

Mandated Reporter Quick Reference Guide

Who Are Mandated Reporters?

S.C. Code Ann. § 63-7-310 identifies the following professionals as mandated reporters:

- Physicians
- Nurses
- Dentists
- Optometrists
- Coroners
- Medical Examiners
- Employees of Coroners/Medical Examiners
- Any other professional in these fields:
 - Medical
 - Emergency Medical Services
 - Mental Health
 - Allied Health
- School Teachers
- Counselors
- Principals and Assistant Principals
- School Attendance Officers
- Childcare Workers in Childcare Centers or Foster Care Facilities
- Foster Parents
- Police and Law Enforcement Officers
- Juvenile Justice Workers
- Substance Abuse Treatment Staff
- Social Workers
- Public Assistance Workers
- Clergy, including Christian Science Practitioners & Religious Healers (subject to laws governing privileged communication)
- Clerical or Nonclerical Religious Counselors Who Charge for Services
- Undertakers
- Funeral Home Directors
- Employees of Funeral Homes
- Judges
- Volunteer Non-Attorney Guardians ad Litem
- Computer Technicians
- Persons Responsible for Processing Film

However, a person under age 18 is not required to be a mandated reporter. (S.C. Code Ann. § 63-7-310(F))

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When to Report?

Mandated reporters must make a report when information is received in their professional capacity that gives them reason to believe that a child has been or may be abused or neglected.

- Reporting to a supervisor or person in charge of an institution, school, facility, or agency does not relieve a mandated reporter of his individual duty to report.
- The duty to report is not superseded by an internal investigation of an institution, school, facility, or agency.

(S.C. Code Ann. § 63-7-310(A), (C))

Where to Report?

Reports may be made to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

(S.C. Code Ann. § 63-7-310(E))

Failure to Report

A person who is required to report child abuse or neglect and who fails to do so is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 or imprisoned not more than six months, or both.

(S.C. Code Ann. § 63-7-410)

Additional Information

For a detailed overview of mandated reporter requirements and how to make a report, see the Mandated Reporter Guide found on the Children's Law Center website at <http://childlaw.sc.edu>.

To schedule a free training on Mandated Reporting, contact the Children's Law Center at 803-777-1646.

Clergy as Mandated Reporters

Understanding the duty of clergy to report suspected child abuse and neglect and when communications are protected by the clergy-penitent privilege

Clergy's Duty to Report

In South Carolina, members of the clergy who are at least 18 years old are mandated reporters and are required by S.C. Code Ann. § 63-7-310 to report suspected child abuse or neglect. While state law does not provide a definition of "clergy," it does specifically identify regular or duly ordained ministers, Christian Science practitioners, religious healers, rabbis, and priests as clergy.

As mandated reporters, clergy members must report when in their **professional capacity** they have received information which gives them **reason to believe** a child has been or may be abused or neglected as defined in S.C. Code Ann. § 63-7-20.

The mandate to report child abuse or neglect does not require the reporter to know for certain that a child has been abused or neglected. The duty to report is triggered when the mandated reporter has the reasonable belief that a child has been or may be abused or neglected.

Reporting to a supervisor or person in charge of an institution does not relieve a mandated reporter of his or her individual duty to report, and the duty to report is not superseded by an internal investigation within an institution. S.C. Code Ann. § 63-7-310(C).

Reporting Requirement Exception

The only circumstance in which clergy, including Christian Science practitioners and religious healers, are exempt from being required to report suspected child abuse or neglect occurs when a clergy member's only knowledge of the abuse or neglect is based on information received:

- from the alleged perpetrator of the abuse,
- during a communication protected by the clergy-penitent privilege provided for in § 19-11-90. S.C. Code Ann. § 63-7-420.

Clergy-penitent Privilege

The clergy-penitent privilege is the protection of confidential communications between clergy members and their church members or other individuals. To be protected by the clergy-penitent privilege, a communication must meet the following four conditions of S.C. Code Ann. § 19-11-90:

- It must be confidential;
- It must be disclosed to a regular or duly ordained minister, priest, or rabbi;
- It must be entrusted to the clergy member when acting in his or her professional capacity; and
- It must be one that is necessary and proper to enable the clergy member to discharge the functions of his or her office according to the usual course of practice or discipline of his or her church or religious body.

Failure to Report

A clergy member who knowingly fails to report, in an effort to resolve the matter internally with the parties involved, could face criminal and civil liability. A mandated reporter who knowingly fails to report is guilty of a misdemeanor and if convicted, may be fined up to \$500, or imprisoned for up to six months, or both. S.C. Code Ann. § 63-7-410.

Additional Information

For a detailed overview of mandated reporter requirements and how to make a report, see the Mandated Reporter Guide found on the Children's Law Center website at <http://childlaw.sc.edu>.

