

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Court Case Number 2017-CP-18-02001

Kaci May and Kaci May as guardian
ad litem for A.R.M., J.H.M., J.T.M.,
C.B.M., J.R.M., and J.W.M.,

Appellants,

v.

Dorchester School District Two,
South Carolina Department of Social
Services, Michael Leach, and Jasmine
Flemister.

Respondents,

**RECORD ON APPEAL
VOLUME III**

Robert J. Butcher
Deborah J. Butcher
Post Office Box 610
Camden, South Carolina 29021
Attorneys for the Appellants

Susan M. Fittipaldi
Thomas K. Barlow
Post Office Box 11367
Columbia, South Carolina 29211
Attorneys for Respondent Dorchester School
District Two

Kenneth P. Woodington
William H. Davidson
Post Office Box 8568
Columbia, South Carolina 29202
Attorney for Respondent South Carolina
Department of Social Services, Michael Leach, and
Jasmine Flemister

RECEIVED
Aug 04 2021
SC Court of Appeals

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

FOSTER CARE ABUSE LAW FIRM, PA

s/Robert J. Butcher

Robert J. Butcher - 74722

Deborah J. Butcher - 74029

509 Walnut Street

Camden, South Carolina 29020

Post Office Box 610

Camden, South Carolina 29021

Telephone: 803.432.7599

rbutcher@camdensc-law.com

Camden, South Carolina
August 3, 2021

**South Carolina Department of Social Services
DETERMINATION FACT SHEET**

Case Name: May, Kaci Case Number: 0001215553

Address: Mrs. May

151 Kaci May Way

Ridgelyville SC 29472

As of 5/12/17, it is the decision of the department that the investigation/assessment
Case Determination Date
 initiated on 3/28/17 has been Indicated for the following forms
Initial Date Case Determination
 of maltreatment: Physical Neglect as supported by the facts and observations
Maltreatment
 recorded below and in the county investigative/assessment file.

Facts/Observations	Supporting Documentation/Evidence
The Dorchester County Department of Social Services responded	Education contact was made at Sandhill Elementary
to a report that the children have been brutally raped by ~~BRITNEY~~	Home visit/ safety inspected attempted
Allegations that the children are not safe in the home.	Law enforcement contacted
Concerns that parents are not supervising the children properly.	
case staffed: 5/12/17	case indicated: 5/12/17

For indicated investigations/assessments, check all that apply:

- ☒ You have been identified as the person responsible for harm to a child. (See attached DSS Form 3089.)
- ☐ A child with whom you are involved has been identified as being abused and/or neglected by state statute. You have not been identified as being responsible for the maltreatment. This information is being provided to you solely because of your legal relationship to the child.
- ☐ A child for whom you are the caretaker has been determined to be abused and/or neglected.
- ☐ Day Care Facility: The matter will be referred to your employer and the DSS Division of Child Day Care Licensing and Regulatory Services for action. (See attached DSS Ltr. 3081.)
- ☐ Foster Homes, Group Homes and Residential Facilities: See the attached letter for additional information regarding appeal of this decision. (See attached DSS Ltr. 3081.)
- ☐ A child has been determined to have been harmed while at your child care facility. The DSS Division of Child Day Care Licensing and Regulatory Services will contact you regarding a corrective action plan and/or any other actions needed to insure the safety of children.

For unfounded investigations/assessments:

- ☐ See attached DSS Form 3085.

Kaci May 5/12/17
Worker's Signature Date

Ellen Ray 05/22/17
Supervisor's Signature Date

DSS Form 3070 (FEB 10) Edition of JAN 03 is obsolete.

South Carolina Department of Social Services
Child Protective Services

NOTICE OF RIGHT TO APPEAL THE AGENCY'S DECISION

Date: 5/12/17

To: Kaci May

Address: 151 Kaci May Way
Ridgeville SC 29472

With this notice you have received a Determination Fact Sheet regarding the investigation initiated on 3/28/17 and indicated on 5/12/17. The Determination Fact Sheet contains a summary of the facts found in the DSS child protective services investigation involving you. The department has determined that you were involved in harm that came to the child(ren), or that you placed the child(ren) at significant risk of being harmed.

Please read this entire letter. It provides important information about your case. The section checked below applies to your situation today.

☒ DSS has filed or plans to file action to take your case before Family Court. You will be served with court papers that will explain what DSS will ask the Family Court Judge to do. This hearing will also provide an opportunity for you to challenge the agency's case decision. You should pay careful attention to the court papers you will receive. The court papers will tell you how you can get a court-appointed attorney, if you cannot afford one. Be sure to give the court papers, this letter and the Determination Fact Sheet to your attorney.

☒ DSS has recorded the investigation and the case decision in the confidential DSS case record. DSS did not place your name on the Central Registry of Child Abuse and Neglect. If you disagree with the case decision, you have the right to appeal the decision through an administrative hearing process. The law that applies to the appeal is SC Code Section 63-7-1410 through Section 63-7-1440.

The purpose of the appeal is to determine whether DSS can prove by a preponderance of evidence that you harmed the child(ren), or allowed someone else to harm the child(ren), or placed the child(ren) at significant risk of harm. If you wish to appeal, you must notify the Department in writing within 30 days of receiving this notice. If you do not notify the Department within 30 days, the case decision will become final. Your letter asking for an appeal must be sent to the following address:

South Carolina Department of Social Services
Office of Administrative Appeals
P.O. Box 1520
Columbia, South Carolina 29202

As of the date of this notice, DSS has not filed a case in Family Court. DSS may go to Family Court at any time to make sure that the child is protected and that services are provided. If DSS takes your case to Family Court, you may challenge the case decision at the Family Court hearing. If your case is decided in Family Court, there will not be an administrative hearing and the administrative appeal will end.

If you have any questions, please contact the county caseworker or supervisor identified below during working hours.

Karyn Hullstrunk
Caseworker

William Ray
Supervisor

843-486-1884
Telephone

DSS Form 3088 (FEB 10) Replaces forms 3040 and 30200.

 DSS **SOUTH CAROLINA**
DEPARTMENT of SOCIAL SERVICES

V. SUSAN ALFORD
STATE DIRECTOR

Henry McMaster
GOVERNOR

June 15, 2017

Via Certified Mail
Deborah Butcher
Post Office Box 486
Manning, SC 29102

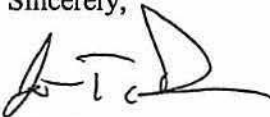
RE: Warren May Appeal
Case Name: Kaci May
Case #: 0001215553

Dear Ms. Butcher:

Pursuant to S.C. Code Ann 63-7-1430 (2012), I have conducted an interim review of Warren May's case and concluded that the decision to indicate the case for Neglect is supported by a preponderance of the evidence.

The Dorchester County Department of Social Services has indicated the May case for Family Court Intervention and he will have the opportunity to contest the agency's finding in that forum. If you have any questions, you may contact me at 843-486-1883.

Sincerely,



John Dunne
County Director
Dorchester County Department of Social Services



HENRY McMASTER, GOVERNOR
V. SUSAN ALFORD, STATE DIRECTOR



June 23, 2017

Deborah Butcher, Esq.
The Foster Care Abuse Law Firm, PA
P.O. Box 486
Manning, SC 29102

Re: Warren May vs. SCDSS

Dear Ms. Butcher:

This Office has been informed by the Dorchester County Department of Social Services that your client's case will be taken to Family Court.

Enclosed is an Order staying your client's appeal pending the resolution of the case in Family Court. S. C. Code Ann. § 63-7-1420 (Supp. 2016) provides that if a person requests an administrative appeal of an indicated case and a proceeding is pending in the Family Court that may result in a finding that will dispose of such an appeal, the Department will stay the appeal pending the court's decision.

Your client's appeal is therefore stayed until the decision of the Family Court.

Sincerely,

L. Lynn McLendon, Director
Individual & Provider Rights

LM/nr

cc:

Mr. John Dunne, Director, Dorchester County DSS
Ms. Jasmine Flemister, Dorchester County DSS
Ms. Deanna Gray Esq., Dorchester County DSS
Mr. Dennis Gmerek, Office of General Counsel

SOUTH CAROLINA DEPARTMENT OF)
SOCIAL SERVICES)

BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS

Warren May)
Case Number 42-CPS)

Petitioner,)

v.)

South Carolina Department of)
Social Services,)

ORDER TO STAY
APPEAL

Respondent.)

This matter is before me on a Request for Hearing received by the Office of
Administrative Hearings on June 8, 2017

The Dorchester County Department of Social Services informed this Office that this case
will be taken to Family Court. Because a proceeding is pending in the Family Court that
may result in a finding that will dispose of this appeal, the appeal is properly stayed
pending the court's decision. S. C. Code Ann. §63-7-1420 (Supp. 2016).

THEREFORE IT IS ORDERED that the appeal be stayed until the Family Court has
made its determination regarding the Petitioner's responsibility for abuse or neglect.

Lynn M. McLendon

L. Lynn McLendon, Director
Individual & Provider Rights

June 23, 2017
Columbia, South Carolina

South Carolina Department of Social Services
CASE TRANSFER AND/OR CASE STAFFING

Case Name:	DOB:	Sex:	Case Number:	Date of Staffing:
May, Kaci	2/17/79	F	0001215553	6/1/17
				Date of Transfer:

Type of Staffing: ☒ Transfer ☐ Supervisory ☐ Closure
☐ Multi- or Inter-Disciplinary ☐ Other: _____

Court Involvement: ☐ Yes ☒ No

If yes, date and type of most recent hearing: _____

Date of next hearing: _____

Current Situation: Minor children are allegedly receiving services, mother will not sign a release. CM was unable to gain access to the home. CM is preparing court paperwork.

Date and Type of Last Contact: 5/25

Recommendations from Staffing: Turn in CS

For Child Welfare Cases: Date of diligent search for absent parent or other relative and outcome of search: _____

Signature/Title:	Date:	Signature/Title:	Date:
------------------	-------	------------------	-------

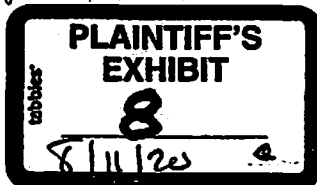
Transfer case to _____ from _____
Worker/Unit/County Worker/Unit/County

Case was received by _____ and reviewed on _____
Worker/Unit/County Date Date

by _____
Worker/Unit/County Date

Sending Worker's Signature:	Date:	Sending Supervisor's Signature:	Date:
<i>[Signature]</i>	6/1/17	<i>[Signature]</i>	6-1-17
Receiving Worker's Signature:	Date:	Receiving Supervisor's Signature:	Date:
<i>[Signature]</i>	6/1/17	<i>[Signature]</i>	6-1-17

DSS Form 3062 (JUN 03) Edition of MAR 08 is obsolete



J.H.M.

J.H.M.

J.H.M.

Birthday

Student Last Name, First Name

Student goes by:

Primary Contact Phone

Student's Home Address (If PO BOX, write both)

Cell #: 045

Employer

Work

Cell #:

Employer

Work

Name:

Relationship to Student:

Contact's Phone:

Parent/Student Signature and Date:

LATE PICK UP SIGN OUT (students who are picked up late after dismissal)

Date: Time:

Signature:

Date: Time:

Signature:

FAMILY ATTORNEY - DEBORAH J. BUTCHER (803) 452-7571
 (803) 700-0809

EITHER HANI MAY OR MEL BUTCHER ARE TO BE CONTACTED
 BEFORE ANYONE INTERVIEWS J.H.M. J.H.M.

PLAINTIFF'S
EXHIBIT

9

8/11/20

C.B.M.

C.B.M.

C.B.M.

Student Last Name, First Name

Student ID#

Primary Contact Phone #

151 Kari May, 151 Kari May, 151 Kari May
Student's Home Address (if not school address)

NAME	Parent	Cell #	Address
Kari May			
Address	Address	Address	Address
Kari May			
NAME	Parent	Cell #	Address
Walter May			
Address	Address	Address	Address
Walter May			

Other Adults and may pick up your child or make arrangements and SCDEGA

Contact Person

Name

Relationship to Student

Dorcas Walker

Judith May

Dorcas Walker

Parent/Guardian Signature and Date: *[Signature]* 8/13/2007

LATE PICK UP SIGN OUT (Students who are picked up late after dismissal)

Date: Time: Signature: Date: Time: Signature:

Family Attorney: DEBORAH J. BUTCHER (603) 432-7599 OFFICE
(603) 906-0809 MOBILEEITHER KARI MAY OR MRS. BUTCHER ARE TO BE CONTACTED
BEFORE ANYONE INTERVIEWS C.B.M. C.B.M.*[Signature]*

J.R.M.

J.R.M.

J.R.M.

Student Last Name, First Name

Student goes by

Birthday

Primary Contact: Phone #

Student's Home Address (PO BOX, write both)

SC 29472

CHECK:		PARENT		Cell #:
Parent		Kaci May		
Address		151 Kaci May Way, Ridgely		
Email		kaci.may2000@yahoo		
CIRCLE:		PARENT		Cell #:
Parent		Walter May		
Address		151 Kaci May Way, Ridgely		
Email		wmay3@gmail		

TRANSPORTATION

MORNING

Bus # _____
 Car # _____
 Pick Up Time _____

AFTERNOON

Bus # _____
 Car # _____
 Pick Up Time _____

Other ADULTS who may pick up your child or make it emergency and NOT 803-293-10

Name:

Relationship to Student

Contact Phone

Deanna Walker

Judith May

Dana Moran

Parent/Guardian Signature and Date:

Kaci May 2/3/2017

LATE PICK UP SIGN OUT (students who are picked up late after dismissal):

Date: Time:

Signature:

Date: Time:

Signature:

FAMILY ATTORNEY- DEBORAH J. BUTCHER (803) 432-7599 OFFICE
 (803) 900-0809 MOBILE

EITHER KACI MAY OR MRS. BUTCHER ARE TO BE CONTACTED
 BEFORE ANYONE INTERVIEWS J.R.M. J.R.M.

Kaci May

A.R.M.

A.R.M.

A.R.M. A.R.M.

Birthday:

Student's Name, First Name

Student's grade by:

Emergency Contact Person's

Student's Home Address (if P.O. Box, give box)

SC 29472

Student	Cell #
Parent	Employer
Teacher	Work
Student	Cell #
Parent	Employer
Teacher	Work

TRANSPORTATION

MORNING

Bus #

Car #

Other

AFTERNOON

Bus #

Car #

Other

Other adults who may pick up your child in case of emergency and who live at the same address as the student

Contact Phone:

Deborah J. Burrier
Deborah J. Burrier
Deborah J. Burrier

Parent's Signature and Date

[Signature]

2/3/2017

LATE PICK UP SIGN OUT (students who are picked up late after dismissal):

Date	Time	Signature	Date	Time	Signature

Family Attorney: DEBORAH J. BURRIER (803) 432-7579 OFFICE
(803) 960-0309 MOBILE

Either Mrs. May or Mrs. Burrier ARE TO BE CONTACTED
BEFORE ANY INTERVIEW

A.R.M. A.R.M. A.R.M.

[Signature]

J.W.M.

J.W.M. J.W.M.

J.W.M. J.W.M.

