptable Use Policies" that include wording that explicitly states that a user's activity on computer information systems may be used for administrative action. Such language then permits CIs to collect pieces of evidence such as email communications, web browsing history, text messaging, etc., from any agency-owned device. The CI can actively seek out evidence as defined by relevant agency policies. In the absence of such policy, the CI may still receive electronic communication or social media evidence offered to them by the individual, target, or any other person who brings such evidence to the CI. It is crucial that, regardless of how the evidence is discovered, that proper collection techniques be followed.

For text messaging, the CI should ask the person holding the evidence on their phone to take progressive screenshots of their text conversation chain from the start of discussing the incident through the current date. The screenshots must be done progressively to show the entirety of the messaging. Each screenshot should then be forwarded via email to the CI. The

CI should also see the phone numbers associated with the text conversation people, not just their names. This may mean that the CI should ask to see the contact information for the names of the people who texted.

The CI should sit down at an agency computer for social media sites with the witness who is aware of the evidence. The CI should have the witness log into their account. The CI should have the witness identify any relevant entries on their account and/or through direct messaging that potentially apply to the incident. The witness should then be instructed to take a screenshot (including the taskbar with the date and time showing) of the page containing relevant content. Each screenshot should then be forwarded via email to the CI.

On sites that allow comments, the field should be expanded to include all comments. In cases where the comments expand beyond a single screen view, multiple screen captures with overlap should be taken.

It is generally considered allowable and ethical for the evidence collection of publicly available data. While most social media networks allow the user to determine their privacy setting, users often choose to make a lot of information available to the public. The CI should utilize the same evidence capturing techniques described above for information they find in the public domain.

The CI should not try to gain access to non-public information by attempting to gain direct access to that information during the investigation (e.g., sending a "friend request" during the investigation). Additionally, CIs should not use the method of pretexting in the gathering of evidence. Pretexting is when the CI misrepresents their identity to obtain information (e.g., using a false identity to send a "friend request").

Evidence obtained through electronic communication or social media must be authenticated. Authentication is how the CI identifies that the evidence is what it claims to be. Several methods can be used to achieve authentication. The original author of a communication or posting can authenticate that they indeed made a communication, post, or comment. If there was a witness who directly observed another individual send or submit the communication, that witness may also authenticate the evidence. Lastly, a witness may testify how they discovered the evidence and why they believe the evidence is attributable to the alleged author.

The CI should maintain a thorough record of all actions taken by them or others concerning the acquisition, transfer, printing, authentication, etc., of digital evidence. Digital evidence will often be logged as documentary evidence as the text is often the relevant evidence (e.g., text message or email). If the digital evidence is only pictures or video, it can be logged to preserve

physical evidence. If the digital evidence has both text and pictures or video, the CI should log it in both the CIR's physical and documentary evidence sections.

The CI should be cautious about the use of evidence that includes the recording of someone's voice. Federal and State law protects someone's reasonable right to privacy and has strict rules about the recording of someone's voice. The CI should consult their supervisor before collecting and/or using evidence that has a recording of someone's voice. Voicemail is an exception to this as it is considered allowable as the person consented to the recording by leaving the voicemail.

Chapter 9: Reconciling Evidence

No two witnesses tell exactly the same story. Inevitably, one witness will say there was oatmeal in the bowl, and another will swear it was Cheerios. Contradictions in testimony and other evidence need to be resolved or "reconciled." This means we must choose which version of a fact at issue is more likely than not to be accurate, although there may be times when neither version is "true." What the CI learns through the reconciliation of evidence is captured throughout the CIR. The following guidelines will help you sift out the more reliable pieces of testimony and other evidence from the less reliable in situations where discrepancies exist.

The CI reconciles evidence to describe in the CIR what the evidence suggests is more likely than not to have happened in regard to the incident. The Administrative Review Committee makes the final decision as to whether what happened is confirmed, not confirmed or inconclusive based on the definition of the category of the incident.

Considerations when Reconciling (or Weighing) the Testimonial Evidence

When reconciling conflicting testimony, the CI should use their critical thinking skills to attempt to determine which of the conflicting pieces of testimonial evidence are most credible (in other words, are most logical and make the most sense). There are several guidelines the CI can use to aid in this effort:

1. Establishing independent corroboration between a key witness' version of the event and the testimony of others enhances that person's credibility.

2. Is the available physical and/or documentary evidence consistent or inconsistent with testimony given by witnesses? Where physical and/or documentary evidence is consistent with witness testimony, more value or weight is given to that version of the event.

3. Based upon the witness' location to the incident itself (physical proximity and obstacles in the environment), how would their capacity to make observations (see, hear, taste, touch, smell) be affected?

4. What are the witness' capacities to see and hear? Are there impairments to either the sense of sight or hearing? If so, was the use of the impaired sense critical to the observation made by the witness? If the impairment to the critical sense was corrected at the time of the observation, such as through the use of eyeglasses or a hearing aid, the reliability of the observation might not have been compromised.