To schedule a free training for clergy on mandated reporting, contact the Children's Law Center at 803-777-1646.

Children's Law Center

University of South Carolina School of Law

Mandated Reporter Guide

Understanding your legal duty to report suspected child abuse and neglect

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I. LEGAL REQUIREMENTS FOR REPORTING

South Carolina established a system for the reporting and investigation of child abuse and neglect with enactment of the Child Protection Act in 1977. This law has since been amended, but the primary purpose has remained the same: to safeguard the welfare and safety of children. Mandated reporters play a key role in this effort to protect children by identifying possible maltreatment and reporting it to the agencies responsible for investigation and intervention. In addition to the requirements placed upon the named professionals, the law encourages all persons to report.

Mandated Reporters

South Carolina law requires certain professionals who are at least 18 years old to report suspected child abuse and neglect. Because they have unique opportunities to observe and interact with children, the following professionals are mandated reporters of child abuse and neglect:

- Physicians, nurses, dentists, optometrists, medical examiners and their staff, emergency medical services professionals, allied health professionals, and other medical professionals
- Coroners and their staff
- Mental health professionals
- Substance abuse treatment staff
- Members of the clergy, including Christian Science practitioners and religious healers (subject to laws governing privileged communication)
- Clerical and nonclerical religious counselors who charge for services
- School teachers, counselors, principals, assistant principals, and school attendance officers
- Social or public assistance workers
- Childcare workers in childcare centers or foster care facilities
- Foster parents
- Police or law enforcement officers
- Juvenile justice workers
- Funeral home directors, funeral home employees, and undertakers
- Judges
- Persons responsible for processing film
- Computer technicians
- Volunteer non-attorney guardians ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA

When to Report

Mandated reporters must report suspected child abuse or neglect when, in their professional capacity, they receive information giving them reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect. Whether information is received by mandated reporters "in their professional capacity" is not necessarily limited by their physical location at the time, but whether they are working within the scope of their employment when they receive the information.¹

The mandate to report child abuse and neglect does not require the reporter to know for certain that a child has been abused or neglected. The requirement to report is triggered when the mandated reporter has a reasonable belief that a child has been or may be abused or neglected.

Reporting to a supervisor or person in charge of an institution, school, facility, or agency does not relieve a mandated reporter of his or her individual duty to report, and the duty to report is not superseded by an internal investigation within an institution, school, facility, or agency.

Because the law allows and also encourages all persons to report, mandated reporters have the option of making a report based on information they receive outside of their professional capacity, and they are encouraged to do so.

Privileged Communication

In the interest of protecting children from abuse and neglect, mandatory reporting laws make void the privileged nature of communication between husband and wife, and between professional and patient or client. HIPAA regulations allow for reporting child abuse or neglect in accordance with state law.

¹ Op. S.C. Att'y Gen., 2016 WL 386063 (January 11, 2016).

Communication between attorney and client remains privileged. Clergy members, Christian Science practitioners, and religious healers must report except when information is received from the alleged perpetrator during a communication protected by the clergy and penitent privilege. The clergy and penitent privilege applies to confidential communications entrusted to an ordained minister, priest, or rabbi when necessary to enable the cleric to discharge the functions of the office according to the usual practice or discipline of the church or religious body.

Where to Report

South Carolina law allows mandated reporters to report to either DSS or law enforcement in the county where the child resides or is found. If the alleged perpetrator is the child's parent, guardian, or other person responsible for the child, DSS is responsible for investigating the report. If a law enforcement agency receives a report of this nature, the information will be forwarded to DSS.

When the alleged perpetrator is someone other than the child's parent, guardian, or other

person responsible for the child's welfare, law enforcement has primary responsibility for investigation as these cases do not fall under the authority of DSS. In these situations, mandated reporters are required to report to the appropriate law enforcement agency. If the alleged perpetrator's identity or relationship to the child is unclear or unknown, the report should be made to DSS.

In the event of an emergency, reporters may choose to contact law enforcement. If a child is in imminent and substantial danger, law enforcement officers are authorized to take the child into emergency protective custody. Officers are not limited to their county or municipality, but can take emergency protective custody of a child when appropriate anywhere in the state.

If there is reason to believe that a child has died as a result of child abuse or neglect, a report must be made to the county medical examiner or coroner's office. If there are other children remaining in the home, a report should also be made to DSS.

II. PROTECTIONS FOR MANDATED REPORTERS

Confidentiality

South Carolina law requires DSS and law enforcement to keep the identity of the reporter confidential. The law provides only limited instances when the identity of the reporter may be revealed. If the report is received by DSS and is later referred to law enforcement, DSS will reveal the name of the reporter to law enforcement to allow for a criminal investigation. Likewise, if the report is received by law enforcement and is later referred to DSS, law enforcement will reveal the name of the reporter to DSS to allow DSS to investigate the allegations.