HOMEROOM

Student's Last Name, First Name

Student goes by:

birthday:

Primary Contact Phone #

151 Kaci May Way, Ridgeville,
Student's Home Address (if PO BOX, write both)
SC 29472

NAME	Cell #:
First: <u>Kaci May</u>	
Last: <u>Kaci May</u>	
Employer:	
Work:	
Cell #:	
First: <u>Warren May</u>	
Last: <u>Warren May</u>	
Employer:	
Work:	
Cell #:	
First: <u>WhMay26@gmail</u>	
Last: <u>WhMay26@gmail</u>	
Employer:	
Work:	

TRANSPORTATION

MORNING:

Bus #:

Car #:

Van: ☐ Taxi: ☐

AFTERNOON:

Bus #:

Car #:

Van: ☐ Taxi: ☐

Other ADULTS who may pick up your child in case of emergency and WITH PROPER ID:

Name

Relationship to Student:

Contact Phone:

Deanna Walker
Judith May
Donna Morgan

Parent/Guardian Signature and Date:

Kaci May 3/3/2017

LATE PICK UP SIGN OUT (students who are picked up late after dismissal):

Date: Time: Signature: Date: Time: Signature:

FAMILY ATTORNEY - DEBORAH J. BUTCHER (803) 432-7549 OFFICE
 (803) 900-0809 MOBILE

EITHER KACI MAY OR MRS. BUTCHER ARE TO BE CONTACTED
 BEFORE ANYONE INTERVIEWS

J.W.M. J.W.M.

Warren A. May

May v. SCDSS

PCA Bates No. 004185

Sand Hill Elementary School
324 Gnarly Oak Lane
Summerville, SC 29435

Phone: 843-695-5201 Fax: 843-695-2502

Website: <http://shos.ddtwa.org>Student Name **J.H.M.** Date of Birth **09-13-2017** Grade **4**Enrollment Date **09-13-2017** Transfer/Withdrawal Code

New Home Address

New School **Connections Academy** Address/PhoneParent/Guardian Signature **K. May** Date **9/13/2017**

Special Programs:	Yes	No	
Self Contained	☐	☒	EFA Classification
Resource	☐	☒	EFA Classification
Speech or Other Special Services	☐	☒	EFA Classification
			(for IEPs call Special Services at 843-875-4161)
Academic Assistance	☐	☒	
Gifted and Talented Program	☐	☒	(For Gifted & Talented Department call 843-821-3960)
ESOL	☐	☒	(Elementary) DRA/STAR

Textbooks Returned	Yes	No	N/A	Cost	Initials	Other Areas/Obligations	Yes	No	Cost	Initials
Reading/ELA	☐	☐	☐			Media Center Clear	☐	☐		
Math	☐	☐	☐			Cafeteria Clear	☐	☐		
Science	☐	☐	☐			Extended Day Clear	☐	☐		
Social Studies	☐	☐	☐			Nurse Clear	☐	☐		
	☐	☐	☐			Financial Secretary Clear	☐	☐		
	☐	☐	☐				☐	☐		
	☐	☐	☐				☐	☐		
	☐	☐	☐				☐	☐		

PowerSchool Printouts

Quick Lookup w/Grades ☐ Initials _____
 Log Entry (Discipline) ☐ _____
 Attendance Detail ☐ _____
☐ _____
☐ _____

Subject	Current Grade	Subject	Current Grade

(Sign- When all information is complete)

Authorized Signature of School Personnel
 Example: Principal, Assistant Principal, Guidance
 Counselor, Guidance or Records Secretary, Systems
 Operator, etc.

Please fax a
request for
student's
complete
school record.

Grading Scale	
90-100 = A	E = EXCELLENT
80-89 = B	S = Satisfactory
70-79 = C	N = Needs Improvement
60-69 = D	U = Unsatisfactory
0-59 = F	
WF = withdraw failing	FA = Failure due to Absences



ROA 000513
May v. SCDSS

FCA Bates No. 004186

Sand Hill Elementary School
224 Gnarly Oak Lane
Summerville, SC 29485

Phone: 843-695-5201 Fax: 843-695-2502

Website: http://shes.ddtwo.org

Student Name **J.R.M.** Date of Birth **[REDACTED]** Grade **2**Enrollment Date **09/14/2017** School Refuses to
provide services

Home Address

New School **Connections Academy**

Address/Phone

Parent/Guardian Signature **[Signature]**Date **9/15/2017**

Special Programs:	Yes	No	
Self Contained	☐	☐	EFA Classification _____
Resource	☐	☐	EFA Classification _____
Speech or Other Special Services	☐	☐	EFA Classification _____
(For IEPs call Special Services at 843-875-4161)			
Academic Assistance	☐	☐	_____
Gifted and Talented Program	☐	☐	(For Gifted & Talented Department call 843-821-3060)
ESOL	☐	☐	(Elementary) DRA/STAR _____

Textbooks Returned	Yes	No	N/A	Cost	Initials	Other Areas/Obligations	Yes	No	Cost	Initials
Reading/ELA	☐	☐	☐	_____	_____	Media Center Clear	☐	☐	_____	_____
Math	☐	☐	☐	_____	_____	Cafeteria Clear	☐	☐	_____	_____
Science	☐	☐	☐	_____	_____	Extended Day Clear	☐	☐	_____	_____
Social Studies	☐	☐	☐	_____	_____	Nurse Clear	☐	☐	_____	_____
_____	☐	☐	☐	_____	_____	Financial Secretary Clear	☐	☐	_____	_____
_____	☐	☐	☐	_____	_____	_____	☐	☐	_____	_____
_____	☐	☐	☐	_____	_____	_____	☐	☐	_____	_____
_____	☐	☐	☐	_____	_____	_____	☐	☐	_____	_____

PowerSchool Printouts

Initials

Quick Lookup w/Grades ☐ _____

Log Entry (Discipline) ☐ _____

Attendance Detail ☐ _____

_____ ☐ _____

_____ ☐ _____

Subject	Current Grade	Subject	Current Grade

(Sign When all information is complete)

Authorized Signature of School Personnel

Example: Principal, Assistant Principal, Guidance Counselor, Guidance or Records Secretary, Systems Operator, etc.

Please fax a request for student's complete school record

Grading Scale

90-100 = A	E = EXCELLENT
80-89 = B	S = Satisfactory
70-79 = C	N = Needs Improvement
60-69 = D	U = Unsatisfactory
0-59 = F	
WF = Withdraw Failing	FA = Failure due to Absences

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social Services

Plaintiff,

vs.

Kaci May; Warren May;

Defendant.

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT

FAMILY COURT COVERSHEET

Docket No. 2017-DR-18-

1334

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: Deanne M. Gray
Address: 216 Orangeburg Road
Summerville, SC 29483
Email: Deanne.gray@dss.sc.gov

SC Bar # 17221
Telephone # (843) 486-1863
Fax # (843) 875-8506
Other: _____

DOCKETING INFORMATION (Check one box below if filing in a Mandatory Mediation County)

- ☒ This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

Nature of Action Codes
(Check One)

Marital Dissolution

- ☐ Divorce (110)
☐ Annulment (120)
☐ Separate Support and Maintenance (130)
☐ Registration of Foreign Divorce Decree - without support/custody (190)
☐ Registration of Foreign Divorce Decree - with support/custody (191)
☐ Marital Dissolution - Other (199) _____

Abuse and Neglect

- ☒ Abuse and Neglect - Child (210)
☐ Abuse and Neglect - Adult (220)
☐ Abuse and Neglect - Other (299) _____

Juvenile Delinquency

- ☐ Truancy (311)
☐ Incurable (312)
☐ Runaway (313)
☐ Criminal Offense (320)
☐ Juvenile Delinquency - Other (399) _____

Protection from Domestic Abuse

- ☐ Domestic Abuse - Intimate Partner (410)
☐ Domestic Abuse - Minor (420)
☐ Registration of Foreign Order of Protection (490)
☐ Domestic Abuse - Other (499) _____

Support

- ☐ Child Support - Private (501)
☐ Child Support - Administrative Process (502)
☐ Child Support - Judicial Process (503)
☐ Registration of Foreign Order of Support (504)
☐ UIFSA - Outgoing (505)
☐ UIFSA - Incoming (506)
☐ Modification of Child Support - Private (507)
☐ Modification of Child Support - DSS (508)
☐ Modification of Alimony (525)
☐ College Expenses (530)
☐ Support - Other (599) _____

Custody/Visitation

- ☐ Child Custody/Visitation (610)
☐ Modification of Custody/Visitation (615)
☐ Registration of Foreign Child Custody Order (690)
☐ Custody/Visitation - Other (699) _____

Miscellaneous Actions

- ☐ Name Change (710)
☐ Correction/Birth Record (720)
☐ Judicial Bypass (730)
☐ Adoption (740)
☐ Foreign Adoption (741)
☐ Post Dissolution Equitable Distribution (750)
☐ Paternity - Private (761)
☐ Paternity - DSS (762)
☐ Termination of Parental Rights - Private (771)
☐ Termination of Parental Rights - DSS (772)
☐ Miscellaneous Actions - Others (799) _____

Submitting Party Signature: _____

Date: _____

Custodial Parent (if applicable): _____

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2011)



FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Oconee (Family Court Only), Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York Counties.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO MEDIATION YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

Rule 3	Actions Subject to ADR
Rule 4(d)(1)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

ALL OTHER CONTESTED ACTIONS

Rule 3	Actions Subject to ADR
Rule 4(d)(2)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2011)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

South Carolina Department
of Social Services,

Plaintiff,
vs.

Kaci May
Warren May

Defendants.

IN THE INTEREST OF:

J.T.M. J.T.M. J.T.M.

J.H.M. J.H.M.

L.C.M. L.C.M.

J.R.M. J.R.M.

J.W.M. J.W.M. J.W.M.

C.B.M. C.B.M.

A.R.M. A.R.M. A.R.M.

Minors Under the Age of 18

**IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT**
DOCKET NO.: 2017-DR-18-1334

SUMMONS, NOTICE OF HEARING,
Explanation of the Right to an
ATTORNEY
[Non-Emergency Removal]

2017 SEP 14 PM 1:19

TO: Kaci May; Warren May:

YOU ARE HEREBY SUMMONED and served with the complaint in this action. You are not required to answer the complaint, but if you do, you should serve a copy of your answer upon plaintiff through its attorney, Deanne M. Gray, at 216 Orangeburg Road, Summerville, SC 29483.

YOU ARE FURTHER NOTIFIED AND SUMMONED TO APPEAR as follows:

1. A treatment/placement plan and **Settlement Conference** will be held on **October 3, 2017 at 2:00 PM** at the Dorchester County Department of Social Services located at 216 Orangeburg Road, Summerville, South Carolina 29483 pursuant to S.C. Code Anno. §63-7-1680, this will be your opportunity to participate in the development of the treatment/placement plan. This will also be an opportunity for you to learn more about

SCDSS vs. Kaci May, et al.
Summons for Non-Emergency Removal

your case and to discuss your case with the DCDSS staff prior to the court hearing. You may have an attorney present with you at this conference. If you do not attend this conference, you will waive your right to participate in the development of the treatment/placement plan.

2. For a **merits hearing** to be held at Dorchester County Family Court, 212 Deming Way, Summerville, South Carolina on **October 12, 2017 at 1:30 PM**. At this hearing, SCDSS will present its Treatment Plan. **THIS HEARING IS SET FOR 15 MINUTES.**

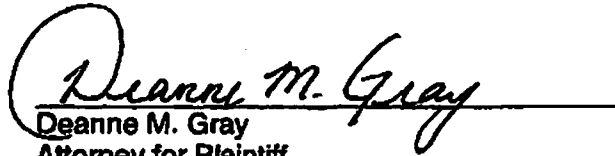
YOU ARE FURTHER NOTIFIED that: (1) the Guardian ad Litem (GAL) who is appointed by the Court in this action to represent the best interests of the children will provide the family court with a written report that includes an evaluation and assessment of the issues brought before the Court along with recommendations; (2) the GAL's written report will be available for review twenty-four (24) hours in advance of the hearing; (3) you may review the report at the GAL Program county office.

PLEASE TAKE FURTHER NOTICE that you have the right to be present and represented by an attorney. If you cannot afford an attorney, the court will appoint an attorney to represent you. It is your responsibility to contact the Clerk of Court's Office, 212 Deming Way, Summerville, South Carolina to apply for appointment of an attorney to represent you if you cannot afford an attorney (take all of these papers with you if you apply.) You must do so before the hearing date.

PLEASE TAKE FURTHER NOTICE on all pleadings in this section.

SCDSS vs. Kaci May, et al.
Summons for Non-Emergency Removal

S. C. DEPARTMENT OF SOCIAL SERVICES


Deanne M. Gray
Attorney for Plaintiff
South Carolina Department of Social Services
216 Orangeburg Road
Summerville, SC 29483
Phone: (843) 486-1863/Fax: (843) 875-8506
S.C. Bar No.: 17221

September 14, 2017

Summerville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

South Carolina Department
of Social Services,

Plaintiff,
vs.

Kaci May
Warren May
Defendants.

IN THE INTEREST OF:

J.T.M. J.T.M. J.T.M.

J.H.M. J.H.M.

LCM. LCM.

J.R.M. J.R.M.

J.W.M. J.W.M. J.W.M.

C.B.M. C.B.M.

A.R.M. A.R.M. A.R.M.

Minors Under the Age of 18

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT
DOCKET NO.: 2017-DR-18-1334

**COMPLAINT for NON-EMERGENCY
REMOVAL**
[63-7-1660]

2017 SEP 14 PM 1:19

South Carolina Department of Social Services (SCDSS) alleges as follows:

1. The minor children are less than eighteen (18) years of age and reside in Dorchester County at the following address: 151 Kaci May Way, Ridgeville, SC 29472.

2. The names, addresses, and relationships of the Defendants to the minor children are as follows:

<u>Name</u>	<u>Address</u>	<u>Relationship</u>
Kaci May	151 Kaci May Way, Ridgeville, SC 29472	Mother
Warren May	151 Kaci May Way, Ridgeville, SC 29472	Father

3. The minor children were abused and/or neglected as defined by S. C. Code Ann. § 63-7-20 in that the minor children were harmed or threatened with harm when Defendants, while responsible for the minor children's welfare, did or allowed the following:

a. Dorchester County Department of Social Services (SCDSS) received an allegation on March 28, 2017 of ongoing child on child sexual abuse and that

SCDSS vs. Kaci May, et al
Complaint for Non-Emergency Removal

the minor children may not be properly supervised. The family was previously referred to community based preventative services in regards to the alleged sexual behaviors of the minor children, but Warren and Kaci May refused the services.

- b. The minor children, J.H.M. J.H.M., J.R.M. J.R.M. and L.C.M. L.C.M., were adopted by Defendants, Kaci May and Warren May, after their biological parents' parental rights were terminated in 2016.
 - c. Defendant Kaci May has requested an Individual Education Plan (IEP) and 504 plan due to concerns for the minor children's reported sexual behaviors.
 - d. Ms. May has admitted to yelling at her adopted children, J.R.M. J.R.M. and J.H.M. J.H.M., and has accused them of "raping her babies." Ms. May has indicated that the minor children could not be trusted and that they were liars, cheaters and thieves.
 - e. Throughout a meeting with school officials, Ms. May never expressed any positive thoughts about either of the adoptive children, J.R.M. J.R.M. or J.H.M. J.H.M. May.
 - f. The Defendants have not cooperated with the request that the minor children have forensic interviews to determine if services are needed.
 - g. SCDSS indicated this case for physical neglect against Kaci May and Warren May on May 22, 2017. Defendant Warren May appealed the decision and the finding was upheld by the County Director on June 9, 2017.
4. The minor children were not taken into emergency protective custody pursuant to S. C. Code Ann. § 63-7-620(A).

SCDSS vs. Kaci May, et al
Complaint for Non-Emergency Removal

5. On information and belief, the harm stated above and other factors alleged below indicate that the minor children are at unreasonable risk of harm. It would be contrary to the welfare of the minor children to remain in or be returned to the custody of Defendants. The minor children cannot be protected adequately at this time from further harm in the custody of the Defendants.

6. The minor children's physical and/or mental condition was and/or is as follows:
See attached Court Information Sheet

7. The harm the minor children likely to suffer as a result of removal from custody of the Defendants is as follows: See attached Court Information Sheet

8. The following steps will be taken to minimize any harm that may result from the removal of the minor children: See attached Court Information Sheet

9. The Plaintiff has made reasonable efforts to prevent or eliminate the need for the removal of the minor children from the custody of the Defendants or has been unable to offer such services, as stated in the attached Court Information Sheet.