5. What was the witness' level of focus and attention during the incident?

6. What is the witness' relationship to other people involved in the incident (was the witness biased or objective)?

Victim Recants the Allegation/Testimony

It is important to recognize that when a victim recants their allegation or testimony, that does not mean that their original testimony was not valid or should be dismissed.

Several common scenarios relate to the reason(s) why a victim may recant their testimony. These reasons all need to be examined by the CI as they may directly influence the outcome of the investigation.

- Did the victim state they did not want anyone to get into trouble? Victims may be concerned that reporting will get someone in trouble or cause stress on others. They may even like and/or have a bond with the target that they want to maintain.
- Did the victim state that someone told them what to say? Targets or witnesses may plant an alternative version of the story with the victim. They may also coach the victim to add or leave out specific details of the incident.
- Did the victim state that someone threatened them with some physical, psychological, monetary, or another form of punishment unless they recanted? Sometimes these threats may be overt statements or implied. For example, a target or witness may say, "If Joe gets fired over this, there won't be enough staff to do some of our activities." This is an implied threat that may affect the victim's allegation/testimony.
- Did the victim state that someone offered them a reward for changing their story or not providing information? Targets or other witnesses may use threats, but rewards may be used as well. Rewards don't have to be large but need to hold meaning to the victim. Rewards like a trip to McDonald's, a game of checkers with staff, or an agreement to slide on some rules can all represent an incentive to recant an allegation/testimony.

The victim is not the only person who may change or recant their story. Any witness may do this for similar reasons as listed above or many other reasons not listed. When this occurs, the CI should review all evidence objectively and attempt follow-up interviews to establish why the story has changed or been recanted.

Chapter 10: Certified Investigator Report

The CIR is an essential tool used to organize and present investigation protocols related to identifying, collecting, preserving, and analyzing evidence. Using a written report is the most effective way to organize the CI's conclusions and determine appropriate corrective actions. It provides the reader a roadmap leading to the findings of fact.

Good documentation takes time. The CI must have uninterrupted time to complete the necessary documentation. An investigation cannot be considered high quality without proper and thorough documentation that provides a road map for the reviewer explaining why the CI did what they did during the investigation.

Quality documentation serves four primary purposes:
1. **Quality assurance** ensures that the investigation was done to the highest of quality standards.
2. **Compliance** ensures that the investigation meets the minimum standards of investigations.
3. **Justification** provides the reasoning behind what actions were taken, in what order, and why.
4. **Memory** supports the CI's memory about what actions were taken, what witnesses said, what other evidence was observed, etc.

The CIR should:
- Be chronological in order of presentation.
- Utilize a logical and ordered structure.
- Be thorough in discussing the evidence gathered.
- Include a reason why there was a diversion when things were done outside the norms provided in the manual.
- Cite the diagrams and pictures used to demonstratively capture those relationships when discussing spatial relationships.
- Use the exact words of a person when quoting them.
- Be organized so that the evidence is easy to review (Lists and bullet points are helpful to keep track of the presentation of the evidence).

The CIR <u>should not</u> contain:

- Generalized conclusions that cannot be supported by the evidence collected.

- Non-fact-based statements.

- Evidence presentation that is confusing, biased, or irrelevant.

- Generic descriptors, such as they, he, she, etc.

- Labeling and using diagnostic language (The CI in their role as a CI is not qualified to diagnose. So calling someone "bipolar" or an "alcoholic" is not something that the CI can diagnose. Diagnoses can be listed but only when there is documentation to support those diagnoses).

- Unanswered questions (If something is not known, the documentation should acknowledge it).

- Acronyms or abbreviations unless on a standardized and agency-approved list or indicated by parenthesis after using the entire word in the first instance.

- Sanitizing the language used by a witness (If a witness uses profane words, derogatory expressions, homophobic, racist, or sexist comments, or wording that is not grammatically correct, the CI should quote them as they said it. It is not the role of the CI to correct language that they believe to be professionally or personally inappropriate).

- The final determination of confirmed, not confirmed, or inconclusive for the incident allegation. The determination is not made by the CI. Instead, it is made by the Administrative Review Committee.

CI Kris was not able to interview the victim first as outlined in this manual. Because Kris needed to make an exception to the procedures in the manual, Kris made sure to document, "When arriving at the home, the victim was eating lunch. The individual is known to have a hard time concentrating when their lunch is interrupted, according to staff and the ISP. Interviewed two other individuals who were not eating lunch but are believed to have witnessed the incident prior to interviewing the victim."

If the CI deviates from any of the standards or methodology described in this manual during an investigation, the circumstances surrounding the deviation and the CI's decision-making process should be detailed in the CIR. Such deviations should only occur for sound investigative reasons that are well thought out by the CI. Examples of deviations from standards and methodology include but are not limited to that the CI did not:

- Meet an established time requirement, including beginning their investigation, conducting the first interview, and finishing all initial interviews.
- Visit the scene of the incident.
- Complete an interview in person.
- Interview the victim.
- Interview witnesses. This includes but is not limited to interviewing any individual receiving services who may have witnessed or have information about the incident.
- Interview the target.