On some occasions, a person who is a mandated reporter may be subpoenaed to testify in court regarding the alleged abuse or neglect. Even then, the fact that the witness is the person who reported the suspected abuse or neglect cannot be disclosed.

Under extremely limited circumstances, a court may order DSS to release the name of

the reporter to the subjects of the report. The alleged perpetrator in an unfounded case may file an action requesting that the court order the release of the reporter's name. The court will review the case records and may review written arguments or hear oral arguments. If the court finds probable cause to believe the reporter acted in bad faith or maliciously made the report, it may order DSS to disclose the reporter's identity.

Immunity from Liability

Persons mandated or permitted to report suspected abuse or neglect, or who participate in an investigation or court proceeding as a result of a report, are immune from civil and criminal liability, provided that such persons have acted in good faith. Immunity covers full disclosure of all the facts that led the person to reasonably believe that a child has been or may be abused or neglected. The law creates a rebuttable presumption that mandated reporters have acted in good faith in reporting suspected abuse or neglect.

Protection from Retaliation by Employer

Employers may not dismiss, demote, discipline, or discriminate against an employee for making a report of suspected child abuse or neglect. If

this does occur, the employee may bring a civil action for reinstatement and back pay against the employer, including state government entities.

III. POSSIBLE PENALTIES

Failure to Report

A mandated reporter who knowingly fails to report suspected child abuse or neglect is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500.00, or imprisoned not more than six months, or both.

False or Malicious Reports

It is unlawful to knowingly make a false or malicious report. False or malicious reporting is a misdemeanor and, upon conviction, is punishable by a fine of up to \$5000 or imprisonment up to 90 days, or both.

IV. PERMISSIBLE ACTIONS FOR MANDATED REPORTERS

Photographs, Radiological and Medical Examinations

A mandated reporter may take, or cause to be taken, color photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, a physician may cause to be performed a radiological examination or other medical examinations or tests of the child without the consent of the child's parents or guardians. Copies of all photographs, negatives, and radiological and other medical reports must be provided to DSS at the time a report is made, or as soon as reasonably possible after the report is made. Upon written request of the consulting care physician or the hospital facility and without consent of the parents, the primary care physician shall release the medical records, radiologic imaging, photographs, and all other health information only to the consulting care physician and the hospital facility. The consulting care physician and the hospital facility only may release the records to law enforcement in accordance with HIPAA.

or hospital suspects the child has been abused or neglected and has reason to believe that releasing the child would place the child's life, health, or physical safety in imminent danger. A child may be detained by a physician or hospital for up to 24 hours to allow time for law enforcement to arrive and determine whether the child should be taken into emergency protective custody. The physician or hospital staff must make a report to DSS and law enforcement and must state at the time of the report that the child was being detained until law enforcement's arrival.

A hospital should designate qualified staff members who are authorized to detain children on behalf of the hospital. A physician or hospital detaining a child in good faith is immune from civil or criminal liability for detaining the child.

Detainment of Child by Medical Professional or Hospital

A physician or hospital may detain a child, without the consent of the parent, if a physician

Request for Summary of Investigation

Mandated reporters may request a summary of the outcome of an investigation. DSS is authorized to summarize the outcome of an investigation to the reporter if requested at the time of the report. DSS has the discretion to limit the information disclosed based upon the reporter's relationship with the child.

V. SPECIAL CIRCUMSTANCES

Harm to Viable Fetus or Newborn

The South Carolina Supreme Court has ruled that a viable unborn fetus is a "child" for purposes of child abuse and neglect laws. A

viable fetus is one that has "reached that period of prenatal maturity where it is capable of independent life apart from its mother."²

² *Whitner v. South Carolina*, 492 S.E.2d 777 (S.C. 1997).

A situation may arise where a healthcare professional, including a mental health provider, has reason to believe that a woman is making choices that have harmed or have placed a viable fetus at substantial risk of harm. A report to DSS should be made when there is reason to believe that a pregnant woman's actions are detrimental to the health or safety of her child.

A report to DSS should be made when there is reason to believe that a woman, pregnant with a viable fetus, is abusing an illegal substance. The decision to report may be more complicated when the pregnant woman's behavior is not illegal but may pose a risk of harm to a viable fetus, such as drinking alcohol. Posing a risk of "harm" to a child (including a viable fetus) requires some evidence that the mother's actions have caused or would likely cause the child physical or mental injury. After carefully considering the available information concerning the extent of the woman's behavior, a report should be made if the professional has a reasonable belief that the mother's actions are causing harm or pose a substantial risk of harm to a viable fetus. The healthcare professional can expect DSS to ask certain questions to assist in evaluating whether the report is within DSS's jurisdiction. Such questions may include: what efforts has the healthcare professional made to educate the woman about the risk of the questioned behavior; to what extent has the healthcare professional promoted the choice of healthy behavior; has medical science establishes a link between the woman's behavior and harm or substantial risk of harm to a viable fetus; what is the gestational age of the fetus or newborn; and is the fetus considered viable.