10. It is unknown if the Defendants are not in agreement with the placement of the minor children in an alternative setting.

11. The Defendant, Kaci May and Warren May, are responsible for the support of the above named children, and the amount should be determined by the Court pursuant to the S.C. Child Support Guidelines. Child support should be retroactive from the date of the first hearing in this case.

12. The Court should approve a Treatment/Placement Plan developed pursuant to S.C. Code Ann. §63-7-1680 or in the alternative, the Court should authorize Plaintiff to terminate or make no effort to preserve or reunite the minor children with Defendants pursuant to S.C. Code Ann. §63-7-1640 and this hearing should constitute the permanency

SCDSS vs. Kaci May, et al
Complaint for Non-Emergency Removal

planning hearing as mandated by S.C. Code § 63-7-1640 and approve the permanent plan for the minor children proposed in the supplemental report.

13. This matter is brought before the Court pursuant to S.C. Code Ann. § 63-7-1660, and this Court has jurisdiction of the parties and subject matter of this action.

WHEREFORE, Plaintiff prays that the court order the following relief:

(A) Legal and physical custody of the minor children, **J.T.M. J.T. J.T.M. J.H.M. J.H.M. L.C.M. L.C.M. J.R.M. J.R.M. J.W.M. J.W. J.W.M. C.B. C.B.M. A.R.M. A.R.M. A.R.M.** be granted to the South Carolina Department of Social Services (SCDSS). In addition, SCDSS shall have the authority to plan for and approve all educational plans and programs on behalf of the minor children, authority to consent to routine and emergency medical care and treatment as may be required, and authority to provide such residential placement of the minor children as may be determined, from time to time, by Plaintiff as being in the best interests of the minor children, also, that SCDSS be designated as the minor children's personal representative as set out in the Health Insurance Portability and Accountability Act (HIPAA) regulations;

(B) The Court approve the Plaintiff's Treatment/Placement Plan or in the alternative, the Court should authorize Plaintiff to terminate or forego reasonable efforts to preserve the family or reunite the minor children, **J.T.M. J.T.M. M. J.H.M. J.H.M. L.C.M. L.C.M. J.R.M. J.R.M. J.W.M. J.W. J.W.M. C.B.M. B.M. A.R.M. A.R.M. A.R.M.** with Defendants, Kaci May and Warren May, pursuant to S.C. Code Ann. §63-7-1640;

(C) The Defendant, Kaci May and Warren May, are responsible for the support of the above named children, and the amount should be determined by the Court pursuant to the S.C. Child Support Guidelines. Child support should be retroactive from the date of the first hearing in this case.

(D) The court should establish paternity;

SCDSS vs. Kaci May, et al
Complaint for Non-Emergency Removal

(E) Defendants cooperate with Plaintiff to make appropriate plans for the minor children and to notify Plaintiff promptly of any change of condition and/or address;

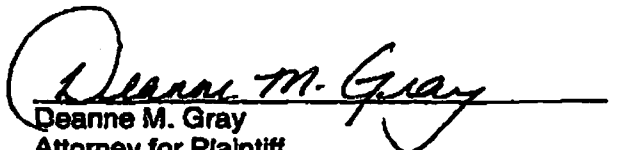
(F) Plaintiff be granted full and complete access to all criminal, professional, school, medical, and other records of the minor children and of Defendants as may be necessary, including an order that Defendants execute necessary releases for such records when required by providers;

(G) Defendants pay the \$100.00 fee required by S.C. Code Ann. §63-3-370(D);

(H) The Court make a finding that the minor children are abused or neglected children as defined in § 63-7-20 and the minor children cannot be protected from further harm without further services and possible removal;

(I) For any and all further relief that the court deems necessary and proper.

S. C. DEPARTMENT OF SOCIAL SERVICES


Deanne M. Gray
Attorney for Plaintiff
South Carolina Department of Social Services
216 Orangeburg Road
Summerville, SC 29483
Phone: (843) 486-1863/Fax: (843) 875-8506
SC Bar No: 17221

September 14, 2017

Summerville, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

South Carolina Department
of Social Services,)

Plaintiff)

vs.)

Kaci May
Warren May)

Defendant(s))

IN THE INTEREST OF:)

J.T.M. J.T.M.)

J.H.M. J.H.M.)

L.C.M. L.C.M.)

J.R.M. J.R.M.)

J.W.M. J.W.M. J.W.M.)

C.B.M. C.B.M.)

A.R.M. A.R.M. A.R.M.)

Minor(s) under the age of 18)

IN THE FAMILY COURT
FIRST JUDICIAL CIRCUIT
2017-DR-18-1334COURT INFORMATION SHEET/
SUPPLEMENTAL REPORT☐ EX PARTE☐ 72 HOUR PROBABLE CAUSE☒ 35 DAY MERITS☐ PERMANENCY PLANNING☐ REVIEW (out-of-home care)☐ REVIEW (treatment)☐ RULE TO SHOW CAUSE☐ OTHER (Intervention)

2017 SEP 14 PM 1:19

I. FAMILY COMPOSITION AND OTHERS NAMED AS PARTIES:

NAME	RELATIONSHIP	DOB/AGE	ADDRESS (Physical & Mailing)
Kaci May	Mother	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472
Warren May	Father	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472
J.T.M. J.T.M.	Minor Child	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472
J.H.M. J.H.M.	Minor Child	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472
L.C.M. L.C.M.	Minor Child	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472
J.R.M. J.R.M.	Minor Child	[REDACTED]	151 Kaci May Way Ridgeville, S.C. 29472

J.W.M. J.W.M. J.W.M.	Minor Child	██████████	151 Kaci May Way Ridgeville, S.C. 29472
A.R.M. A.R.M. A.R.M.	Minor Child	██████████	151 Kaci May Way Ridgeville, S.C. 29472
C.B.M. C.B.M.	Minor Child	██████████	151 Kaci May Way Ridgeville, S.C. 29472

II. DETERMINATION AND REASONS FOR AGENCY INVOLVEMENT:

In November 2016, the family was referred to community based preventative services in regards to alleged sexual behaviors of the children but the parents refused the services. On March 28, 2017, Dorchester County Department of Social Services received allegations of ongoing child on child sexual abuse and that the minor children are not being properly supervised.

III. LEGAL HISTORY:

The minor children, J.H.M. J.H.M., J.R.M. J.R.M., and L.C.M. L.C.M., were adopted by Warren and Kaci May after their biological parent's rights were terminated in 2016.

IV. BACKGROUND INFORMATION:

Mrs. May has requested an Individual Education Plan and 504 plan due to concerns for the minor children's alleged sexual behaviors. There are concerns about the safety of the minor children and concerns about the mental health of Ms. May due to statements she has made regarding the minor children. At a meeting with school officials on March 27, 2017, Ms. May admitted that she has yelled at her adopted children, J.R.M. and J.H.M., and accused them of "raping her babies." Ms. May has indicated the minor children could not be trusted and that they were liars, cheaters and thieves. Throughout the meeting, Ms. May never expressed any positive thoughts about either of these adoptive children. If the alleged sexual behaviors are occurring, there are concerns that the children are not being properly supervised. However, there has not been independent evidence of the sexual abuse which leads to concerns regarding Ms. May's mental health and the ability of Kaci and Warren May's to protect the minor children.

The children have not been permitted to complete forensic interviews to determine if services are needed. The Department has been denied access to the children and the home where they reside. The Department was not granted access to the minor children's medical or mental health records to confirm Ms. May's reports of trauma and services for the minor children. The parents have denied the Department visitation with the minor children and prohibited contact. Ms. May has reported that her children were upset and hid when the Department's investigators came to the home because she had taught them

that if they were taken to a foster home that they would be raped. The Department indicated the case against Warren and Kaci May on May 22, 2017. Warren May appealed the Department's finding on June 9, 2017. The case decision was upheld by the County Director.

V. CURRENT SITUATION

The Department made contact with the minor children, J.H.N J.H.M., C.B.M. I.M., A.R.M. A.R.M. A.R.M. and J.R.IV J.R.M. at their school on March 29, 2017. On March 31, 2017, the Department made contact with the minor children, LCM. LCM. J.W.M. J.W.M., and J.R.M. J.R.M. at home with Kaci May. Ms. May informed the Department that she had an attorney and the case manager needed to speak with her attorney. The case manager observed the children but was not authorized to interview them. Ms. May also informed the case manager that she did not authorize the case manager to be in her home. When Ms. May was asked if she needed help getting J.H.M. services, Ms. May became upset.

On May 12, 2017, the case manager went to the minor children's school for a follow up face to face visit with the minor children. The minor child, J.T.M. J.T.M., was testing so he could not be seen. In addition, the minor child, C.B C.B.M. was absent from school and could not be seen. The case manager was able to observe and speak with the minor children, J.H.M J.H.M., J.R.IV J.R.M. and A.R.M. A.R.M. A.R.M.

On June 17, 2017, the case manager made a face to face visit with the May family after a performance at local high school. The case manager observed all of the minor children who stated they were fine. The case manager did not engage in full conversation due to nature of the contact. In July 2017, the case manager had to request law enforcement to do a welfare check. Law enforcement reportedly did not find family at home and indicated that house looked like the family may have moved.

The Department has been unable to access the minor children's medical or mental health records. Mr. and Ms. May have not cooperated with requests that the minor children have forensic interviews to determine if services are needed.

VI. LEGAL REPRESENTATION:

Guardian ad Litem:
Guardian ad Litem Attorney:
Defendant's Attorney (Mother):
Defendant's Attorney (Father):

VII. RECOMMENDATIONS:

The Dorchester County DSS makes the following recommendations:

1. That there be an internal database finding of Physical Neglect against Kaci May and Warren May for the minor children.

2. That the Department of Social Services be granted access to the home and the minor children to assess the safety and wellbeing of the minor children.
3. That the minor children complete forensic interviews and follow all recommendations.
4. That Kaci May and Warren May shall attend and successfully complete parenting classes and be able to demonstrate a level of understanding of the material and be able to apply it in the care of their children.
5. That Kaci May and Warren May will contact mental health within five (5) days of the date of this hearing to schedule an assessment and follow the recommendations from such assessment.
6. That Kaci May and Warren May allow a third party agency to assess the family for in-home services to accommodate the family's needs and to assess for appropriate services for the family and the minor children.
7. That Kaci May and Warren May sign any and all releases for the agency to be able to obtain treatment records to monitor their progress and for the agency to obtain medical and mental health records for the minor children to access what service recommendations would be appropriate for the minor children and if needed the parents.
8. The Defendants shall keep the Department of Social Services notified of their present addresses, phone numbers and places of employment at all times.
9. The case be judicially reviewed in three months.

Case Manager  Date: 9/13/2017

Supervisor:  Date: 9/19/2017

SCDSS vs. Kaci May, et al
Complaint for Non-Emergency Removal

AT THE MERITS HEARING, THE COURT MAY ORDER A TREATMENT/PLACEMENT PLAN. IF YOU FAIL TO COMPLY WITH THE PLAN, YOU COULD LOSE YOUR RIGHTS AS A PARENT.

ALL INTERESTED PARTIES ARE ADVISED THAT AT THE MERITS HEARING, THE COURT MAY ORDER A TREATMENT/PLACEMENT PLAN. IF YOU OBJECT TO THE PLAN OR TO ANY RECOMMENDATIONS CONCERNING THE PLAN OR THE COURT'S ORDER, YOU MUST STATE YOUR OBJECTION AT THE HEARING TO THE JUDGE.

THREE RIVERS MIDLANDS 597
200 ERMIN ROAD

PATIENT DEMOGRAPHIC PROFILE

Date Printed: 101317

WEST COLUMBIA, SC 29170
(803) 791-9918

Patient Name..... **J.H.M. J.H.M.**
 Address..... 151 KACI MAY WAY
 City, State, Zip..... RIDGEVILLE, SC 29472
 Phone..... Cell:
 Social Security No..... Other:
 Birth Date.....
 Age..... 010Y
 Sex..... F
 Race..... W White
 Ethnicity..... CAUCASIAN
 Language.....
 Marital Status..... SINGLE
 Referral Source 1..... INTERNET
 Referral Source 2.....
 Financial Class: 2002
 Fin. Class Name: BLUE CROSS FEDERAL EMPLOY
 Doctor Name..... DUBOSE DON
 NPP.....
 Auth #.....

Account No/Type..... 3000626001-9 VOL -VOLUNTARY
 Medical Record No... 000004201
 County.....
 Admit Date/Time..... 10/13/17 9:30
 Disch Date/Time.....
 Adm. Dx..... Reactive attachment disorder of chi F941
 Prev. Admit Date..... 00/00/0000
 Service..... RPY
 Occupation.....
 Employer.....
 Address.....
 Phone.....
 Nursing Station: RTC2
 Resid: Military: Y
 Other Contact:
 Name.....
 Address.....
 City, State, Zip.....
 Phone.....
 Relationship.....
 Cell..... Other.

*** Insurance Information ***

Primary Insurance Holder/Guarantor

Name..... MAY KACI
 Address..... 151 KACI MAY WAY
 City, State, Zip.... RIDGEVILLE, SC 29472
 Phone.....
 Relationship..... MOTHER
 D.O.B. 00/00/0000
 Occupation.....
 Employer.....
 Address.....
 City, State, Zip..
 Cell.....
 Other.....

Spouse/Parent

Name.....
 Relationship.....
 Address.....
 City, State, Zip..
 Phone.....
 Occupation.....
 Employer.....
 Cell.....
 Other.....

*** Insurance Carrier 1 Information ***

Carrier..... BLUE CROSS FEDERAL EMPLOYEE
 Group Name... Grp#..
 Policy.....
 Policy Holder.. MAY KACI
 Address.....
 City/St/Zip....
 Ins Phone.....
 Policy Hld DOB. 00/00/0000

*** Insurance Carrier 2 Information ***

Carrier..... TRICARE SOUTH
 Group Name... Grp#..
 Policy.....
 Policy Holder.. MAY KACI
 Address..... PO BOX 7031
 City/St/Zip.... CAMDEN, SC 29020
 Ins Phone.....
 Policy Hld DOB. 00/00/0000

*** Insurance Carrier 3 Information ***

Carrier..... SELECT HEALTH
 Policy.....
 Policy Holder.. **J.H.M. J.H.M.**

*** Insurance Carrier 4 Information ***

Carrier.....
 Policy.....
 Policy Holder..

Notes:



THREE RIVERS MIDLANDS 597
200 ERMIN ROAD

PATIENT DEMOGRAPHIC PROFILE

Date Printed: 101317

WEST COLUMBIA, SC 29170
(803) 791-9918

Patient Name..... **J.R.M. J.R.M.**
 Address..... 151 KACI MAY WAY
 City, State, Zip..... RIDGEWAY, SC 29472
 Phone.....
 Social Security No.....
 Birth Date.....
 Age..... 008Y
 Sex..... M
 Race..... W White
 Ethnicity..... CAUCASIAN
 Language.....
 Marital Status..... SINGLE
 Referral Source 1..... INTERNET
 Referral Source 2.....
 Financial Class: 2002
 Fin. Class Name: BLUE CROSS FEDERAL EMPLOY
 Doctor Name..... DUBOSE DON
 NPP.....
 Auth #.....

Account No/Type.....3000627001-8 VOL -VOLUNTARY
 Medical Record No... 000004202
 County.....
 Admit Date/Time..... 10/13/17 9:30
 Disch Date/Time.....
 Adm. Dx..... Conduct disorder, childhood-onset I F911
 Prev. Admit Date..... 00/00/0000
 Service..... RPY
 Occupation.....
 Employer.....
 Address.....
 Phone.....
 Other Contact:
 Name.....
 Address.....
 City, State, Zip.....
 Phone.....
 Relationship.....
 Cell.....
 Other.....