Once the CIR has been written, the investigation is ready for Administrative Review. The CI should submit their investigation file to the Administrative Review Committee to make decisions and recommendations regarding conclusions and outcomes. Management of an organization is responsible for validating the investigation and determining the conclusions, outcomes, and recommendations for corrective action. If the conclusions and recommendations for corrective action are to be made in conjunction with others, the management should meet with those individuals and make these decisions jointly. The Administrative Review Committee may require the CI to be available to discuss aspects of the investigation.

Structuring the CIR

A thorough, organized CIR includes the following, documented by the CI:

I. INVESTIGATION INFORMATION: The CI to captures information about the investigation.

II. TESTIMONIAL EVIDENCE: The CI enters information about evidence offered as part of a testimony by a witness to an incident.

III. PHYSICAL EVIDENCE: The CI captures information regarding physical evidence related to an incident.

IV. DOCUMENTARY EVIDENCE: The CI captures information regarding documents identified as evidence for the investigation.

V. INVESTIGATIVE METHODOLOGY. The CI captures information regarding the methodology of the investigation.

VI. SUMMARY OF CI's FINDINGS: The CI summarizes their findings.

VII. CONCERNS IDENTIFIED BY CI: The CI lists concerns related to practice or policy that they have identified.

Concerns Identified by the CI

It is important to note that the CI may identify a concern about practice, policy and/or procedure during an investigation. The concern may be directly related to the incident under investigation, or it may be unrelated. The "Concerns Identified by the CI" section of the CIR allows the CI to document these concerns. Concerns can be defined as something that could be

a matter of interest or importance to an organization. The purpose of documenting a concern in the CIR is to alert the organization to a situation that may require corrective action(s). If the CI feels that the identified concern has even the potential for needing corrective action, the concern should be documented in the CIR. **The CI should never wait to alert an organization about an immediate concern for health, safety, or rights.**

CIs should arrange concerns in groupings that allow for analysis by the Administrative Review Committee. The Administrative Review Committee is responsible for accepting or rejecting (for corrective action development) each concern identified by the CI. The CI should choose the most appropriate category for each concern identified during the investigation. Concerns need only be listed once, and CIs should minimize the need to repeat concerns that may fall over multiple areas. Details of each concern must be described in the CIR.

In addition, the CI may identify a concern that is outside the scope of the investigating organization to address. In those cases, the Administrative Review Committee is responsible for elevating those concerns outside the organization. CIs must document all concerns, even if it is apparent that the concern is not within the scope of the investigating organization to implement corrective action(s).

The overall goal of documentation of concerns by the CI is to help the Administrative Review Committee identify areas for possible corrective action(s) based on the evidence that the CI analyzed as part of the investigation.

The chart below describes the general types of concerns that the CI may encounter and need to document in the CIR.

Concerns Identified by the CI	
Type of Concern	Explanation
Assessed Needs	Concerns related to an individual's assessed needs. This includes but is not limited to: • Assessment(s) has not been completed • Assessment(s) is inaccurate • Assessment is out of date Examples of assessments include but are not limited to: • Pennsylvania statewide needs assessment – Support Intensity Scale (SIS) • Assessments per licensing regulations • Functional behavior assessment • Individual Support Plan (ISP) team assessment

Concerns Identified by the CI

Type of Concern	Explanation
Corrective action(s) from Incidents	Concerns related to corrective actions from an incident. This includes but is not limited to: • Corrective action(s) listed in an incident report has not been implemented • Corrective action(s) listed in an incident report has not been implemented as written • Corrective action(s) listed in an incident report has not been monitored for implementation or effectiveness Corrective Actions – Actions implemented to increase protection to individuals from similar future incidents. Corrective actions can be implemented for a single individual and/or related to an organizational change to prevent similar incidents to all individuals.
Documentation	Concerns related to documentation that include but are not limited to: • Documentation is lacking sufficient detail per policy, regulation, or law • Documentation is lacking quality • Documentation is missing required elements to support individual need(s) • Documentation does not provide proof of intended purpose Documentation – Papers or other written material that provides proof of something. May include hard copy, handwritten, and/or electronic materials.

Environmental Needs	Concerns related to environmental needs[5] that include but are not limited to:
	• Safety concerns
	   o Structural and safety aspects of the home (i.e., how the home is designed, constructed, and maintained; its physical characteristics; and the presence or absence of safety devices)
	   o Quality of indoor air
	   o Water quality
	   o Exposure to unsafe chemicals
	   o Pest and/or rodent infestation

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[5] Adapted from https://www.cdc.gov/nceh/lead/healthyhomes.htm