Healthcare professionals should report when an infant has been diagnosed with fetal alcohol syndrome or when a blood or urine test of a child or mother at birth shows the presence of a controlled substance or a metabolite of a controlled substance, unless the result of medical treatment.

Withholding Health Care

A report should be made to DSS when a parent or other person responsible for the child's welfare withholds health care from a child that a physician or hospital has determined is medically necessary. If the parent has

withheld health care due to a religious belief or judgment that it is in the child's best interests, this is not considered abuse or neglect. However, if a physician or hospital determines that, more likely than not, the child will die or suffer permanent harm without the medical treatment, DSS may petition the family court for an order authorizing the physician or hospital to provide the necessary medical care. The court can order that medical care be provided without the parents' consent to prevent death or permanent harm to the child.

Safe Haven for Abandoned Babies Act ("Daniel's Law")

Daniel's Law is named for an infant whose mother abandoned him in a landfill shortly after birth. Fortunately, he survived and nurses at the hospital named him Daniel. Daniel's Law is intended to provide a safe option for babies, no more than sixty days old, whose parents are unable or unwilling to care for them.

Under Daniel's Law, a parent or person acting at the direction of the parent, may leave an unharmed baby in the care of staff of certain designated facilities without penalty or prosecution. The person must leave the infant in the physical custody of a staff member or employee of the safe haven. "Safe havens" include hospitals or hospital outpatient facilities, law enforcement agencies, fire stations, EMS stations, and houses of worship during the hours when facilities are staffed.

A safe haven must take temporary physical custody of an infant left voluntarily by a person who does not intend to return for the infant. The person leaving the infant is not required to disclose his or her identity. However, the staff member of the safe haven must ask the person leaving the child to provide information concerning the child's background, including the identity of any parent (other than the person leaving the infant) and a medical history. With the information provided, the safe haven staff must fill out the "Abandoned Infants Form for Safe Havens" (DSS Form 3082), which is available on the DSS website at <http://dss.sc.gov> or at the local DSS office. If the person leaving the infant does not wish to provide any information to the safe haven, the safe haven must offer the DSS form and a stamped envelope in case the person later decides to

provide the information directly to DSS. The safe haven must also offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

Within six hours of receiving an infant, the safe haven must transport the child to a hospital or hospital outpatient facility. By the end of the next working day, the hospital or hospital outpatient facility will notify DSS. DSS will immediately assume legal custody of the child and pursue action in family court to terminate parental rights so that the child can be adopted. Court hearings regarding an infant abandoned under Daniel's Law are expedited.

Safe havens and their staff members are immune from civil and criminal liability for any action authorized by Daniel's Law as long as they comply with the provisions of the law. Hospitals and hospital outpatient facilities may want to remind staff of the option of relinquishment of parental rights for adoption through DSS or a private adoption agency

as an alternative for mothers who give birth at the hospital and wish to leave the baby. Relinquishment is also a non-punitive option, but if a mother chooses this option, her identity would be known.

(For further information and Form 3082, contact DSS's Adoption and Birth Parent Services at 1 (800) 922-2504 or visit the DSS website.)

Adults Abused as Children

Mandated reporters, particularly mental health or medical professionals, may be told by an adult that he or she was abused as a child. The South Carolina Attorney General's Office has concluded that, under current law, a report is not required in this situation provided that: the adult is not incompetent, there is no reason to believe that another child still under the age of 18 has been or may be abused, and there is no other requirement to report.³ An adult who was abused as a child may choose to report to law enforcement, as there is no statute of limitations on criminal actions in South Carolina.

VI. PROCESSING REPORTS

DSS Child Protective Services

The purpose of child protective services is to protect the child's safety and welfare and to maintain the child within the family unless the child's safety requires placement outside of the home. The Department of Social Services (DSS) is responsible for investigating reports of abuse and neglect when the suspected perpetrator is the child's parent or guardian, or person responsible for the child's welfare. A person whose contact with the child is incidental, such as a babysitter, is not a person responsible for the welfare of the child as defined by state law. If it is not clear from a report whether the suspected perpetrator has assumed the role of parent or guardian for the child, DSS may use information gathered by law enforcement to determine whether to initiate an investigation. If this information is not available within 24 hours of receipt of the report, DSS must begin an investigation.