*** Insurance Information ***

Primary Insurance Holder/Guarantor

Name..... MAY KACI
 Address..... 151 KACI MAY WAY
 City, State, Zip.... RIDGEWAY, SC 29472
 Phone.....
 Relationship..... MOTHER
 D.O.B. 00/00/0000
 Occupation.....
 Employer.....
 Address.....
 City, State, Zip..
 Cell.....
 Other.....

Spouse/Parent

Name.....
 Relationship.....
 Address.....
 City, State, Zip..
 Phone.....
 Occupation.....
 Employer.....
 Cell.....
 Other.....

*** Insurance Carrier 1 Information ***

Carrier..... BLUE CROSS FEDERAL EMPLOYEE
 Group Name... Grp#..
 Policy.....
 Policy Holder.. MAY KACI
 Address.....
 City/St/Zip....
 Ins Phone.....
 Policy Hld DOB. 00/00/0000

*** Insurance Carrier 2 Information ***

Carrier..... TRICARE SOUTH
 Group Name... Grp#..
 Policy.....
 Policy Holder.. MAY KACI
 Address..... PO BOX 7031
 City/St/Zip.... CAMDEN, SC 29020
 Ins Phone.....
 Policy Hld DOB. 00/00/0000

*** Insurance Carrier 3 Information ***

Carrier..... SELECT HEALTH
 Policy.....
 Policy Holder.. **J.R.M. J.R.M.**

*** Insurance Carrier 4 Information ***

Carrier.....
 Policy.....
 Policy Holder..

Notes:

Deborah J. Butcher
dbutcher@camdensc-law.com

Robert J. Butcher
rbutcher@camdensc-law.com



Post Office Box 486
 Manning, South Carolina,
 29102

Phone: (803) 432-7599
 Fax: (803) 432-7466

October 16, 2017

Via Facsimile [(843) 695-5202 (school) and (843) 873-4053 (district)] and U.S. Mail

Wally Baird, Principal
 Sand Hill Elementary School
 324 Gnarly Oak Lane
 Summerville, South Carolina 29485

Joseph R. Pye, Superintendent
 Dorchester School District Two
 115 Devon Road
 Summerville, South Carolina 29483

Dear Dr. Baird and Dr. Pye:

I represent Kaci and Warren May, parents of J.R.M., R.M., J.H.M., J.H.M., L.C.M., J.W.M., J.W.M., J.T.M., J.T.M., C.B.M., C.B.M., and A.R.M., A.R.M.. As you may be aware, J.R.M., J.R.M., and J.H.M., J.H.M. were recently placed by their parents at Three Rivers Residential Treatment Facility in West Columbia, South Carolina.

We are currently in litigation with the South Carolina Department of Social Services [SCDSS]. The crux of the litigation centers on the fact that J.R.M., J.R.M., and J.H.M., J.H.M. suffered horrible abuse before their adoptions by the May Family and those mental health and behavioral issues have caused severe problems in the home. SCDSS is alleging abuse and neglect even though the agency failed to tell the May Family about these problems when they placed the children and allowed the Mays to adopt them.

I am writing to demand that Sand Hill Elementary School and its staff cease allowing SCDSS to meet with the May children at school. At this point in the case, they have no right to do so. I can understand if there is a new report of abuse and/or neglect, the school would allow SCDSS caseworkers to meet with the children. But as long as there are no new allegations SCDSS does not have the right to meet with these children.

Should the school continue to allow SCDSS to meet with the May children I will seek an injunction from the Court of Common Pleas due to the violation of my clients' First and



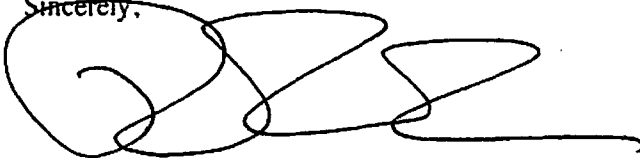
Fourth Amendment rights and I will seek attorney's fees and costs against the school district and SCDSS.

If SCDSS claims that there is a new report of abuse and neglect, I would ask that you require the caseworker to show a document called an, "Intake Summary".

It is certainly sound public policy to allow SCDSS to conduct an initial investigation of abuse and neglect as sometimes the school hours are the only time a child can be seen without his or her possible abusers being around. But we are well past that stage and SCDSS is now simply digging for dirt on my clients' family. SCDSS has done nothing in this case but to cause harm to the May family.

Should you have any questions, please call me on my cell at (803) 427-6117.

Sincerely,

A handwritten signature in black ink, appearing to be "Robert J. Butcher", with a long horizontal flourish extending to the right.

Robert J. Butcher

Cc: Deanne M. Gray
216 Orangeburg Road
Summerville, South Carolina 29483

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

South Carolina Department of Social
Services,

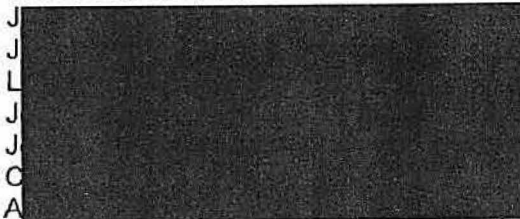
Plaintiff,

vs.

Kaci May
Warren May

Defendant(s),

In the Interest of:



Minors under the age of eighteen (18)

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT
DOCKET NO.: 2017-DR-18-1334

STIPULATION FOR
VOLUNTARY DISMISSAL

Charles M. Butler

2018 JUN 14 PM 1:00

IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel that the above-captioned action is voluntarily dismissed pursuant to Rule 41 (a)(1)(B), SCRPC. Plaintiff SCDSS's investigation beginning on or about March 28, 2017 resulting in a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned.

Deanne M. Gray

Deanne M. Gray
Attorney for Plaintiff SCDSS

Robert Butcher

Robert Butcher
Attorney Defendants
Kaci May and Warren May

Mary Lee Briggs
Attorney for the Guardian ad Litem

PLAINTIFF'S
EXHIBIT

16

6/14/20

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social
Services,

Plaintiff,

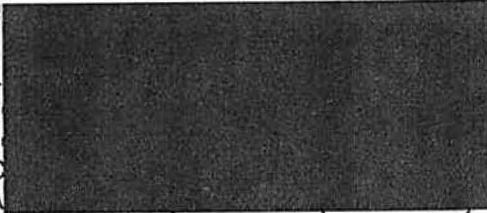
vs.

Kaci May
Warren May

Defendant(s).

In the Interest of:

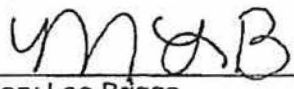
J
J
L
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A


Minors under the age of eighteen (18)IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT
DOCKET NO.: 2017-DR-18-1334STIPULATION FOR
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Deanne M. Gray
Attorney for Plaintiff SCDSS

Robert Butcher
Attorney Defendants
Kaci May and Warren May



Mary Lee Briggs
Attorney for the Guardian ad Litem

South Carolina Department of Social Services

Human Services Policy and Procedure Manual

CHAPTER 7, Child Protective and Preventive Services

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**CHAPTER 7, Child Protective and Preventive Services Revision Number: 10-01 Effective
Date: 01/14/2010**

700 Introduction

STATUTES AND REGULATIONS

Statutes and Regulations 766 that relate directly to the contents of the Child Protective and Preventive Services Manual are: South Carolina Code of Laws, Title 63 - South Carolina Children's Code; 27 South Carolina Code Annotated Regulations 114-4510 through 114-4550 (Governs Child Protective Services Involving Institutions).

OTHER AGENCY POLICIES

Related guiding principles and policies which govern the Department of Social Services follow.

The guiding principles mandate the following:

Principle: 1. To respect the humanity and dignity of each person for whom the agency delivers quality services.

Principle: 2. To respect the humanity and dignity of each staff person.

Quality Service

It is the policy of the Department of Social Services to promote a work environment that encourages each staff person in the Department of Social Services to perform each duty exactly as required or cause the requirement to be officially changed to what the agency and its clients really need.

MISSION STATEMENT FOR CHILD PROTECTIVE AND PREVENTIVE SERVICES

Child Protective and Preventive Services are offered to families by the South Carolina Department of Social Services which is mandated by law to protect children from abuse or neglect within their families, in foster care, or by persons responsible for the child's welfare as defined by statute. Services are provided to strengthen families; to enable children to remain safe in the home; to temporarily remove from parental custody a child who is at imminent risk of harm; or to pursue termination of parental rights and assure the child permanency in a substitute family if the custodial family cannot be preserved without serious risk to the child. The child is our primary client in child protection cases and the following goals for children and families have been defined by federal law and good practice standards.

: Safety. All children have the right to live in an environment free from abuse and neglect. The safety of children is the paramount concern that must guide child protection efforts.

- : Permanency. Children need a family and a permanent place to call home. A sense of continuity and connectedness is central to a child's healthy development.
- : Child and family well-being. Children deserve nurturing environments in which their physical, emotional, educational, and social needs are met. Child protection practices must take into account each child's needs and should promote healthy development.

PHILOSOPHICAL TENETS OF CHILD PROTECTION

The importance of the family in U.S. society is central to the Nation's history and tradition. Parents have a fundamental right to raise their children as they see fit, and society presumes that parents will act in their children's best interest. When parents do not protect their children from harm and meet their basic needs—as with cases of child abuse and neglect—society has a responsibility to intervene to protect the health and welfare of these children. Any intervention into family life on behalf of children must be guided by State and Federal laws, sound professional standards for practice, and strong philosophical underpinnings. This section presents key principles underscored in Federal legislation and the philosophical tenets on which the community's responsibility for child protection is based.

The following philosophical tenets expand upon the principles set forth in the Adoptions and Safe Families Act enacted in 1997 and in subsequent federal law, and the values that underlie sound practices in community responses to child abuse and neglect.

- : Prevention programs are necessary to strengthen families and reduce the likelihood of child abuse and neglect. Child maltreatment results from a combination of factors: psychological, social, situational, and societal. Factors that may contribute to an increased risk for child abuse and neglect include, for example, family structure, poverty, substance abuse, poor housing conditions, teenage pregnancy, domestic and community violence, mental illness, and lack of support from extended families and community members. To reduce the occurrence of maltreatment, communities should develop and implement prevention programs that support children and families.
- : The responsibility for addressing child maltreatment is shared among community professionals and citizens. No single agency, individual, or discipline has all the necessary knowledge, skills, or resources to provide the assistance needed by abused and neglected children and their families. While public child protective services (CPS) agencies, law enforcement, and courts have legal mandates and primary responsibility for responding to child maltreatment, other service providers working with children and families—along with community members—play important roles in supporting families and protecting children. To be effective in addressing this complex problem, the combined expertise and resources of interdisciplinary agencies and professionals are needed.
- : A safe and permanent home is the best place for a child to grow up. Most children are best cared for in their own families. Children naturally develop a strong attachment to their families and when removed from them, they typically experience loss, confusion, and other negative emotions. Maintaining the family as a unit preserves important relationships with parents, siblings, and extended family members and allows children to grow and develop within their own culture and environment.
- : When parents (or caregivers) are unable or unwilling to fulfill their responsibilities to provide adequate care and to keep their children safe, CPS has the mandate to intervene. Both

laws and good practice maintain that interventions should be designed to help parents protect their children in the least intrusive manner possible. Interventions should build on the family's strengths and address the factors that contribute to the risk of maltreatment. Reasonable efforts must be made to maintain child safety and keep the children with their families except when there is significant risk to child safety. Referral to court and removal of children from their families should only be done when it is determined that children cannot be kept safely in their own homes.

- : Most parents want to be good parents and have the strength and capacity, when adequately supported, to care for their children and keep them safe. Underlying CPS intervention is the belief that people have the strength and potential to change their lives. Professionals must search for and identify the strengths and the inner resiliencies in families that provide the foundation for change.
- : To help families protect their children and meet their basic needs, the community's response must demonstrate respect for every person involved. All people deserve to be treated with respect and dignity. This means showing respect for a person, while not necessarily approving or condoning his or her actions. In addition to caregivers and children, service providers should demonstrate respect for mothers, fathers, grandparents, other family members, and the family's support network.
- : Services must be individualized and tailored. While people may have similar problems, there are elements that will vary from family to family. In addition, each family's strengths and resources are different. The community's response, therefore, must be customized to reflect the particular circumstances, strengths, and needs of each family.
- : Child protection and service delivery approaches should be family centered. While noting that the child is our primary client, we believe that parents, children, their extended families, and support networks (e.g., the faith community, teachers, health care providers, substitute caregivers) should be actively involved as partners in developing and implementing appropriate plans and services to reduce or eliminate the risk of maltreatment. Tapping into the strengths and resources of a family's natural support network is fundamental to enhancing family functioning.
- : Interventions need to be sensitive to the cultures, beliefs, and customs of all families. Professionals must acknowledge and show respect for the values and traditions of families from diverse cultural, ethnic, and religious backgrounds. To become culturally competent, professionals must first understand themselves and the effects of their own background on their values, behaviors, and judgments about others. In working with children and families different from themselves, professionals need to be aware of the context of the family's culture and background in order to help provide access to culturally relevant services and solutions.
- : To best protect a child's overall well-being, agencies must assure that children move to permanency as quickly as possible. Along with developing plans to facilitate reunification of children, agencies must develop alternative plans for permanence from the time the child enters care. For those children who cannot be safely reunified with their families, timely efforts must be made to ensure a stable, secure, and permanent home for the child through adoption or other permanent living arrangements.

Note: The mission statement and philosophical tenets of foster care are contained in Chapter 8.

Referenced Documents

Revision Comments

Philosophical Tenets are updated to reflect revised national goals of safety, permanency and wellbeing based on federal law.

CHAPTER 7, Child Protective and Preventive Services Revision Number: HSP- 15-01
Effective Date: 01/07/2015

701 Policies

This section specifies the policies of the Department of Social Services that guide all practice and procedure associated with Child Protective and Preventive Services.

1. Persons referred for child protective services are eligible without regard to income.
2. Any DSS employee who conducts intakes, participates in or conducts child protective services (CPS) assessment (investigation), carries cases in foster care, family preservation or adoptions, and/or county foster home licensing as well as individuals providing direct supervision of state child welfare services must be child welfare certified.

Certification Requirements for Individuals Returning to Child Welfare Duties - Any individual previously child welfare certified who does not engage in child welfare duties for more than 12 consecutive months (due to leaving employment with DSS or change in duties or position within DSS) and intends to return to child welfare duties at DSS must be re-certified.

Exemptions can be made based on employment activities during the break in service or employment at the discretion of the Director of Knowledge Management and Practice Change with appointing authority's recommendation and justification in writing.

Maintaining Certification - Each human service worker and supervisor will be required to obtain 20 hours training child welfare training per year in order to maintain child welfare certification. It is the appointing authority's responsibility to ensure each worker has completed this requirement and maintain documentation of hours in the employee's personnel file.

Staff must obtain child welfare certification prior to being assigned cases for CPS assessment, CPS investigation, family preservation, foster care, adoptions, and/or county foster home licensing. Under close supervision, staff who have not completed the certification requirements may provide case management support services such as transportation of clients, arranging and observing visits, making referrals, follow up on medical reports, and other similar duties.

All staff are expected to maintain a level of professional expertise through ongoing training on child abuse and neglect.

Note: Additional training and certifications may be required as a condition of employment and/or program area functionalities.