Concerns Identified by the CI

Type of Concern	Explanation
	o The house's immediate surroundings • Inadequate privacy • Inadequate maintenance and/or cleanliness of the environment • Unsanitary and/or inadequate water supply • Lack of proper toilet facilities • Lack of method to keep food fresh (i.e., refrigeration) • Lack of basic utilities such as heat, electricity, running hot and cold water • Lack of fire safety equipment such as smoke detectors, fire extinguishers, etc. Environmental Needs-Needs identified as it relates to physical living space and/or sounds, temperature, sanitation, stimuli, etc. *CIs need to ensure they are not dismissing certain environmental needs as "lifestyle choices."
Equipment Use/Needs	Concerns related to equipment use/needs that include but are not limited to: • Lack of training/education for individual about equipment use o Education must be provided even if the individual is not going to be the person directly using the new equipment. This is frequently seen with things like blood pressure cuffs, blood sugar monitors, and lifts. Individuals have the right to receive education about all medical conditions and related equipment to help manage those conditions, even if it is not anticipated that they will directly use the equipment required for care. • Lack of action to repair, replace and/or maintain equipment • Missing equipment • Lack of action to obtain evaluations for equipment Equipment-A device used to increase, maintain, or improve an individual's functioning, increase healthy outcomes, monitor physical health conditions, and/or

Concerns Identified by the CI	
Type of Concern	Explanation
	increase an individual's ability to communicate and exercise choice and control in their lives.
Frequency of monitoring	Any concerns related to the frequency of the monitoring of services and supports performed by a supports coordinator, provider, or other oversight entity.
Investigation activities	Any concerns related to investigation activities that include but are not limited to: • The investigation process outlined in the ODP Certified Investigators Manual Investigation – The process of identifying, collecting, and assessing evidence from a reportable incident in a systemic manner by a person certified by the Department's approved Certified Investigator Training Program.

Medical Care/Needs	Any concern related to inadequate care or oversight of care needed to maintain or enhance an individual's overall health. The medical care/need may be outlined in an ISP, discussed in an assessment, a recommendation from a medical professional, incident report, or be related to an emergency.
	Medical care generally refers to the examination and/or treatment by a qualified medical professional, ongoing implementation of healthcare protocols, and/or basic first aid. When reviewing evidence related to medical care, consider the following:
	• Did the staff person(s) recognize symptoms of illness or injury and seek treatment promptly?
	   o Unnecessary delays in calling emergency services; Such as calling program supervisor, nursing staff, family, etc. before 911
	   o Failure to acknowledge/recognize symptoms of illness/injury such that the individual:
	      ▪ Reports illness, pain, discomfort, etc., and there is a failure to seek prompt treatment
	      ▪ Displays signs or symptoms of illness/injury, and they are not recognized, which causes a failure to seek prompt treatment
	• Did the staff person(s), caregiver(s), or another responsible person (s) provide CPR, First Aid, or

Concerns Identified by the CI

Type of Concern	Explanation

	other life-sustaining treatment appropriately and promptly?
	    ▪ Was CPR initiated if appropriate?
	    ▪ Was First Aid applied correctly?
	• Were all person-centered health care protocols followed, including:
	    ▪ Meal preparation
	    ▪ Special diet
	    ▪ Eating protocols
	    ▪ Skin integrity protocols

Medication Administration	Any concerns related to medication administration for an individual. Medication Administration-Any activity related to the medications for an individual. Activities that may be related to medication administration include but are not limited to: • Obtaining medications from the pharmacy or other sources (for non-prescription medications) • If applicable, creating and maintaining accurate medication records (logs) • Providing needed support to individuals that participate in self-administration of medication • Ensuring medications are administered as prescribed/ordered • If applicable, only administering medications after completing the ODP medication administration course • If applicable, administering medications as outlined in the ODP medication administration course • Ensuring proper storage and disposal of medications • If applicable, only administering insulin injections after completing the ODP medication administration course and completing an approved diabetes education course in the past 12 months
Missing Records, Documentation, etc.	Any concerns related to missing records or documentation. If a record is unable to be located, the CI should attempt to determine the cause of the missing records/documentation. The nature of the missing

Concerns Identified by the CI	
Type of Concern	Explanation
	record will assist the Administrative Review team in developing corrective action(s). For example, records and documentation that are thought to have existed but have been lost may require corrective actions related to laws outside of the ODP system. If missing records/documentation contain personally identifiable information (PII) about an individual, there may be violations of laws such as The Health Insurance Portability and Accountability Act (HIPPA). Additional incidents may need to be reported if an investigation uncovers such violations. Personally identifiable information (PII) is information that can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth mother's maiden name, etc. HIPAA (Health Insurance Portability and Accountability Act of 1996) is United States legislation that provides data privacy and security provisions for safeguarding medical information.
Notification/communication	Any concerns related to notification/communication that include but are not limited to: • Failure to notify an individual about an incident • Failure to notify an individual's family, guardian, and/or designee about an incident. • Discovery that notification did not occur as documented in the record • Failure to notify protective services as required • Failure to notify law enforcement as required • Failure to communicate investigation outcomes to an individual • Failure to communicate investigation outcomes to an individual's family, guardian, and/or designee • Discovery that communication was inaccurate to an individual • Discovery that communication was inaccurate to an individual's family, guardian, and/or designee