Within 24 hours of receipt of a report of suspected abuse or neglect, DSS must begin an investigation and physically observe the

child. Based on the information provided by the reporter, DSS assesses the risk of harm to the child and determines an appropriate response time that is within the 24 hours. If DSS determines the child is at high risk, the investigating caseworker will respond in a shorter amount of time. DSS notifies law enforcement of reports of sexual abuse within 24 hours. DSS must also refer other reports that involve violations of criminal law to law enforcement.

DSS must notify the parent or guardian as soon as possible after initiating the investigation. During the investigation, DSS may interview the child and other children in the home outside the presence of their caregivers. DSS may also inspect the child's residence, as well as obtain copies of school, medical, and other records concerning the child. Because of its obligation to preserve and reunify families whenever possible, DSS may implement a safety plan with a family that is being investigated. The safety plan is a temporary agreement between the child's family and DSS that is designed to

³ Op. S.C. Att'y Gen., 2014 WL 3352174 (S.C.A.G. June 30, 2014).

prevent placement of the child in foster care.

DSS will complete its investigation within 45 days and determine whether the report is “indicated” or “unfounded.” Upon a showing of good cause, the director may grant a one-time extension of 15 days. When the child has been removed from the home and the family court is involved, the investigation must be completed prior to the removal hearing that is held within 35 days.

If the investigation yields a preponderance of evidence that abuse or neglect occurred, DSS indicates the report and coordinates services to correct the causes of the abuse or neglect. An indicated case may result in the name of the perpetrator being entered in the Central Registry of Child Abuse and Neglect. For cases that are indicated, DSS may coordinate services for the family without court involvement (a family preservation or treatment case), or may file a complaint in family court seeking the court’s involvement in the implementation of a plan of services.

When there is to be court involvement, DSS may coordinate services for families without removing the child from the home (an intervention case) or may ask the family court to remove the child and order protective services (a removal case). In all child maltreatment cases brought before the family court, a guardian ad litem will be appointed to represent the best interests of the child.

If the investigation does not yield a preponderance of evidence to support a finding of abuse or neglect, DSS must unfind the report.

Family Court Hearings

The following is a brief explanation of the various types of family court hearings held in child abuse and neglect cases.

Intervention Hearing. DSS files a complaint in family court, and an intervention hearing is held within 35 days. If the court determines that the child has been abused or neglected, the court authorizes DSS to provide services to the family while the child remains in the home.

Probable Cause Hearing/Emergency Protective Custody Hearing.

Some children who are in DSS custody enter foster care after being placed into emergency protective custody. A child may be placed into emergency protective custody when a law enforcement officer or family court judge has probable cause to believe that, by reason of child abuse or neglect, the child’s life, health or physical safety is in substantial and imminent danger. Within 72 hours of a child being removed from the home, there will be a probable cause hearing to determine whether the decision to take the child into emergency protective custody was proper, and whether there is reason for DSS to retain custody of the child or whether it is safe to return the child home.

Removal/Merits Hearing. Within 35 days of filing a complaint for removal of a child from the child’s home, there will be a removal/merits hearing. A removal complaint is filed after a child enters foster care through emergency protective custody. DSS may also file a removal complaint asking the court to remove a child who has been or may be abused or neglected, but is not in substantial and imminent danger.

At the removal hearing, evidence is presented by the parties and, based on the evidence, the court will determine whether the child has been abused or neglected. The determination by the court is referred to as a “finding.” If the court finds that abuse or neglect occurred, it will also determine whether the child must enter or remain in the custody of DSS or whether the child can safely return home. The court will also determine what protective services should be offered to the family.

Permanency Planning Hearing. Permanency planning hearings are required for every child who remains in foster care. A permanency planning hearing must be held no later than one year from the date the child was first placed in foster care, and at least once every 12 months thereafter until a permanent plan is finalized and the case is closed by the court. The purpose of this hearing is to determine a permanent plan that is in the child’s best interest and to timely gain permanency for the child. At the permanency planning hearing, the

court will determine whether to return the child to the parents, place the child in the custody or guardianship of a relative or non-relative, or terminate the parents' rights so that the child is free for adoption.

Termination of Parental Rights Hearing.

Termination of parental rights is a new court action initiated by the filing of a complaint to terminate the parents' rights. A hearing must be held within 120 days after the complaint is filed. The family court may terminate the parents' rights upon finding by clear and convincing evidence that at least one statutorily defined ground exists and that the termination is in the best interests of the child.