3. Only certified staff of the Department are authorized to screen referrals made to Child Protective and Preventive Services in order to ensure that the screening decision is in compliance with SC Code of Laws and agency policy.
4. The Department shall use a standardized procedure of casework practice for assessing safety and risk, and providing, documenting and terminating child protective services to families and children.
5. When the agency receives a referral that involves the use of illegal drugs by the parent or other person responsible for the child's welfare and there is an allegation that the parent's behavior has harmed or places the child at substantial risk of harm, the agency will accept this as a report of suspected abuse and neglect and complete a thorough investigation, to include the safety assessment, to determine if children are unsafe and if parental behavior has caused harm or placed the child at substantial risk of harm. Please note that nothing in this statement is intended to minimize the importance of assessing issues of domestic violence, mental health concerns, or other family dynamics that impact on child safety.
6. The State Child Fatality Advisory Committee is established and authorized by state statute to review the circumstances surrounding the unexpected and unexplained deaths of children. (Reference SC Code of Laws Ann. §63-7-1900) The SCFAC is a multidisciplinary group composed of child advocates, medical professionals, law enforcement, coroners, and representatives of state agencies with responsibility for services to children and families. By virtue of their professional expertise and because of the direct access to law enforcement investigations of child deaths, the SCFAC may receive information that leads them to believe that surviving siblings of a deceased child are at substantial risk of harm.

Therefore, it is the policy of DSS that when the State Child Fatality Advisory Committee has reason to believe that a risk of harm exists and makes a report, that this report shall be investigated by the Department of Social Services pursuant to SC Code of Laws Ann. §63-7-920 and agency policy.

The DSS representative to the SCFAC will assume responsibility for ensuring that an investigation is initiated in compliance with statute and policy and will obtain and provide to the county investigating any documentation the SCFAC can by statute release to DSS. The DSS representative will be responsible for reporting back to the SCFAC at the conclusion of the investigation at the next regularly scheduled meeting of the committee.

7. The policy and practice standard of the department is that Child Protective Services staff will conduct at least one face to face interview once a calendar month with the victim child, siblings and any other children in the home, and parents, protective adult, and/or other caregiver during the time a case is open for child protective services. The purpose of this visit is to assess for child safety and to assess progress toward meeting treatment goals to reduce future risk of harm. Additional visits should be made as determined on a case by case basis given the issues specific to each family.

8. The agency should pursue removal of children from a home where:
 - a. parents' use or abuse of or dependence on alcohol and/or other drugs and/or any other factors such as domestic violence or mental health, leads to endangering the safety of the child and
 - b. there is no other protective caregiver in the home or otherwise available.
9. In order to close a CPS treatment case with the child in the home when parents have been abusing or are dependent on alcohol and other drugs and/or when any other factors such as domestic violence or mental health problems have caused the child to be unsafe, there must be documentation in the agency record of the following:
 - a. The parent/caregiver in question must be involved in a treatment program designed to change the behaviors that made the child unsafe and demonstrated significant progress on the treatment plan goals and there is a second person in the home who is the protective caregiver and DSS case consultation has taken place with the treatment provider(s) and sufficient changes in behavior have been made that eliminate the safety threats and reduce risk of future harm.OR
 - b. The parent/caregiver has completed treatment and the caregiver has demonstrated observable behavioral changes in their ability to keep the child safe and DSS case consultation has taken place with specific treatment provider(s) and sufficient changes in behavior have been made that eliminate the safety threats and reduce risk of future harm. In general, case closure requires that the parental behaviors that led to the child being unsafe have been changed and the agency can articulate the reasons that support the belief that the child is now safe in the parent's care.
10. The Department is authorized to provide a process for the review and amendment of cases indicated for child abuse or neglect pursuant to §63-7-920, which are not otherwise being brought before the family court for disposition. This process is authorized and defined under SC Code of Laws Ann. §63-7-1410.
11. It is the policy of the Department that in cases indicated under §63-7-920 where the individual determined by a preponderance of the evidence to have abused or neglected the child, disagrees with or challenges the case decision and the safety of the child is in question, the case MUST be taken to Family Court for review of the child safety concerns and a finding on the child abuse case decision.

In cases where treatment services are to be provided or are reasonably expected to be provided and the individual or family disagrees with the indicated decision and/or the decision to deliver services, those cases MUST be taken to Family Court. There can be little effective treatment and the safety of the child is in question when there is no acknowledgement of the abuse or neglect. The Administrative Appeals process cannot coerce treatment nor address child safety.
12. Client case records must be kept current in the automated case record (CAPSS). All case activity should be documented in CAPSS as soon as it occurs but no later than thirty (30)

calendar days after the action; documentation of critical events (such as removals, court action, and others as determined by supervisor) must be completed within ten (10) calendar days.

Note that the documentation of initiating a CPS investigation and the CPS case decision must be entered within five days of the activity (reference Section 710 and 719). The monthly visit for in home treatment cases must be documented by the end of the month for data reporting purposes. (Reference, Section 731 and D04-22).

13. SC Code of Laws Ann. §43-1-115 requires that each county DSS child welfare program in South Carolina be reviewed at least once every five years for the purpose of quality assurance. SCDSS has modeled its quality assurance process on the federal Child and Family Services Review (CFSR) process. DSS engages in a review of the child welfare services program:

- a. to determine to what degree services are delivered in compliance with federal and state laws and agency policy; and
- b. to assess the outcomes for children and families involved in the child welfare system.

By agency policy, county child welfare reviews are both quantitative (begin with an analysis of agency data for that county for the period under review) and qualitative (includes an analysis of information obtained from agency stake holders, and information obtained from a review of client records).

Referenced Documents

Revision Comments

January 2015- Clarified certification requirements for child welfare workers and supervisors for CPS assessment, CPS investigation, family preservation, foster care, adoptions, and/or county foster home licensing in accordance with Directive Memo D14-14, Child Welfare Certification Requirements, dated August 1, 2014.

CHAPTER 7, Child Protective and Preventive Services Revision Number: HSP 15-06
Effective Date: 07/01/2015

719 Child Protective Services Investigation/Assessment

Purpose: To outline procedures: (1) to identify safety concerns and ensure the immediate safety and safety throughout the investigation/assessment of all children in the household and under the control of the alleged perpetrator; (2) to make a determination whether or not the children were abused or neglected; (3) to make a decision regarding future risk of maltreatment; and (4) to plan for agency service intervention. The order of the steps provided in the section may vary given the specifics of the report. (See Section 750, §63-7-20, §63-7-620, §63-7-920, S. C. Code of Laws)

NOTES: The agency's safety and risk assessment and service planning document is the Child and Family Assessment and Service Planning Tool (CFASP). For general instructions about using the automated system, see the CAPSS handbook.

For local operating and communications procedures between local Law Enforcement and DSS, refer to your county's DSS/Law Enforcement Protocol. This protocol is mandated by SC Code of Laws Ann., §63-7-620.

Refer to the Memorandum of Agreement with the Children's Advocacy Center (CAC) or similar multidisciplinary abuse assessment facility that serves that county for the purpose of defining the referral process, forensic interviewing, and multi-agency case staffing procedures.

By mutual agreement between and among state agencies and entities involved in the investigation of and services to children exposed to the manufacture of methamphetamines, the South Carolina Drug Endangered Children –Investigative Guidelines for Law Enforcement, Child Welfare and Medical Personnel (SCDEC Guidelines) is to be incorporated as an addendum to the DSS/LE Protocol and its provisions used in conjunction with Section 719 when investigating such situations. The county protocols and guidelines are to be reviewed and revised annually and a copy sent to the Office of Community Services.

While the need for Emergency Protective Custody (EPC) must be assessed case-by-case, virtually every child exposed to the manufacture of methamphetamines will be in substantial and imminent danger and should be taken into EPC unless there is a relative identified as willing and able to protect. This action will be taken because of the significant health hazards and physical dangers presented by the actual manufacture of methamphetamines. Reference Chapter 8, Section 815.05 for specific procedures when children are removed by EPC as a result of exposure to manufacture of methamphetamines.

Social Service Worker

1. Receives report as assigned, reviews intake information with supervisor as necessary to plan for initial contact, child safety, personal safety, and to prioritize activities of initial assessment according to needs of the specific report.

2. If not completed by intake, notifies law enforcement as soon as possible but within 24 hours of receipt of all reports that include allegations of sexual abuse/assault, regardless of primary typology of the report. (See Section 750, S. C. Code of Laws Ann. - §63-7-920)

Checks to see if law enforcement has made a referral to CAC. If not, makes referral as soon as possible after receipt of report, but in no more than 5 working days, to local Children's Advocacy Center (CAC) or similar multidisciplinary abuse assessment facility for medical examination by a physician, or by an advanced practice registered nurse or physician assistant who is working under the supervision of a physician who has been trained in child abuse and neglect when presenting issues include:

- a. Head injury in children less than 3 years of age, burns in children 3 years of age or younger, or fractures in a child 5 years of age or younger;
- b. bruises located on the face, neck, chest, back, buttocks with a pattern or multiple in number;
- c. any report alleging sexual abuse of a child;
- d. any report involving the sexually transmitted disease in a child eleven years of age or younger; or
- e. any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

A medical evaluation by the CAC may not be necessary:

1. if the child has already had a medical examination by a physician or other licensed healthcare provider; or
2. if the county Department of Social Services caseworker, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in subsection 26(a) - (e); or
3. after consultation with the Children's Advocacy Center or similar multidisciplinary abuse assessment facility.

(See SC Code of Laws Ann, §63-11-310 Children's Advocacy Center)

3. Makes contact with the Family Independence/Supplemental Nutrition Assistance Program (FI/SNAP) staff who might be involved with the family to gather pertinent information to assist in locating the family or in planning for worker safety at initial contact. Uses DSS Form 1600 to document communication with FI/FS staff.

4. Notifies Foster Care staff of an infant coming into the custody of DSS under the Safe Haven Act. Reference Chapter 8, Section 812.01 for additional guidance.

5. In consultation with supervisor, considers any barriers to communication known at intake,

such as limited English proficiency, speech or hearing impairment. If such a situation exists, refers to Limited English Proficiency/Sensory Impairment (LEP/SI) Policy and Procedures in Directive Memo D02-39, dated September 23, 2002, and Limited English Proficiency/Sensory Impairment (LEP/SI) Requirements, in Directive Memo D06-5, dated February 15, 2006 to county protocols for specific guidelines to assist in the initial and subsequent contacts with the family.

6. After consultation with supervisor, makes initial contact within two hours to start the investigation/assessment of reports where the information received at intake suggests an emergency with immediate present danger threats to children in order to assess for child safety and future risk and take steps to ensure the safety of all children in the household. Initial contact is about assessing immediate present danger. Evaluates referral for concerns related to worker safety and plans initial contact so as to minimize personal danger, to include but not limited to, requesting assistance from law enforcement when contact after normal working hours is necessary.

Note: Consults with law enforcement as outlined in the DSS/LE Protocol and South Carolina Drug Endangered Children –Investigative Guidelines when report suggests imminent danger in order to plan initial contact and subsequent investigative and placement action. (Reference County DSS/LE and SCDEC Guidelines) Follows SCDEC Guidelines when the report involves children at a lab site where methamphetamines are being manufactured. (Reference SCDEC Guidelines and Chapter 8, Section 815.05)

Note: The first attempt at contact is always for direct and personal contact with the child to determine if the child is safe. If the child is not available, then immediate and personal contact with the parent, guardian or other person responsible for the child's care and welfare is to be made, with personal contact with the child to follow as soon as possible. If the attempted personal contact with the parent, guardian or other person responsible for the child's care and welfare is unsuccessful, then there must be direct contact with someone who knows about the child's situation and condition so that an informed assessment of safety can be completed with personal contact with the child to follow as soon as possible. The items below (a - d) rank the contact by order of importance. Item #c below is acceptable only when all other efforts have been exhausted without success. Documentation must clearly reflect all efforts to see the child.

- a. Initiates an investigation in situations of an emergency (immediate danger) with personal contact with the involved children; or
- b. Initiates the assessment by personal contact with the parent, guardian or other person responsible for the child's care and welfare when unable to see the child; for example, child hospitalized in another county; or
- c. Documents attempted personal contact with the parent, guardian or other person responsible for the child's care and welfare which was unsuccessful, such as incorrect or incomplete directions, the family was not at home when an unannounced visit occurred, or efforts to coordinate the initial contact with law enforcement was unsuccessful. Documents

specific attempts to locate family such as through the post office, utilities, school, Department of Corrections, Inmate Search at <http://public.doc.state.sc.us/scdc-public/>.

d. Attempts to locate school age children through contact with school in county or through Department of Education, Ombudsman. Sends request for search on agency letterhead stationery and include child's name, Social Security number (if known) and DOB of child in question. Also include parents or guardian's names and the last known place of school enrollment. The DOE Ombudsman will provide any information available in the school's records.

7. Initiates an assessment of all other reports as soon as possible but no later than 24 hours from receipt of the report.

During initial contact or as soon as possible, gathers information from the child and family to identify the ethnicity (defined to include race, religion, national origin, or cultural group) and immigrant status of the child and family to determine what services might be necessary and appropriate, such as translation/interpreting, attending to specific culturally sensitive issues, and/or for meeting state and federal law regarding unqualified or undocumented immigrants. Undocumented immigrants are eligible for protective services but may not qualify for other federally funded services.

If the information gathered supports or confirms that the child is a member of a federally recognized Native American tribe or nation, notifies the tribal office for the purpose of coordinating the investigation and possible placement with tribal authorities. Immediately staffs the case with the county attorney to assure that Indian Child Welfare Act (ICWA) required notices are provided and other procedures are followed in the event of removal of the child. See Chapter 8 Foster Care for removal and placement guidance. (Reference Sections 754 and 811 - Indian Child Welfare Act)

Documents ethnicity and Native American affiliation in CAPSS.

8. Follows procedures outlined in Section 736: Death of a Child, when the investigation involves suspected abuse or neglect resulting in a child fatality.

Supervisor

9. Provides the assigned worker with guidance as necessary given worker's level of experience and expertise and the allegations contained in the report. Ensures that an initial contact is made by the assigned worker by meeting one of the standards in #6 of this section. If the initial contact was unsuccessful, the worker must continue to try to make personal contact as appropriate considering the allegations.

If personal contact has not been made by the third day or no later than 72 hours of receipt of a report, a staffing with the supervisor is required to consider necessary actions to locate the child and/or the child's family which shall include contacting law enforcement for assistance.

Note: CPS staff must make diligent search efforts to establish and maintain family contact in order to complete investigations and monitor open family preservation cases. All diligent efforts must be documented in CAPSS including the response of law enforcement to the request by CPS staff for assistance and any activity of law enforcement.

Note: Do not leave notes for the family if they are not at home. Notes raise anxiety, can make the situation unstable and possibly increase concerns for child safety.

Social Service Worker

10. Notifies the subject of the report that pursuant to §63-7-920, allegations of child maltreatment are being investigated and provides details but withholds identifying information on the reporter (See Reference Data - S. C. Code of Laws, §63-7-920)

11. As notice of the investigation, provides to and discusses with parents DSS Brochure 3034, Child Protective Services: A Guide for Parents, which provides information about the investigative assessment process, parents' rights and responsibilities, and possible court action as a result of this situation as required in §63-7-920. Answers any questions the parents may have about the process. (See Section 750 - S. C. Code of Laws, §63-7-920)

As mandated by federal law, also provides to the parents or other caregivers being investigated the handbook on parents' legal rights entitled Child Abuse, Child Neglect - What Parents Should Know If They Are Investigated, DSS Brochure 30230. This handbook provides parents with information on legal rights which includes but is not limited to: the CPS process; the reporter's protection and rights; the right to a lawyer; the right to be informed of court hearings; how to contact the clerk of court; the possibility of temporary placement of the children; the process for appointment of a guardian ad litem (GAL); and what information the parents need to share with the agency. (Reference Child Abuse Prevention and Treatment Act)

12. Identifies any present or impending danger threats at initial contact using guide in Part I: Assessment of Present Danger At Initial Contact. If protective action can control the threats so that the child can remain in the home, completes with the family prior to leaving the home on the initial contact a Safety Plan (DSS Form 3087) that identifies:

- a. the specific present or impending danger threats to be controlled,
- b. the parents' willingness to cooperate,
- c. description and confirmation of who can and will be the protector of the children,
- d. description of the safety services that will control the threats, and
- e. timeframes for action and oversight.