Concerns Identified by the CI

Type of Concern	Explanation
Organization Policy	Any concerns related to an internal organizational policy. Concerns may or may not be linked to policy rules that exist outside of the organization. The policy or procedure of concern may or may not be directly related to the incident under investigation or investigations in general. The CI may address any policy or procedure of concern.
Plan Content	Concerns related to missing, inaccurate, or outdated information within the Individual Support Plan (ISP) or other plan related to the support/services an individual receives. The content of any plan for services/supports must be consistent, accurate, and in line with assessment results. Examples of plans include but are not limited to: • ISP • Behavior Support Plan (BSP) • Social-Emotional Environmental Needs (SEEN) Plan • Crisis Plan • Restrictive Intervention Plan
Plan Implementation	Concerns related to how services and supports are implemented per the Individual Support Plan (ISP) or other plan related to the supports/services an individual receives. Services/supports are required to be delivered as outlined in the ISP etc. This includes the delivery of services at the frequency and duration the team specifies in the ISP.
Prompt Action to Protect Health, Safety, and Rights	Any concern related to prompt and adequate actions to protect health, safety, and rights. What are prompt actions? In general, actions to protect health, safety, and rights are completed immediately upon discovery/recognition of the incident. The individual, guardian, and team should determine the supports and services that are needed. Individuals do have the right to refuse supports, but the documentation should be present of efforts to encourage acceptance of supports. Suppose the individual is unwilling or unable to advocate on his/her behalf. In that case, the report should indicate this and

Concerns Identified by the CI

Type of Concern	Explanation
	show that the actions taken in response to the incident are in the best interest of the individual. If needed, the Provider, SCO, or AE should obtain an outside advocate to help the individual decide. What are adequate actions? Adequate actions vary depending on the nature of the incident. Common actions include: • Medical interventions for injuries • Counseling • Separation from target • Protection of property • Contact with protective service agencies • Contact with law enforcement if it's suspected a crime has occurred • Victim's assistance • Alternate housing arrangements How to address the refusal of supports? Suppose the individual is unwilling or unable to indicate a desire for additional supports or alternate housing. In that case, there should be evidence in the incident report that the team did not allow the target of the incident to decide this on behalf of the individual. When there is a refusal of supports indicated in the incident report, the Administrative Review committee should determine if the refusal is based on a choice expressed by the individual. Suppose this choice may put the individual at imminent risk of harm. In that case, there should be evidence in the report that this was recognized and that additional actions were explored to mitigate the situation.
Quality of monitoring	Any concerns related to the quality of the monitoring of services and supports performed by a supports coordinator, provider, or other oversight entity. Quality includes but is not limited to: • Monitoring at the required frequency • Monitoring all required elements of service/support • Documentation of issues discovered during monitoring

Concerns Identified by the CI

Type of Concern	Explanation
Staff Training	Any concerns related to staff training. Paid staff are required to meet certain training requirements. Concerns in this area include but are not limited to: • Failure to meet orientation training requirements • Failure to meet annual training requirements • Inaccurate and/or misleading training records • Failure to maintain documentation of training • Failure to train to individual needs
Supervision Needs	Any concern related to the supervision needs of an individual. Concerns in this area include but are not limited to: • Failure to accurately assess and document supervision needs • Failure to implement ISP staffing ratios
Other	Any other concerns identified by the CI during the course of the investigation. Concerns in this area may include concerns outside the scope of the investigating entity. Those situations may require the investigating entity to notify ODP of the concern and/or refer the concern to entities outside of the ODP service system.

APPENDIX I: GLOSSARY

Administrative Review – The final step of the investigation process that reviews the competency and quality of an investigation for speed, objectivity, and thoroughness; weighs evidence and makes an investigation determination; determines preventative and additional corrective action plans; and completes the Administrative Review section of the Certified Investigator Report.

Background Interview: An interview used to generate evidence considered relevant, but not specifically originating from the incident itself.

Certified Investigator: A person certified based on the content of this manual to investigate critical incidents.

Circumstantial Evidence: Evidence that is not directly from an eyewitness or participant and requires some reasoning to prove the details of the incident.

Critical Incident: A type of incident that has been determined to be a sufficiently serious indicator of risk that it requires an investigation by a Department-certified Investigator.

Direct evidence: Evidence in the form of testimony from a witness who was present for the incident and experienced any of the specific details of the incident through sight, hearing, touch, taste, or smell.

Documentary Evidence: Anything evidence written down, on paper or electronically.

Follow-up Interviews: Interviews generally conducted with identified witnesses and used primarily to reconcile conflicting evidence, ask about new evidence emerging in the investigation or ask questions the CI failed to ask during earlier interviews with a witness.

Incident: An event with potential to adversely impact an individual's health, safety, or rights.

Incident Management: The response to an event, intended to ensure the adequate, appropriate, and effective protection and promotion of the health, safety, and rights of the individual.

Initial Witness Interview: Interviews conducted with people identified as potential witnesses who have either direct or circumstantial evidence about what happened.