Law Enforcement Investigation

Law enforcement officers become involved in child maltreatment cases in various ways. Law enforcement officers are authorized to take a child into emergency protective custody if there is probable cause to believe the child is in imminent and substantial danger due to abuse or neglect. Law enforcement officers investigate child maltreatment in addition to DSS when the alleged perpetrator is a parent or guardian and the maltreatment also violates the state's criminal laws. Law enforcement has sole authority to investigate child abuse or neglect when the perpetrator is someone other than the child's parent or guardian, or person responsible for the child's welfare. Although law enforcement and DSS may coordinate their investigations, the two processes are separate and distinct. The primary purposes underlying law enforcement's investigation are to determine whether a crime

has been committed, and if so, to prosecute the offender.

When law enforcement has probable cause to believe that an individual has committed a crime, the alleged perpetrator will be arrested. A bond hearing will be held, and the alleged perpetrator may be detained or released pending final disposition of the charge.

After the bond hearing, the next step is typically a preliminary hearing to determine whether law enforcement had probable cause to make the arrest. The grand jury will then review the case to decide whether the evidence is sufficient to formally charge (indict) the alleged perpetrator. If the alleged perpetrator is indicted, the next step is usually a hearing to determine whether the alleged perpetrator is guilty or not guilty of committing a crime. The person charged can choose to plead guilty or may request a jury trial. If the alleged perpetrator pleads guilty or is found guilty by a jury, he or she may be sentenced to incarceration or placed on probation. For certain sex offenses, the judge can order the perpetrator to register as a sex offender. The judge must also order DSS to place the perpetrator's name on the Central Registry of Child Abuse and Neglect following conviction for certain crimes involving physical or sexual abuse of a child.

Criminal cases involving suspected offenders who are under the age of 17 are handled in a different manner through the juvenile justice system. Contact the Children's Law Center for further information about this system.

VII. RECOGNIZING CHILD ABUSE OR NEGLECT _____

The first step in helping abused or neglected children is learning to recognize possible signs of maltreatment. The law does not specify injuries or circumstances that require a report. Rather, mandated reporters must be familiar with indicators and exercise judgment in deciding whether a report is appropriate. Indicators of child maltreatment can be obvious, but are sometimes subtle and difficult to recognize. The presence of indicators does not necessarily mean abuse or neglect has occurred or is occurring; however, when indicators appear repeatedly or in combination, professionals should take a closer look at the situation and consider the need to report. Although child maltreatment can be divided into various types (physical abuse, sexual abuse, mental injury/abuse, neglect), these various types often occur in combination. The following material is primarily taken from *Recognizing Child Abuse and Neglect: Signs and Symptoms* (2003), a fact sheet published by the National Clearinghouse on Child Abuse and Neglect.

General Indicators of Maltreatment

Child:

- Shows sudden changes in behavior or school performance
- Has not received help for physical or medical problems brought to the parents' attention
- Is always watchful, as though preparing for something bad to happen
- Is overly compliant, passive, or withdrawn
- Comes to school or other activities early, stays late, or does not want to go home

Parent:

- Shows little concern for the child
- Treats one child differently from siblings
- Denies the existence of – or blames the child for – the child's problems
- Asks teachers or other caretakers to use harsh physical discipline if child misbehaves
- Sees the child as entirely bad, worthless, or burdensome
- Demands a level of physical or academic performance the child cannot achieve
- Looks primarily to the child for care, attention, and satisfaction of emotional needs

Signs of Physical Abuse

Child:

- Has unexplained burns, bites, bruises, broken bones, or black eyes
- Has injuries that mirror the shape of an object
- Has bruises in various stages of healing, or on different body planes
- Has bruises on the fleshy parts of the body
- Has fading injuries after an absence from school
- Attempts to hide injuries
- Seems frightened of the parents and does not want to go home
- Shrinks at the approach of adults
- Reports injury by a parent or guardian

Parent:

- Offers conflicting, unconvincing, or no explanation for the child's injuries
- Does not seek medical care when needed for the child's injuries
- Describes the child in a very negative way
- Uses harsh physical discipline with the child
- Has a history of abuse as a child

Signs of Neglect

Child:

- Is frequently absent from or late to school
- Is always hungry; begs or steals food or money

- Is consistently tired
- Has slow physical development or is underweight
- Lacks needed routine or urgent medical or dental care
- Has poor hygiene; is consistently dirty and has a body odor
- Lacks appropriate clothing for the weather
- Abuses alcohol or other drugs
- States that there is no one at home to provide care or supervision

Parent:

- Appears to be indifferent to the child
- Seems apathetic or depressed
- Behaves irrationally or in a bizarre manner
- Is abusing alcohol or drugs

Signs of Sexual Abuse

Child:

- Reports sexual abuse
- Has difficulty walking or sitting
- Refuses to change for P.E. or participate in activities
- Reports nightmares or bedwetting
- Experiences a sudden change in appetite or weight
- Has a sudden change in grades
- Appears withdrawn or depressed
- Demonstrates unusual sexual knowledge or behavior
- Becomes pregnant or contracts a sexually transmitted disease, particularly if under 14
- Runs away from home