NOTE: The initial Safety Plan is to be used at this point to control immediate present danger safety threats (threats acting now, readily identifiable, serious and threaten immediate safety of child) if identified and must be completed before leaving the setting. If no present danger is identified, a Safety Plan is not required at initial contact. The Safety Plan developed at initial contact is immediate, short-term, and sufficient to provide responsible adult supervision and care to allow for the completion of the investigation. Its purpose is to suspend what is going on in the family long enough to complete an investigation,

Documents reasonable efforts to prevent removal by identifying the safety services or actions necessary for each child to live safely at home or with a relative or friend. Documents on the Safety Plan when a child is at imminent risk of removal by checking YES or NO.

Note: The Safety Plan at initial contact may include a kinship caregiver arrangement as described in SC Code of Laws Ann., §63-7-920 when a child can be diverted from foster care. See # 20 for steps to determine if the agency can agree to the kinship caregiver arrangement.

13. Documents the information regarding the initial contact including the date, time, individuals present, location of the meeting and the outcome in the CAPSS automated system within five working days.

14. Completes formal staffing of assessment with supervisor no later than seven working days after the report is received and as necessary throughout the investigation/assessment. Documents staffing in CAPSS using format of DSS Form 3062 (summary of current situation, recommendations for next steps, persons involved in staffing). Use of the DSS Form 3062 in supervisory staffing is at discretion of supervisor.

If necessary, requests DSS attorney to prepare and submit an affidavit and petition for an inspection warrant if the investigation/assessment cannot be completed without it. (See Section 750, S. C. Code of Laws, §63-7-920)

15. Gathers information necessary to analyze the current functioning of the children and family and determine if children are safe using the six fundamental assessment questions that inform the safety assessment decision.

1. What is the extent of maltreatment?

- The kind and specific description of the maltreatment
- The severity of the maltreatment
- The specifics of the events, injuries and conditions present.

2. What are the circumstances surrounding the child maltreatment?

- The caretakers' explanation of what happened, the injuries and related conditions including the child's condition.
- History and duration of the situation
- Co-existing factors and conditions such as substance abuse or mental health
- Contextual issues, such as use of instruments, acts of discipline, threats, and caregiver intentions
- Caregiver acknowledgement and attitude about the maltreatment

3. How does the child function on a daily basis?

- Capacity for attachment
- General mood and temperament
- Intellectual functioning
- Communication and social skills
- Expressions of emotions/feelings
- Behavior

- Peer relations
- School performance
- Physical and mental health
- Vulnerability
- Functioning within cultural norms

4. What are the disciplinary approaches and typical context used by the caregiver?

- Disciplinary methods
- Concept and purpose of discipline
- Context in which discipline occurs
- Cultural practices

5. What are the overall pervasive parenting practices used by caregivers?

- Satisfaction in being a caregiver
- Caregiver knowledge and skill in parenting and child development
- Caregiver expectations and empathy for a child
- Decision making in parenting practices
- Parenting style
- History of parenting behavior
- Protectiveness

6. How does the caregiver function with respect to daily life management and general adaptation including substance use and mental health functioning?

- Communication and social skills
- Coping and stress management
- Self-control
- Problem solving
- Judgment and decision making
- Independence
- Home and financial management
- Employment
- Rationality
- Substance use
- Mental health
- Physical health and capacity
- Functioning within cultural norms

See the Child and Family Assessment and Service Planning Tool (CFASP) – Initial Assessment, Safety Assessment and Safety Planning.

16. Assesses the family situation to make a case determination about maltreatment, present and impending safety concerns and future risk of maltreatment. Uses the following steps to complete this assessment. The information gathered through these interviews, observations, records review, etc. will provide the information necessary to answer the six assessment questions described in #15.

Note: the order of these specific steps may vary given the specific needs of an investigation.

a. Interviews the alleged victim(s), parents (mothers and fathers), alleged perpetrator, siblings, collateral contacts, and any other involved party. Interviews family in home setting and observes interaction between and among family members. Interviews an absent or non-resident parent or documents why the absent/non-resident parent cannot be interviewed and/or involved in the investigation. Reviews information on agency automated system (Human Services and Economic Services), for indicated and unfounded case information and in agency paper files.

Note: Discusses with resident or custodial parent (usually mother) that father involvement is good for children.

Children with involved fathers:

- show more confidence and less anxiety,
- perform better in school, and
- are less likely to be involved in destructive behaviors.

Father involvement benefits mothers. An involved father:

- teaches sons to respect women,
- is more likely to have positive communication with the mother, and
- is more likely to provide economic support.

Fathers benefit too by knowing they are having a lifelong impact on a child's life and by enjoying an irreplaceable relationship. All this supports and enhances the opportunity for positive interaction with a family.

b. Considers the safety of all other children in the home and in alternative placement, including children in the family who are placed at Department of Juvenile Justice (DJJ), and assesses the need to investigate suspected abuse or neglect of children not named in the original report. Initiates reports as appropriate and necessary. Contacts DJJ staff to gather information, to include but not limited to family history, any safety concerns known, evaluations completed by DJJ, child's release date, court involvement and to arrange for interviews with child at DJJ regarding the allegations of abuse or neglect and any other pertinent information.

c. Gathers information to consider any issues of domestic violence, substance abuse, mental illness and/or criminal activity and the impact of these behaviors on the child's immediate safety and future risk of maltreatment.

Note: The GAIN-SS screening tool should be used by those counties trained in its use to screen for substance and alcohol use, mental health concerns, and criminal behavior. The GAIN-SS is formatted for use with adolescents and other tools should be used for adults.

When conducting the safety assessment, considers the following indicators of alcohol and drug involvement as part of the on-site investigation. If there are indications of alcohol or drug abuse, a comprehensive evaluation from a qualified substance abuse counselor should be considered.

1. substance use is part of the CPS report
2. paraphernalia is found in the home (syringe kit, pipes, charred spoon, foils, large number of liquor or beer bottles, etc.)

3. home or parents smell of alcohol, marijuana, or drugs
4. a child reports alcohol or other drug use by parents or other adults in the home
5. a parent or other adult appears to be actively under the influence of alcohol or drugs (slurred speech, inability to mentally focus, physical balance is affected, extremely lethargic or hyperactive, etc.
6. parent shows signs of addiction (needle tracks, skin abscesses, burns on inside of lips, etc.) 7. parent admits to abuse of substances or alcohol (see guide for indicators of use, abuse, or dependence in Section 702, item #3)
8. parents shows or reports experiencing physical effects of addiction or being under the influence, including withdrawal (nausea, euphoria, slowed thinking, hallucinations, or other symptoms)

d. When screening adults, uses the following simple screening questions to guide decision to refer for formal AOD assessment when substance or alcohol use is not clear from indicators present in the home or at any time deemed appropriate by the situation.

The CAGE Questionnaire (amended for drug use)

C - Have you ever felt the need to Cut down on your drinking or drug use?

A - Have you ever felt Annoyed by people criticizing your drinking or drug use?

G - Have you ever felt bad or Guilty about your drinking or drug use?

E - Have you ever had a drink or used a drug first thing in the morning to steady your nerves or get rid of a hangover? (Eye-opener)

Scoring: If the answer is "yes" to one or more questions, the responder should receive a formal alcohol and drug assessment. Answering "yes" to one or two questions may indicate alcohol and drug-related problems. Answering "yes" to three or four questions may indicate alcohol or drug dependence.

OR

UNCOPE (for both drinking and drug use)

U - Have you spent more time drinking or Using than you intended?

N - Have you ever Neglected some of your usual responsibilities because of alcohol or drug use?

C - Have you ever felt you wanted or needed to Cut down on your drinking or drug use in the past year?

O - Has your family, a friend, or anyone else ever told you they Objected to your alcohol or drug use?

P - Have you found yourself thinking a lot about drinking or using? (Preoccupied)

E - Have you ever used alcohol or drugs to relieve Emotional discomfort, such as sadness, anger, or boredom?

Scoring: Two or more positive responses indicate possible abuse or dependence and a need for further assessment by a Substance Use Disorder treatment provider.

e. With the assistance of and consultation with drug abuse specialists, makes decision about what type of drug test is appropriate under any given set of conditions. The expectation is that

DSS staff will work with drug abuse specialists to determine what tests are necessary and what the test results mean in the context of child safety.

f. Observes and investigates/assesses any other maltreatment which may not have been included in the initial report.

g. Assesses children for indicators of developmental delays or exposure to illegal drugs (withdrawal symptoms or other medical effects from exposure as diagnosed by medical personnel) and considers the impact of a developmental delay and/or illegal substance exposure on the child's safety and well-being. This determination of developmental delays or illegal substance exposure can come from information obtained:

1. through an analysis by the caseworker and parents of the child's developmental level using the Developmental Milestones Chart;
2. through the required medical screening of a child going into foster care;
3. through an EPSDT screening of any Medicaid eligible child; or
4. any other medical evaluation of a child in the course of a child abuse or neglect investigation.

NOTE: Any child believed to have been exposed to illegal substances (prenatally or after birth) must have a medical examination.

Provides to parents with children under age of three, a BabyNet card with developmental milestones information or DSS Form 30242 and contact number of BabyNet for assistance with voluntary self-referrals.

Completes a BabyNet referral form within 2 working days of determining the need for a referral. (See Section 719.01 for specific guidelines.)

h. Considers the educational needs of children three years of age and older and assists family with referrals to school for special services. Assesses the performance, attendance, and behaviors of the children in the educational setting and considers the impact of educational issues on safety of child. Cross reference Chapter 8, Section 819.03, for specific guidance on educational needs of foster children.

i. Assesses the responses of the parent/guardian to the abuse or neglect to include the acts, omissions or failure to protect by the parent or guardian.

j. Takes or causes to be taken color photographs, appropriate and adequate medical examinations, X-rays, and other tests as required in order to assess a situation and to document child maltreatment. (See Section 750 - S. C. Code of Laws, §63-7-380) If there is suspected injury to the genital area or suspected sexual abuse involving genital contact, the child should be examined by a physician, and photographed as appropriate by or in the presence of medical personnel. If the allegation is about diaper rash on an infant or toddler, the worker may photograph the very young child who has a diaper rash in the genital area in the presence of the parent or other caregiver or medical personnel.

CPS workers should not examine children's genitals. Such examinations are intrusive and potentially traumatic and should be conducted by medical personnel. CPS workers are not medical personnel and are not authorized to conduct medical examinations.

k. Documents observations of adults and/or children present in the household and of siblings placed in alternative placement such as DJJ who may or may not be suspected of being abused or neglected. The assessment should include but not be limited to family history and functioning, the specific abuse, and other components as outlined in the six questions relating to maltreatment, nature of abuse, child functioning, parenting - discipline, parenting - general and adult functioning.

l. Documents information gathered in the assessment in CAPSS dictation.

17. Considers and discusses with the parent or guardian the safety issues identified for the victim child when the abuse or neglect is determined to have been perpetrated by a person who is not responsible for the child's welfare as defined by §63-7-20, and facilitates or refers the parent to appropriate service provider to meet identified treatment needs for the child and family.

18. As more information about the family and situation is gathered and as any additional present or impending danger threats are identified, revises the existing Safety Plan as needed or develops a safety plan with the family's active participation and agreement. The Safety Plan describes the specific actions to be taken to control for the safety threats that are identified as part of the assessment. Documents the specifics of the ongoing Safety Plan in the CAPSS automated system within five working days. The safety plan is a written arrangement between a family and the agency that establishes how present and impending danger threats to child safety will be managed. The safety plan must be implemented and active as long as threats to child safety exist and the caregiver protective capacities are insufficient to assure a child is safe. The safety plan should:

- a. identify a protector who has sufficient protective capacities;
- b. ensure that all parties understand their roles and are capable of carrying out their responsibilities; and
- c. document ways in which the child) must be protected using safety services and actions only, no promissory commitments;
- d. services must have immediate effect, be immediately accessible and available;
- e. document reasonable efforts to prevent removal by identifying the safety services or actions necessary for each child to live safely at home or with a relative or friend. This information will be documented on the Safety Plan. Document on the Safety Plan when a child is at imminent risk of removal by checking YES or NO.

Note: If child is determined to be at imminent risk of removal absent these services (a "candidate" for IV-E foster care), the case must be staffed every three months until risk is

reduced and every six months thereafter. A re-assessment of the child's safety must be made at the three month staffing to determine if the child continues to be at imminent risk of removal and what steps the agency must take to address these continuing concerns. Documentation must clearly show this assessment and the determination in order to document IV-E eligibility. Use DSS Form 30229, CPS In-Home Treatment Supervisory Review Checklist as guide for the review and document in the Case Evaluation/Case Closure section.

Note: Reasonable efforts are not required when one or more of the following exists: severe or repeated abuse/neglect; sexual abuse; torture or abandonment; the parent committed or conspired to commit murder, manslaughter or physical abuse resulting in death or hospitalization of a child with subsequent criminal convictions; or parental rights to another child were involuntarily terminated. See S. C. Code of Laws, §63-7-1640), and Section 726, Emergency Protective Custody.

19. Documents the plan to control for safety on the safety plan and have all parties sign, including the identified protector. Files copy of signed safety plan in paper file, provides original to family (copy to each person if multiple signers). If there is no protector identified and/or the family refuses to participate, assesses immediate safety concerns and the likelihood of future maltreatment to child in the home and initiates appropriate actions to protect, such as request evaluation by LE for emergency protective custody or initiate an Ex Parte action. When the facts support that the child is in present danger or impending danger such that the child would be placed in foster care without effective services to prevent placement, documents this by checking the appropriate box on the form.

NOTE: A Safety Plan cannot modify the provisions of an existing court order. A parent may agree to a safety plan that changes how his rights established in the order are temporarily exercised; however, all parties should understand that the order is not altered by the agreement. If critical to the safety of the children and the affected parent will not agree, DSS can seek an Ex Parte action through family court to temporarily stay the preexisting order or a removal through the emergency protective custody process. Questions regarding existing court orders should be referred to the county attorney.

NOTE: The safety plan should be modified as necessary to control for safety and remain in force as long as there are threats to the child's safety and the caregiver protective capacities are insufficient to assure a child is safe. The safety plan controls the conditions that results in a child being unsafe. The worker must discuss the safety plan with the family every time the worker is with the family to ensure that the safety plan is controlling/managing the identified safety threats.

While it is expected and desired that a child is safe by the time a case decision is made or shortly thereafter, there may continue to be safety threats. Court intervention may be needed if the agency's safety plan does not result in the child being safe.

Treatment cannot begin until the threat is under control. The Treatment Plan is designed to change behavior or conditions that caused the child to be unsafe or at a substantial risk of future harm.

20. If the identified plan to control for safety involves informal kinship care placement with relatives (blood or fictive kin) to divert the child from foster care, a family meeting must be held within 24 hours to include the parent, guardian, extended family and other relevant persons to discuss the family's problem that led to intervention and possible corrective actions including, but not limited to, a kinship caregiver for the child. If a kinship caregiver is identified, the following steps must be completed:

- a. Provides the kinship caregiver with information necessary to support placement, including, but not limited to, the child's condition, financial support information, agency expectations regarding safety and other pertinent information; Uses the Kinship Care Agreement (DSS-3017) and Child Profile (DSS 3018). Provides a copy to the parent(s) and kinship caregiver. Documents in CAPSS.

Note: Completes the placement agreement (DSS 3017) and Child Profile (DSS 3018) at the time of placement or within 24 hours of placement, i.e. the family meeting or site visit.

The Kinship Care Agreement (DSS 3017) is valid for not more than 12 months by which time permanency is established by: (1) the children being reunited safely with the parents or (2) the agency has initiating court action regarding legal custody.