Investigation: The process of identifying, collecting, and assessing evidence from a reportable incident in a systematic manner.

Investigation Determination: A finding of confirmed, not confirmed, or inconclusive made during the Administrative Review stage of an investigation.

Investigative Plan: A framework to guide the CI to conduct a systematic investigation that is objective, timely, and thorough.

Investigatory Question: A question that provides a general guide to the parameters of the investigation and assists the CI in avoiding tunnel vision.

Irrelevant Evidence: Evidence that does not have the potential to describe or explain an incident under investigation.

Objectivity: The ability to describe or perceive something based on evidence without influence by personal emotions, experiences, bias, or opinion.

Physical Evidence: Evidence in the form of objects or things, spatial relationships between people or things, and the absence of things that otherwise would be available based on the testimony of witnesses.

Preponderance of the Evidence: The standard of evidence requiring that the conclusion drawn about the incident is more likely than not to have occurred.

Relevant Evidence: Evidence that potentially describes or explains an event or incident under investigation.

Risk Management: The proactive and responsive management of potential risks to an organization, its employees, its clients and customers, and others.

Risk Mitigation: An overall approach to minimize the severity of risk and to reduce the likelihood of occurrence or recurrence of an adverse event.

Speed: A standard of evidence that requires the CI to act in a timely way that considers how evidence may change or disappear over time.

Target: The person or entity who is alleged to have caused the incident to occur.

Testimonial Evidence: Evidence that is a witness' communication to a CI, in verbal form or the equivalent, of their memories of their experiences or observations related to the incident under investigation – a story.

Thoroughness: A standard of evidence that requires the CI to generate details throughout the entire investigation.

Trauma: A psychological, emotional response to an event or an experience that is deeply distressing or disturbing.

Trauma-Informed Interviewing: An approach to interviewing that treats a person in a way that is sensitive to their trauma that has been recently experienced or even experienced in the past.

Victim: The individual for whom the incident occurred or is alleged to have occurred.

Victim's Assistance Programs: Resources that are available to individuals who are victims of a crime to assist them medically, physically, emotionally, financially, and legally. There are two main types of victim's assistance programs: system and community-based organizations.

Witness Statement: Document used to preserve intact the witness' communication of their memory of experiences they had or observations they made.

APPENDIX II: WITNESS STATEMENT FORM

ODP Certified Investigator Program
Witness Statement Form

Case Name_____Case Number_____

Witness Name_____Title/Relationship_____

Work Location/Address_____Phone_____

Date of Interview_____Time_____Location of Interview_____

Reason for Interview_____Investigator_____

Witness Signature_____Date_____

Interviewer Signature_____Date_____

Page 1 of_____

ODP Certified Investigator Program
Witness Statement Form (continuation page)

Case Name_____Case Number_____

Witness Name_____Date of Interview_____Time_____

Location of Interview_____Investigator_____

Witness Signature_____Date_____

Interviewer Signature_____Date_____

Continuation Page_____of_____

APPENDIX III: EVIDENCE LOGS

Physical Evidence Log Sheet

(use additional pages as needed)

CI Name _____   **EIM Incident ID_____**

Type of Physical Evidence Identified *Select one:* • *Object* • *Body Part* • *Incident Scene* • *Other*	Collected? *Select one:* • *Yes* • *No*	Date and Time Physical Evidence Collected/ Preserved *Select date; then add time*	Brief Description of Physical Evidence **What is relevant about this evidence?** *(include how the piece of evidence was preserved: photograph(s), diagram(s), videos, other [please describe])*	Process Deviation *Select one:* • *Yes* • *No*

Testimonial Evidence Log Sheet

(use additional pages as needed)

CI Name _____   **EIM Incident ID_____**

Relationship to Individual *Select from list below **	Witness Name	Job Title (or Family Role)	Was this person identified as a target for this incident? *Select one:* • *Yes* • *No*	Type of Interview *Select one:* • *Attempt* • *Follow-up* • *Initial*	Interview Date and Time *Select date; then add time*	Interview Completed in Person? *Select one:* • *Yes* • *No*	Process Deviation? *Select one:* • *Yes* • *No*

Summary of Testimonial Evidence	
Witness Name	Summary of relevant information from witness statement and attempts at interview

* Relationship to Individual: Administrative Entity/County Intellectual Disability Staff; Another Individual; Friend; General Public; Guardian; Individual's Designee; Office of Developmental Programs Staff; Protective Services Entity Staff; Provider Staff Member; Relative; Supports Coordinator; Victim; Other

Documentary Evidence Log Sheet

(use additional pages as needed)

CI Name _____   **EIM Incident ID_____**

Title of Documentary Evidence	Collected? *Select one:* • Yes • No	Date and Time Collected *Select date; then add time*	Brief Description of Documentary Evidence What is relevant about this evidence?	Process Deviation *Select one:* • Yes • No

Checklists – Investigatory Plan and Methodology

After being assigned the task of conducting an investigation, the CI can use the following checklists to begin developing and tracking the investigatory plan.