Parent:

- Is unduly protective of the child or severely limits the child's contact with other children, especially of the opposite sex

Signs of Mental Injury

Child:

- Shows extremes in behavior, such as overly compliant or demanding behavior, extreme passivity, or aggression
- Is either inappropriately adult (e.g., parenting other children) or inappropriately infantile (e.g., rocking or head-banging)
- Has attempted suicide or engaged in self-harm
- Exhibits a lack of attachment to parents

Parent:

- Constantly blames, belittles, or berates the child
- Is unconcerned about the child and refuses to consider offers of help for the child's problems
- Overtly rejects the child

VIII. GUIDELINES FOR MANDATED REPORTERS

When confronted with the possibility that a child has been or may be abused or neglected, there are several steps that should be taken to protect the child. The following are suggested guidelines to further assist mandated reporters in recognizing and reporting suspected child abuse and neglect.

Responding to a Child

- Listen attentively while the child is talking to you.
- Do not probe for details, particularly concerning sexual abuse. (Proving sexual abuse in court often depends heavily on the child's statement. Discussing details of the abuse with the child should only be done by trained investigators.)
- Do not remove clothing to examine the child's body unless you are a medical professional.
- Do not indicate doubt or disbelief.
- Do not express shock or anger at the possible perpetrator. Children often love the person who mistreats them.
- Tell the child what you will do (e.g., that you are going to contact DSS and a caseworker will come to talk with the child).
- Do not give the child false assurances or promise that you will keep the information confidential.

Documentation

- Document the basis of your concerns, including physical and behavioral signs.
- Document the child's statements to you. Try to use the child's exact words.
- Document the child's demeanor while talking with you. Note any signs of fear or distress.
- If you make the report orally, record the date, time, and the person and agency you contacted. If you make the report in writing, keep a copy of the correspondence.
- Be aware that your records concerning the report may be subject to subpoena.

Making a Report

- Make the report as soon as possible after receiving the information which causes you to suspect abuse or neglect. Mandated reporters cannot "cause" a report to be made by delegating this responsibility to

someone else. You must personally make the report.

- In addition to making the report to DSS or law enforcement, follow your employer's procedures regarding notification of supervisors.
- You do not need to have conclusive proof. The law requires you to report when you have "reason to believe" a child is being or may be abused or neglected.
- Do not attempt to investigate or excessively question the child. Specially trained DSS caseworkers and law enforcement officers will investigate the allegations.
- Collect as much of the following information as possible to convey to the investigating agency: child's name, age, date of birth, and address; child's present location; names and ages of siblings; and parents' names and addresses.
- Explain why you are concerned about the child when making the report.
- At the time of the report, or as soon as possible thereafter, provide copies of all photographs, negatives, and medical reports to the appropriate investigating agency.
- Although reports can be made anonymously, it is often helpful to provide your name and telephone number in the event that further information is needed.
- At the time the report is made, you can request to be notified of the outcome of the investigation.
- After you have made a report, if you learn new information or additional information, report it to DSS or law enforcement.

Contact with Parents

- In general, it is best not to contact the child's parents about your suspicions before making the report. Informing parents before the appropriate intervention can be made may lead to retribution against the child or destruction of evidence.
- Never accuse a parent of abuse or neglect.

- Depending upon the situation, you may explain that you are legally required to report based upon the possibility that the child has been or may be harmed.
- In some cases, if the child does not appear to be in imminent danger or if the suspected offender is someone other than a parent, you may choose to maintain open communication with the parent after a report is made. This depends upon the

setting and your relationship with the parent.

Follow-up

- Your continued help may be necessary. Be willing to meet with multidisciplinary teams and/or testify in court if requested. All professionals and agencies must work together to obtain the best outcome for a child.

IX. DEFINITIONS

The following definitions are provided by S.C. Code Ann. § 63-7-20 unless otherwise noted:

Abandonment

A parent or guardian willfully deserts a child or willfully surrenders physical possession of a child without making adequate arrangements for the needs or continuing care of the child.

Bad Faith

Generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.⁴

Central Registry of Child Abuse and Neglect

A statewide data system that identifies perpetrators of child abuse and neglect. Information concerning an individual in the Central Registry is confidential and may be disclosed only for the screening of an individual's background when required by a statute or regulation for employment, licensing, or other purposes.⁵

Child

A person under the age of eighteen. **Note:** (In *Whitner v. State*, 492 S.E.2d 777 (1997), the court held that a viable fetus is included under this definition of a child.)