- b. Completes evaluation of kinship caregiver site within 24 hours of placement using DSS Form 30212 and document findings in CAPSS;
- c. Obtains signed Affidavit for Kinship Placement using the DSS Form 3042 from each adult in the home; document in CAPSS and
- d. Completes necessary background checks on relative and all adults in the home to ensure that DSS does not agree to a placement with a person who has a criminal and/or a child abuse or neglect history. Access criminal history as authorized under SC Code of Laws, §63-7-990, (Reference SC Code of Laws, §63-7-990 and local DSS/LE Protocol). DSS form Request for Criminal History Record Information (CHRI) and/or Local Law Enforcement records (DSS 30261) is available.

NOTE: do not consider as Kinship Caregiver any person who uses/abuses/addicted to illegal substances or who abuses or is addicted to legal substances.

- e. Summarizes in CAPSS the information documented on the Kinship Caregiver Site Visit (DSS 30212) and the background screenings. Provides a copy to parents and kinship caregiver.

21. If child cannot be protected in the home and has to be taken into emergency protective custody as part of an out-of-home safety plan, follows procedures in Section 726 and in Chapter 8, Section 817.03, Foster Care. If a relative is identified as placement resource and wants to be

licensed, advises the relative of the foster care licensing procedures outlined in Chapter 9, Foster Care Licensing Manual.

Considers placement resources and documents efforts to coordinate with the child's Native American nation or tribe when the victim child is a member of a federally recognized Native American nation or tribe. If not already documented, documents Tribe Affiliation in CAPSS. (Reference Section 754 - Indian Child Welfare Act)

22. As soon as possible, completes a search of the data base and Central Registry on any individual who is named as a protector and not already included in the case record to determine if the individual is named on the Child Abuse and Neglect Central Registry or has other child abuse or neglect history with the agency that might impact on the child's safety.

23. Completes full assessment of family and allegations of abuse or neglect. The use of a safety plan to assure that the child is in safe placement does not relieve the department of responsibility to complete the assessment and provide services to the family that may be appropriate.

Social Service Worker/Supervisor

24. If the safety threats cannot be controlled by use of an in-home safety plan, pursues an out-of-home safety plan by requesting assistance from law enforcement for Emergency Protective Custody. (See Section 750 - S. C. Code of Laws, §63-7-620; Section 726, Emergency Protective Custody)

Note: Supervisory consultation should take place prior to initiating removal actions or as soon as possible thereafter. Outcome of staffing must be documented in the automated system. Ensures medical testing of children coming into foster care to include testing for AIDS, drugs, etc., if recommended by medical personnel. (See Chapter 8, Foster Care Manual)

Social Service Worker

25. If a child is believed to be unsafe and a safety plan cannot be created that will control or manage the safety threats and a change in custody is anticipated:

- a. Explores possibility of relative placement, including non-custodial parent, by convening a family conference.
- b. Ensures relatives are given advance information to understand the process of becoming licensed as foster parents. (Reference Chapter 9, Foster Care Licensing Manual)
- c. Conducts diligent search for absent parent through the Child Support Enforcement Division by completing DSS Form 2738, Foster Care - Child Support Referral Form. Also, completes a Central Registry and SLED background check, Department of Corrections' Inmate Search at <http://public.doc.state.sc.us/scdc-public/> to search for parents who might be incarcerated.

- d. Considers whether the adult/parent in the home is safe if domestic violence is an issue involving the absent parent. For example, consider if there a restraining order in place against the absent parent.
- e. Considers the safety of and likelihood of future risk to any child at DJJ who will be returning to the home and if removal of this child is indicated by the facts of the family situation.
- 26. Maintains photographs, X-rays of the child, copies of medical records and psychological reports on the family in the case record. (See Section 750, S. C. Code of Laws, §63-7-380)
- 27. Reviews with involved medical personnel and consults as needed with other medical experts the findings from any medical procedure or information from medical records.
- 28. Initiates and coordinates a mandatory multidisciplinary staffing prior to the case decision for a child who is admitted to the hospital due to severe injuries or for situation considered to be near death (diagnosed by medical personnel as serious or critical condition) believed to have been the result of the acts or omissions of the parent, guardian, or other caregiver. Arrangements for this staffing can be part of the MOA with the Children's Advocacy Center or other similar multidisciplinary abuse assessment center serving the county.
 - a. Includes, but does not limit the staffing to: the attending physician, pertinent hospital staff, law enforcement and/or military police, other professionals who have information on the case, the DSS caseworker and supervisor.
 - b. Holds staffing in face to face forum with all involved parties present. If necessary, involved persons listed may be included through telephone conference call.
 - c. Ensures the sharing of all available information on a child with severe injuries so that a thorough and complete assessment can be made.
 - d. Documents the outcome of multidisciplinary staffing on DSS Form 3062 with all participants signing document to indicate their agreement, and documents the staffing information fully in CAPSS.
- 29. Coordinates and reviews case information with involved law enforcement (to include, but not limited to, information contained on the Sex Offenders Registry, contacts with SLED, etc.) or other professionals (to include FI/FS staff - see DSS Form 1600) to ensure the sharing of information.
- 30. Consults with involved professionals outside the department to ensure communication and clarity of information.
- 31. If additional information is received during the initial investigation/assessment that alleges a new incident of abuse or neglect, follows procedures as outlined in Section 711, Recurrent Referrals to evaluate the information and determine if a new investigation is necessary.

Social Service Worker/Supervisor

32. Ensures that a case decision staffing is held so that a case decision is made within 45 days of receipt of the report.

- a. Involves county attorney in the staffing for sexual abuse cases so that any decisions about the need for family court petitions can be made at the time of the case decision. Documents reason why attorney is not involved in staffing and what has been or will be done to ensure legal input and timely court actions.
- b. If the sexual abuse case is indicated, provides legal staff with necessary documentation and reports so that legal staff can prepare and file a petition for a hearing on the Central Registry question within 60 days of the decision to indicate.
- c. Involves county attorney in staffing of any case when it is believed at the time of the staffing that there is a likelihood that the case will go to family court.
- d. Ensures that a multidisciplinary staffing or consultation with involved professionals is held before a case decision is made. For example, when the evidence gathered supports that parental/caretaker use or abuse of or dependence on alcohol and/or other drugs has led to endangering the safety and welfare of the child, the staffing or consultation must include, at a minimum, a drug abuse specialist in order to fully consider the impact of the alcohol or drug use/abuse/addiction on the allegations of abuse or neglect. Or in the case of domestic violence or serious mental health issues, you must include a DV specialist or a mental health specialist in order to have sufficient and accurate information on which to base a decision. The staffing or consultation may be face-to-face or can be by telephone or through other means of communication.

NOTE: The definition of physical neglect consists of two parts – the failure of the parent to do something and that the failure has caused actual harm or has placed the child at substantial risk of physical or mental injury. It is not enough to find that circumstances suggest the parent might engage in conduct in the future that is a failure to supply food, clothing, shelter, etc. for us to indicate maltreatment. (Reference SC Code of Laws Ann., Section 63-7-20(4) (c) and (f)).

33. If necessary, submits justification to the County Director or designee for a one-time extension of 15 days if the decision cannot be made within the 45 days but is reasonably expected to be made within the 60 days. Documentation of a staffing of the case with the supervisor must be included with the justification. An extension may be granted at the discretion of the County Director or designee if:

- a. the child or other relevant party who could not be located within the 45 days, despite the best efforts of the department, is expected to be located within the next 15 days; or
- b. specific diagnostic information which was initiated or requested within the initial 45 days will not be available within the 45 days, but can reasonably be completed within the next 15 days; or
- c. other compelling reasons as presented by staff on a case by case basis that there is a reasonable expectation that the investigation can be completed in an additional 15 days; and

d. the request has been made prior to the 45th day of the investigation. An extension shall not be granted by the County Director or designee if requested on or after the 45th day.

Note: Upon request, the State Director or state/regional designee may grant a one-time good cause extension (not to exceed 60 days from the date of the report) for a request not made prior to the 45th day of the investigative/assessment.

Director/Designee

34. Based upon the criteria listed above, makes a decision regarding the request for an extension of 15 days to the investigative/assessment period. The decision must be made by the 45th day of the investigative/assessment.

Social Service Worker

35. Documents extension of time line in the automated case record (CAPSS) within two working days of the decision by the Director/Designee to grant the 15 day extension.

36. In consultation with supervisor, makes an agency finding regarding the validity of the report as soon as all information necessary to make a decision is gathered. A finding must be made within 45 days from receipt of the report (unless an extension is granted).

Notifies the family and perpetrator of the indicated case decision in person within 5 working days of the decision and prior to the mailing of the notice letter. This must be done face to face in order to assess the parents' response to the case decision and gauge the impact of their response on the child's safety as well as determine the parents' willingness to cooperate with treatment and/or their desire to appeal the decision. The face to face discussion about the indicated decision encourages engagement of the family as it is respectful of families' rights and feelings. It also can set the stage for a more positive introduction of the treatment worker to the family. The parents' responses in this face to face discussion about the case decision will help the worker, supervisor, and county attorney to make decisions about the agency's need to petition family court and therefore determine which notice letter is appropriate for the specific situation.

If the decision is not made before 45 days (no more than 60 days), the agency's decision becomes unfounded according to state statute. The case record dictation must reflect the date and outcome of the agency decision staffing to serve as official documentation of the date of the decision. CAPSS must be updated in 5 days of the case decision staffing to reflect the decision and the information that constitutes the preponderance of evidence.

Note: The re-reporting of a situation by agency staff because the agency is unable to complete the investigation in the 60 days maximum allowed by state law for an investigation is not supported by state law. State law specifies that the agency must make a decision within 60 days or the decision becomes unfounded.

SC Code of Laws §63-7-930(A) "By the end of the sixty-day time period, suspected reports must be classified as either unfounded or indicated pursuant to the agency's investigation," and §63-7930(C) "All reports that are not indicated at the conclusion of the investigation and all records

of information for which an investigation was not conducted pursuant to §63-7-310 must be classified as unfounded.” (See Section 750, S. C. Code of Laws, §63-7-930)

Reminder: If a child is taken into custody by EPC or Ex Parte action and in order to provide investigative and case planning information to the Family Court at the 35 Day Removal Hearing, the worker should complete the investigation as quickly as possible.

Social Service Worker

37. After the case decision, completes the DSS-3070, Determination Fact Sheet outlining the facts supporting the agency decision. The appropriate notice letter as referenced on the DSS3070 should be completed after the face to face discussion with the family. The notice letter provides specific information regarding the right to appeal an agency decision and the appropriate process for that appeal given the unique case situation. Both documents are mailed to the subject of the report (person alleged or named as the perpetrator) within five working days of the decision to indicate or unfound.

Persons responsible for the child's welfare as defined under §63-7-20 and who are directly involved in this case which includes the non-residential/non-custodial parent also must be notified of the outcome of the investigation by copy of the DSS-3070 but do not have a legal right to appeal the decision unless they are named as the subject of the report.

NOTE: If the case is not going to be taken to Family Court for oversight on treatment and/or safety issues and the individual found to have abused or neglected the child is not being offered treatment services, the individual must be offered an administrative appeals under §63-7-1410. The notice letter must be sent by certified mail. (Reference SC Code of Laws, §63-7-1410).

38. Documents the specifics of the case decision staffing in CAPSS automated system in five working days of the decision. Documents routine case activity in CAPSS no later than thirty calendar days after the activity.

Social Service Supervisor

39. Reviews and signs off on the case decision and notification letters as necessary. Ensures case documentation in CAPSS is completed.

Social Service Worker

40. If the report is unfounded, classifies the report as Category I, Category II, or Category III according to the evidence identified. (See Section 750, SC Code of Laws, §63-7-920 and §63-7-20)

- a. Informs the subject of the report that the report is unfounded. Also mails the subject of the report a copy of DSS-3070, Determination Fact Sheet and unfounded notice letter within five working days. Updates CAPSS and files a copy of DSS-3070 and notice letter in paper file. Persons responsible for the child's welfare as defined under §63-7-20 and who are directly involved in this case which includes the non-residential/non-custodial parent also must be notified of the outcome of the investigation by copy of the DSS-3070.

- b. Notifies FI/FS staff of the case decision immediately using the DSS Form 1600, Referral to Human Services, so that all material about the unfounded case can be removed from the FI/FS case record.
- c. Updates data base within five working days of the case decision.
- d. Maintains the unfounded case record according to statute. Uses information in unfounded case records only as allowed by statute. All unfounded case material in the paper record will be deleted/purged at the end of five years unless the record has been secured by the Office of General Counsel for legal reasons or a need to maintain the record has been identified by the County office or the Division of Human Services for reasons related to CPS or LE investigations. (See Section 750 - S. C. Code of Laws Ann., §63-7-920 & 930)
- e. Makes a referral to BabyNet on a child under age three in an unfounded report who appears to need early intervention services by completing the BabyNet Referral Form within two working days of determining need to refer. Discusses with family the BabyNet service and why a referral is believed to be appropriate. This determination of developmental delays can come from information obtained:
 - 1. by an analysis by the caseworker of the child relative to the Developmental Milestones Chart - DSS Form 30242;
 - 2. through the required medical screening of a child going into foster care;
 - 3. through an EPSDT screening of any Medicaid eligible child; or
 - 4. any other medical evaluation of a child in the course of a child abuse or neglect investigation.

BabyNet will assess and evaluate a child referred by DSS to determine if early intervention services are appropriate for that particular child. BabyNet services are not coercive services and the parents have the right to refuse to participate.

41. If the report is classified as "indicated" for abuse or neglect by a preponderance of the evidence: (See Section 750, S. C. Code of Laws Ann., §63-7-920 and §63-7-20)

- a. Informs family of case decision. Discusses with the family the impact of the indicated case decision, any planned court action (to include a request to family court to order person's name be placed on the Central Registry and the potential impact of this action on individual), and the treatment planning process. Provides any information requested or needed to help the family understand DSS intervention.
- b. Notifies law enforcement within 24 hours when the facts indicating child abuse or neglect also appear to indicate a violation of criminal law for the purposes of police investigation. Refers a case to law enforcement if there is evidence of drug manufacture, drug dealing, the presence of illegal drugs in the home, or other illegal use of drugs. (See Section 750 - SC Code of Laws §637-920)
- c. Discusses with the family the agency's responsibility for providing or coordinating services and the need for the family's cooperation and participation.

d. Makes the federally mandated referral to BabyNet on any child under age three who is identified as the victim of child abuse or neglect in a substantiated (indicated) case of child abuse or neglect or who is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure by completing the BabyNet Referral Procedure as outlined in Section 719.01. If the parents refuse to participate with BabyNet, the worker must pursue alternative services for concerns identified as safety issues that will be addressed within the service plan. The parents have the right to refuse to participate with BabyNet and DSS must then assess if alternative services are necessary.

e. Provides the family with a copy of the DSS-3070, Determination Fact Sheet, and other notice letters as appropriate within five working days of the case decision.