Investigatory Plan

Task	Notes	Completed? *Select one:* • *Yes* • *No*	Process Deviation? *Select one:* • *Yes* • *No*
Gather information about initial incident report • Victim injured? • Victim currently safe? • Alleged location of incident known?			
Establish investigation timeline • Do records need to be obtained from outside sources? • Are key witnesses available? • Are interpreters or other communication resources needed?			
Create investigatory question(s)			
Have supplies (tool kit items) available			
Identify potential witnesses • Plan the chronology of witness interviews • Identify and plan for witness communication needs and preferences • Weigh necessities of interviews in the community			
Create list of evidence to collect • Physical o What photos need to be taken? o What diagrams need to be used/created? • Documentary			
Know how the collected evidence is to be maintained and stored			
Anticipate parts of investigation that could cause trauma or discomfort to victim or other witnesses			

Investigatory Methodology (Plan Implementation and Documentation)

Task	Notes	Completed? *Select one:* • *Yes* • *No*	Process Deviation? *Select one:* • *Yes* • *No*
Check on the safety and well-being of the victim			
Review activities of intake and preservation with management			
Review incident with Reporter			
Visit Incident Scene			
Complete First Witness Interview within 24 hours of Investigation assignment			
Complete all initial witness interviews within 10 days of investigation assignment • Preserve testimony in written statements			
Collect/preserve physical and documentary evidence			
Complete all needed background interviews • Preserve testimony in written statements			
Complete all needed follow-up interviews • Preserve testimony in written statements			
Identify and document investigative concerns			
Complete the Certified Investigator Report (CIR) • Document deviations from ideal investigation processes • Document choices made, such as who was interviewed, pictures that were/were not taken, etc. • Ensure investigative plan logic is documented in CIR			

APPENDIX V: INVESTIGATIVE PLAN AND METHODOLOGY

Create Initial Investigative Plan

- Gather Information about Initial Incident Report
- Establish Ideal Investigation Timeline
- Create Investigatory Question
- Identify witnesses
- Plan Order of Witness Interviews
- Weigh community interview considerations
- Identify and prepare for communication needs/preferences of witnesses
- Have supplies (tool kit) available
- Create List of Possible Evidence to Collect
- Determine how evidence will be preserved
- Identify parts of investigation that could cause trauma or discomfort

Implement Investigative Plan

- Check on safety of victim
- Review activities of intake and preservation
- Review incident with reporter
- Begin and complete Initial Witness Interviews within prescribed time frames
- Preserve testimony from all interviews in written format
- Conduct Background and Follow-up Interviews
- Collect/preserve Physical Evidence
- Collect Documentary Evidence
- Modify Investigative Plan as Needed
- Identify concerns

Document Investigative Plan and Methodology

- Document deviations from ideal investigation processes
- Document choices made; such as who was interviewed; pictures that were/were not taken
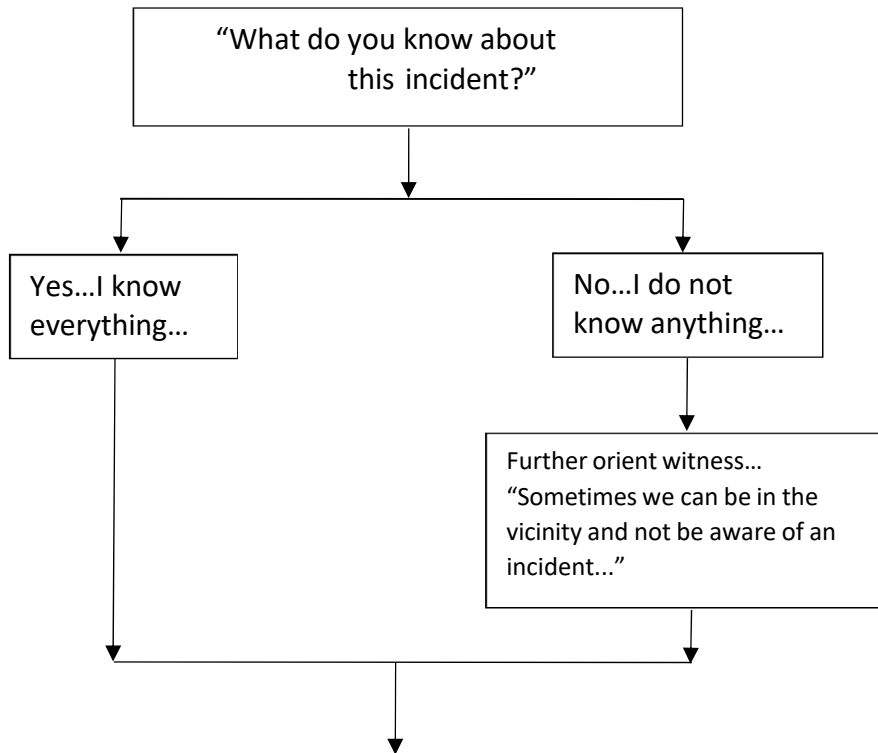- Ensure investigative plan logic is documented in CIR

APPENDIX VI: <u>STRUCTURING THE INITIAL WITNESS INTERVIEW</u>

<u>Structure the initial witness interview as follows</u>:

    I.   **Introduction**

    II.   **Reason for interview**

    III.   **General Open-ended introductory question:**

Final Question:
- "What else can you tell me about…?"
- "What else do you think I should know about…?"