Child Abuse or Neglect or Harm

Child abuse or neglect or harm occurs when:

- a) the parent, guardian, or other person responsible for the child's welfare:

- i) inflicts or allows to be inflicted upon the

child **physical or mental injury** or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment and physical discipline which:

- (A) is administered by a parent or person in loco parentis;
- (B) is perpetrated for the sole purpose of restraining or correcting the child;
- (C) is reasonable in manner and moderate in degree;
- (D) has not brought about permanent or lasting damage to the child; and is not reckless or grossly negligent behavior by the parents.

- ii) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child; **Note:** *Under South Carolina law, such sexual offenses include fondling; intercourse; cunnilingus; fellatio; anal intercourse; any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body; and child exploitation (child pornography).*

- iii) fails to supply the child with adequate food, clothing, shelter, or education as required by state law, supervision appropriate to the child's age and development, or health care

⁴ Bad Faith, *Black's Law Dictionary* (5th ed. 1979).

⁵ S.C. Code Ann. § 63-7-1910, -1920, -1980, and -1990.

though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absence from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate;

iv) abandons the child;

v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval;

vi) commits or allows to be committed against the child female genital mutilation as defined in Section 16-3-2210 or engages in acts or omissions that present a substantial risk that the crime of female genital mutilation would be committed against the child; or

vii) has committed abuse or neglect as described in subitems (i) through (vi) such that a child who subsequently becomes a part of the person's household is at substantial risk of one of those forms of abuse or neglect; or

b) a child is a victim of trafficking in persons as defined in Section 16-3-2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian, or other person responsible for the child's welfare. Identifying a child as a victim of trafficking in persons does not create a presumption that the parent, guardian, or other individual responsible for the child's welfare abused, neglected, or harmed the child.

Clear and Convincing Evidence

Proof that leaves a firm belief or conviction as to the allegations sought to be established.⁶

Emergency Protective Custody

The right to physical custody of a child for a temporary period of no more than 24 hours to protect the child from imminent danger.

Good Faith

Honesty of purpose, freedom from intention to defraud, and, generally speaking, means being

faithful to one's duty or obligation.⁷

Indicated Report

A report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.

Mental Injury

Injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional.

Person Responsible for a Child's Welfare

The child's parent, guardian, foster parent; an operator, employee, or caregiver of a public or private residential home, institution, agency or childcare facility; or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian.

Physical Injury

Death or permanent or temporary disfigurement or impairment of any bodily organ or function.

Preponderance of Evidence

Evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition. (Also means "more likely than not.")

Relinquishment

The informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption and to whom the parent has given consent to the adoption of the child.⁸

Unfounded Report

A report for which there is not a preponderance of evidence to believe that the child is abused or neglected.

⁶ Clear and Convincing Proof, *Black's Law Dictionary* (5th ed. 1979).

⁷ Good Faith. *Black's Law Dictionary* (5th ed. 1979).

⁸ S.C. Code Ann. § 63-9-30(8).

X. LEGAL REFERENCES

South Carolina Code of Laws

§ 63-7-20	Definitions
§ 63-7-40	Safe haven for abandoned babies (“Daniel’s Law”)
§ 63-7-310	Persons required to report (mandated reporters)
§ 63-7-315	Civil action for wrongful termination based on reporting
§ 63-7-330	Confidentiality of information
§ 63-7-360	Mandatory reporting to coroner (and medical examiner)
§ 63-7-370	Domestic violence reporting
§ 63-7-380	Photos and x-rays without parental consent (and release of records)
§ 63-7-390	Reporter immunity from liability
§ 63-7-410	Failure to report; penalties
§ 63-7-420	Abrogation of privileged communication; exceptions
§ 63-7-430	Civil action for bad faith reporting
§ 63-7-440	Knowingly making false report (and penalties)
§ 63-7-610	Statewide jurisdiction (authority of law enforcement officers to EPC)
§ 63-7-620	Emergency protective custody
§ 63-7-710	Probable cause hearing
§ 63-7-750	Doctor or hospital may detain child; civil immunity
§ 63-7-920	Investigations and case determination
§ 63-7-950	Withholding health care
§ 63-7-980	Cooperation between DSS and law enforcement
§ 63-7-1610(A)	Jurisdiction of family court
§ 63-7-1650	Intervention and services without removal
§ 63-7-1660(F)	Presence of controlled substance or metabolite in newborn; fetal alcohol syndrome
§ 63-7-1700	Permanency planning hearings
§ 63-7-1710	Standards for terminating parental rights
§ 63-7-1940	Court order for placement in Central Registry
§ 16-3-651	Criminal sexual conduct: definitions
§ 19-11-90	Priest and penitent privilege
§ 23-3-430	Sex offender registry

United States Code of Laws

45 C.F.R. 164.512(b)(1)(ii)	HIPAA exception for reporting child abuse or neglect
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