<u>**Strategies to Organize the Interview**</u>:

- Chronologically sequence witness' movement through time/place
- Generate detail – ask follow-up questions as relevant, do not wait to go back and ask later. Remember: **last answer given generates next question.**
- Use "who, what, where, why, how" (open-ended) questions
- Do not ask leading questions, compound questions, etc.

APPENDIX VII: Examples of Documentary Evidence

Types of Business Program Records Produced by Organizations

Following are lists identifying the types of documentary evidence often produced by human service and healthcare organizations. The lists are broken into the core management process areas of an organization: Program (records of individuals receiving services and program operations), Personnel, Fiscal, and Administrative.

I. **Medical and Program Records of Individuals Receiving Services**

Medical and program records maintained by service providers generally include the following types of information:

1. Intake Forms
    a. Face Sheets
    b. Identifying Information
    c. Conditions of Admission, Consents
2. Assessments & Evaluations
    a. Psychiatric
    b. History & Physical
    c. Pharmacology
    d. Social Needs
    e. Environmental Needs
    f. Personal Safety
    g. Nutrition
    h. Nursing
    i. Education
    j. Occupational Therapy (OT), Physical Therapy (PT), Speech, Psychology, Behavior Support
3. Consultations
4. Health Care Information
    a. Physician Orders/Notes
    b. Nursing Notes
    c. Lifetime Medical History
    d. Medication Administration Records (MARs) – current and past
5. Plan of Care (POC) or Individual Support Plan (ISP)
    a. Potential Risks
    b. Support Needs
    c. History
    d. Outcomes
    e. Services and Supports

6. Support Team Reviews and Meetings
7. Interdisciplinary Notes
    a. Behavioral Health History
    b. Past Incident Reports (incident history)
    c. Non-licensed Staff Notes
    d. Ancillary Staff Notes – Social Work, Recreational Therapy (RT), Nutrition, etc.
8. Human Rights Committee (HRC) Approved Restrictive Procedure Plans and Related Forms
9. Restrictive Procedure Review Committee (RPR) including Behavior Support Plans (BSPs) and Related Forms
10. Labs & Radiology
11. Charts and Graphs
    a. Vital signs
    b. Height & weight
    c. Sleep
    d. Dietary Intake including Liquids, Solids, etc.
    e. Toileting and Bathing
12. Legal Documents
    a. Informed Consent
    b. Guardianship and Conservator Papers
    c. Involuntary Commitment
13. Discharge Summaries
14. Death Documentation

II. Personnel Records

Another potential source of relevant evidence for an investigation is the personnel files of employees involved in the incident. The most relevant evidence in these files include:

1. Job Application(s)
2. Training Records (i.e. training on medical procedures, medication administration, behavior plans, CPR/First aide, safety policies, incident management, etc.)
3. Time and Attendance Records
4. Signed Personnel Policies and Procedures

Although employee disciplinary/commendation histories are also part of personnel records, the CI must exercise caution in the use of these records, as a person's past actions do not necessarily reflect their role, if any, in the incident under investigation. Reliance on these records could create bias either for or against a person.

III. Fiscal Records

With increased concerns regarding incidents such as financial exploitation, the fiscal records of the organization can become increasingly more significant as evidence. Fiscal records typically maintained by

service providers include the following:

1. Accounts Payable and Receivable
2. Cash Accounts
3. Finances of Individuals Receiving Services
   a. Personal accounts
   b. Pay records
   c. 3rd party reps, Guardians, or Conservators
4. Balance Sheets (monthly, year-to-date)
5. Agency Budgets (approved, monthly, year-to-date)
6. Bank Statements
7. Agency Audits and Management Letters
8. Fiscal Policies and Procedures

IV. Other Administrative Records

Other records maintained by organizations that could become relevant evidence in an investigation include:

1. Email communications
2. Meeting Minutes
3. Incident Report forms
4. Investigation Files
5. Telephone logs and/or records
6. Visitor logs and/or records
7. Shift Reports
8. Strategic Plans
9. Quality Improvement Plans and related documents
10. Policies and Procedures
11. Training Curricula
12. Self-Assessment completed by providers prior to Licensing inspections
13. Licensing Inspection Summary or Licensing Surveys for ICF/IDs (including relevant correspondence and documentation)
14. Any other miscellaneous records produced by an organization

A central circle labeled "Witness Testimony" is connected by double-headed arrows to six surrounding circles:
- Is physical and documentary evidence consistent with testimony?
- Independent corroboration by others of the witness's version of event
- Physical proximity and environmental factors affecting ability to make observation
- Capacity to see and hear
- Objectivity (relationships, motives, etc.)
- Focus