Social Service Worker/OHAN Investigator

f. Notifies the subject of the report by certified mail that for cases indicated pursuant to §63-7920 which are not going to Family Court, or for those cases indicated under §20-7-670, the individual determined to have abuse or neglected the child may appeal the decision as outlined in Section 725, Appeals Process. (See Section 750, SC Code of Laws Ann., §63-7-1410)

NOTE: It is the policy of the Department that in cases indicated under §63-7-920 where there are safety threats and/or where treatment services are to be provided or are reasonably expected to be provided and the individual or family disagrees with the indicated decision and/or the decision to deliver services, the case MUST be taken to Family Court. There can be little effective treatment and the safety of the child is in question when there is no acknowledgement of the acts or omissions that led to the abuse or neglect. This process allows Family Court to consider the facts of the situation in totality whereas the Administrative Appeals process cannot coerce treatment nor address child safety.

g. Notifies service providers such as DJJ, DMH, DHEC, etc., of the outcome of the investigation/assessment in order to coordinate services as needed. When treatment services are appropriate for a family, and the subject of the report disagrees with the results of the investigation, the case should be taken to Family Court under §63-7-1650 for CPS intervention. In this action, DSS must present evidence to support its case determination and the proposed treatment services. This will provide the subject of the report with an opportunity to contest the case decision and is the individual's avenue of appeal.

h. For OHAN cases needing treatment services (for example, licensed foster parents with biological children who are found to be abused or neglected), transfers the case to the county of residence for follow up treatment services. (See Section 721 – Out Of Home Abuse Investigations)

Social Service Worker

i. If the subject of the report challenges the agency decision that he/she abused or neglected the child, or if the Department needs to take the case to family court to compel services, and/or to request that an individual's name be listed on the Central Registry, presents case to DSS

attorney for intervention. (See Section 750, S. C. Code of Laws Ann., §63-7-920 and §63-7-1650)

- j. Informs the family that at any time during the delivery of services by the agency, the department may petition the Family Court in its jurisdiction for authority to intervene and provide protective services without removal of the child. This step must be taken in instances where the family indicates a refusal to participate and the agency determines by a preponderance of the evidence that the child cannot be protected from harm without intervention. (See Section 750, S. C. Code of Laws, §63-7-1650)
- k. Discusses with the family possible outcomes of a hearing pursuant to §63-7-1650.
- l. Informs the family of the time frame for the destruction of the record containing their names and other identifying information. Information in unfounded records will be maintained and used by the department in assessment of risk in subsequent reports for not less than five years. Indicated case information will be maintained for seven years from the date services are terminated. The names of individuals legally on the Central Registry as of June 7, 2002, will continue to be listed. (See Section 750, S. C. Code of Laws, §63-7-920 and §63-7-1910)
- m. If a court hearing is deemed necessary, follows requirements of statute. (See Section 750, S. C. Code of Laws, §63-7-1650)
- n. Completes DSS-3058, Court Information Sheet, or equivalent summary as needed and appropriate to provide information to the DSS attorney to prepare for the court hearing.
- . Immediately notifies FI/FS staff of the case decision using the DSS Form 1600, Referral to Human Services.

County Office Staff

- p. Files copies of signed forms, medical or psychological evaluations, court documents or other pertinent information that must be preserved in a paper file. Maintains the case record (paper file) for seven years from the date services are terminated including the actual record and CPS Log. (See Section 750, S. C. Code of Laws, §63-7-920 and §63-7-1910)
- q. Updates the Central Registry to reflect any court order pursuant to §63-7-920 or appeals process action pursuant to §63-7-1410 that results from a county case action.
- r. Maintains a county tracking system to ensure compliance with all court orders to include entering a person's name in the Central Registry. Designates a person to have direct responsibility for this task. Uses the tracking system to ensure that when the agency determines that there is a preponderance of evidence that a person committed an act of sexual abuse, the case is taken to Family Court for consideration of the Central Registry listing and any other treatment concerns.

State Office Program Staff

42. Monitors indicated sex abuse cases and Central Registry for compliance with state statute. Notifies program technical assistance or county operations staff of any concerns that may require follow up with county offices.

State Office Central Registry Staff

43. Receives DSS Form 30165, a copy of the indictment and the sentencing order from county clerks of court and enters into the Central Registry the names of individuals ordered onto the Central Registry of Child Abuse and Neglect by the criminal court pursuant to SC Code of Laws 17-25-135.

Social Service Worker or Assigned Staff

44. In situations where the department has an interest in receiving information regarding persons who are incarcerated due to a conviction on abuse or neglect charges, pursuant to §16-3-1520 and §16-3-1530 of the Victim's and Witnesses' Bill of Rights, requests notification of the perpetrator's pending release from the solicitor by completing and forwarding the DSS-3032, Victim Impact Statement for Child Protective Services, to the solicitor and Department of Probation, Parole and Pardon Services.

45. Conducts a search of the Central Registry when contacted by law enforcement investigating abuse/neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities prescribed in the Children's Code. (Reference §63-71990) Central Registry information is not subject to HIPAA, so procedures associated with HIPAA do not apply to a request that DSS determine whether a person is on the Central Registry.

All Staff

46. Maintains all information concerning child abuse and neglect reports in a confidential manner ensuring that information is given only to those parties specifically named and authorized in §63-7-1990 and §63-7-920.

47. Ensures that all documentation of actions in a case is completed in the CAPSS automated case record no later than 30 days after the action. Documents critical case activity, such as removals, court actions, or other as directed by supervisor, in no more than 10 days.

48. Ensures that other specified timelines (such as the initiation of investigation, notification of case decision, and documentation of monthly visit in open treatment cases) are met,

County Director

49. Approves any entry into CAPSS that exceeds any established timelines for data entry. Refer to Policy Section 719 #13, #35, and #42, and Section 730 purpose for specific established timelines.

Referenced Documents Revision Comments

Update to pages 5, 12 and 13, items 12 and 20 indicating the change in terms from "alternative caregiver" to "kinship caregiver". Clarification of procedures for Kinship Caregiver Placements.

CHAPTER 7, Child Protective and Preventive Services Revision Number: 10-01 Effective
Date: 01/14/2010

724 Client Opposition to Intervention

Purpose: To outline steps to be taken by staff and/or supervisor when the client refuses to admit the worker to the home or becomes overtly hostile and orders the worker to leave before completion of an interview or appointment. (~~See Reference Data~~—Section 740, Worker Safety)

Social Service Worker

1. If appropriate, restates his/her interest in the child's well-being and the mandate of the agency.
2. If the client orders the worker to leave, the worker shall leave the premises immediately and consult with the supervisor regarding the current situation.

Social Service Supervisor

3. Upon consultation with the worker, decides whether or not to request assistance from law enforcement or Family Court in order to complete the investigation. (See Section 750, S. C. Code of Laws, §63-7-1650)

Social Service Worker

4. Contacts law enforcement or DSS legal representative for assistance to request an inspection warrant pursuant to §63-7-920 if required in order to complete an investigation.
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Referenced Documents

Revision Comments

January 2009- revises statute citations.

730 Family Assessment

Purpose: To ensure the ongoing safety of all children in the home(s) of the alleged victim(s) and/or under the control of the alleged perpetrator and to assist the family to identify risk factors and underlying causes of behavior which contributed to the abuse and/or neglect. The family assessment is: 1) an in-depth study of the family's current situation and history; 2) individualized for each member; 3) focuses on better understanding the reasons that the family is functioning in ways that contribute to their child being unsafe and on strengths and needs for individuals and family group; 4) determines resources with family; 5) geared toward development of ongoing plan and delivery of services; and, 6) in itself, intervention that impacts on the entire family and its members. A family assessment must be completed even if child has been diverted to a relative under a safety plan.

Family assessments must include all family members if they are accessible and do not pose a threat to other family members. Document why a specific person is not involved.

Social Service Worker

1. Staffs case information with assessment/investigating worker and/or supervisor.
2. Reviews and completes documentation as required.
3. Completes the individualized family assessment using Section 2: Comprehensive Family Centered Risk Assessment and Case Planning of the Child and Family Assessment and Service Planning tool to guide this assessment as soon as possible after a report has been indicated. The assessment should be completed within 30 days following indication.

Note: The additional family assessment information is gathered through interviews with family, collaterals, and other professionals. Interviews during the family assessment and treatment phases of a CPS case can be scheduled as the expectation is that by this point in the life of the case, the worker and family have developed a relationship that would allow for planned visits and other interactions without putting the child at further risk of harm.

4. Completes the assessment on the child, parent, family and environmental factors by:
 - a. Reviewing all written information, records and documents;
 - b. Contacting the family to inform them of the assessment, its purpose, and how it will be completed;
 - c. Interviewing every involved member of the immediate family, including any sibling incarcerated at DJJ or in other out-of-home placement;
 - d. Interviewing and observing the family together, particularly observing children under three for developmental delays and coordinating services with BabyNet to meet identified needs;
 - e. Interviewing extended family and other significant individuals as appropriate; (For children belonging to federally recognized Native American nations or tribes, this will include members of the nation or tribe as designated by the nation or tribe.)

- f. Reviewing available medical records on all involved children;
- g. Scheduling appointments with professionals for medical, psychological or psychiatric evaluations on family members as deemed appropriate by worker and/or immediate supervisor and other collateral contacts as appropriate;
- h. Assesses the educational needs of the children and the performance, attendance, and behaviors of the children in the educational setting. Considers the relationship of these factors to the reason for agency involvement (i.e., abuse and neglect affects child's school performance or attendance). Meets with school officials as appropriate and facilitates parental involvement as necessary and maintains educational records in file. Cross reference Chapter 8, Section 819.03, for guidance on educational needs of foster children.
- i. Documenting observations in behavioral terms; and
- j. Considers the willingness of the parent/guardian to participate in treatment planning for the return of the incarcerated sibling following discharge and considers the impact of the child's return home on the family functioning. Provides DSS records to DJJ per Child Abuse Prevention and Treatment Act (CAPTA) requirements and coordinates with DJJ to plan for return of the incarcerated child to the family. Updates DJJ at six month review and prior to closure if sibling remains incarcerated.

5. Considers for closure where the plan has been achieved, desired outcomes reached, and there is little to no risk to child. Using Child Safety Assessment, Section 1 of the CFASP, completes a safety assessment and a re-assessment of risk using the Family Centered Risk Assessment and Case Planning tool to determine if child is now safe and if the likelihood of future maltreatment has been reduced. Case closure requires that the parental behaviors that led to the child being unsafe have been changed and the agency can articulate the reasons that support the belief that the child is now safe in the parent's care. This requires intensive planning, cooperation and communication between DSS, the family, and treatment providers.

In order to close a CPS treatment case with the child in the home when parents have been abusing or are dependent on alcohol and other drugs and/or when any other factors such as domestic violence or mental health problems have caused the child to be unsafe, there must be documentation in the agency record of the following:

1. The parent/caregiver in question must be involved in a treatment program designed to change the behaviors that made the child unsafe and demonstrated significant progress on the treatment plan goals and there is a second person in the home who is the protective caregiver and DSS case consultation has taken place with the treatment provider(s) and sufficient changes in behavior have been made that eliminate the safety threats and reduce risk of future harm.

OR

2. The parent/caregiver has completed treatment and the caregiver has demonstrated observable behavioral changes in their ability to keep the child safe and

DSS case consultation has taken place with specific treatment provider(s) and sufficient

changes in behavior have been made that eliminate the safety threats and reduce risk of future harm.

6. Staffs case information with supervisor and DSS attorney to determine need to petition family court for authority to intervene.

7. When appropriate, requests that DSS attorney file a petition with the Family Court for authority to intervene and provide protective services as authorized by §63-7-1650 and §63-7-1670, S. C. Code of Laws. (See Section 750, S. C. Code of Laws)

a. Assesses the appropriateness of including in the petition, siblings in alternative placements such as siblings incarcerated at DJJ. Notifies service providers as appropriate, including DJJ staff of pending court hearing.

b. Staff cases with mutual clients with DJJ on a quarterly basis to ensure information sharing and joint planning.

Social Service Supervisor

8. Reviews with staff and signs off on the comprehensive family assessment as documented in the Comprehensive Family Centered Risk Assessment and Case Planning.

Referenced Documents

Revision Comments

August 2008 - Reiterates need to involve extended family members. Extended family for individuals who claim membership in federally recognized native American tribes or nations will involve other tribe members. Revises statute citations.

South Carolina Department of Social Services
Human Services Policy and Procedure Manual

CHAPTER 7, Child Protective and Preventive Services

Revision Number: HSP 14-07

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731 Case Work Treatment Process

Purpose: To outline actions to be taken to assist the family and/or family network to reduce risk factors which contributed to abuse and/or neglect and enable the family to provide a safe environment for their children without the involuntary services of DSS. (See Section 750, S. C. Code of Law, §63-7-1650) Uses the Child and Family Assessment and Service Planning Tool to guide the treatment planning and assessment process.

Note: The policy and practice standard of the Department is that Child Protective Services staff will conduct at least one face to face interview per calendar month with the victim child, siblings and any other children who reside in the home, and parents, protective adult, and/or other caregiver during the time a case is open for in-home child protective services. More contact must be held when necessitated by safety concerns or developments in the case. The primary purpose of this contact is to assess safety and future risk of maltreatment to the child, as well as review the progress of the plan. The majority (over 50%) of visits must be conducted in the family home in order to assess the child and caregivers' interaction and the overall safety of the home environment. Documentation of the monthly visit must be entered into CAPSS by the end of the month of that visit.

The home visits and other interviews necessary to continue to assess for safety and to deliver treatment services can be arranged with the family, collaterals, and other professionals. Interviews and visits during the family assessment and treatment phases of a CPS case can be scheduled with the family as the expectation is that by this point in the life of the case, the worker and family have developed a relationship that would allow for planned visits and other interactions without putting the child at further risk of harm. Planning for visits demonstrates a respect for the family and an effort on the part of the agency to include the family in all aspects of the case. The need for unannounced visits should be determined on a case by case basis with worker and supervisor evaluating the specific issues of each case.

Staff will conduct at least one face to face interview with a sibling who is incarcerated and maintain contact with DJJ staff to share and gather relevant information regarding the sibling and to coordinate services as necessary.

Note: Child protection and child well-being are the paramount considerations of the agency. If, at any time during a treatment/family preservation case, a worker receives an allegation that a child has been subjected to abuse, neglect or exploitation by his/her parent or person acting in the parental capacity such as the caretaker, guardian or other persons, the treatment/family preservation worker shall notify the county intake office of the suspected abuse, neglect or exploitation immediately but no later than within 24 hours of the worker's receipt of the allegation. Further, if the information involves the sexual abuse of a child, or contains any other allegations where the facts indicating abuse and neglect also appear to indicate a violation of criminal law, the worker shall notify the local law enforcement entity immediately but no later than within 24 hours. This notification can be verbally but must also be in writing.

If the worker receives allegations that a child has been subjected to abuse, neglect or exploitation by someone other than a parent, guardian or other person acting in a parental capacity, the worker shall notify law enforcement within 24 hours.

Social Service Worker

1. Consults with the clients and other professionals to arrive at an appropriate and accurate understanding of the case dynamics and likely outcomes or alternatives, makes it clear to the team the specific safety threats that have been identified, what they look like behaviorally in the family and how their intervention needs to focus on changing those specific behaviors. Exchanges information with DJJ staff for a sibling incarcerated at DJJ and coordinate contact per interagency protocols.

2. Discusses with the family every time the worker is with the family any Safety Plan still in place to ensure that it is controlling/managing the identified safety threats. The safety plan stays in place until 1) the safety threat no longer exists or ninety (90) days from the initiation of the Safety Plan or 2) an alternative plan (such as out of home placement) is required to control/manage the safety threats. Also discuss family progress in changing behaviors that caused children to be unsafe EVERY time the worker is with the family.

Note: In order to accurately and adequately assess child safety, the majority (over 50%) of these discussions must take place in the family home for first-hand observations of parent-child interactions and the physical environment.

3. Concurrent with ongoing safety assessment and within 30 days of the indicated case decision, assists the family to complete the Family's Story in Section II of the Family Centered Comprehensive Assessment and Case Plan. This provides an opportunity for the family to express in their own words how they feel about being involved in the system so that their fears and concerns can be addressed. Uses all the information gathered about the family situation to complete the comprehensive family assessment and service planning analysis with the family.

4. Building on the comprehensive family assessment, prepares with the family (specifically, with mother, father, age appropriate children, significant other persons) and appropriate service providers, a family centered treatment plan which details any changes which must be made in

parental behaviors or home conditions that make children unsafe and any services which will be provided to the family to assist in the behavioral changes.

With the assistance of and consultation with drug abuse specialists, makes decision about what type of drug test is appropriate under any given set of conditions. The expectation is that DSS staff will work with drug abuse specialists to determine what tests are necessary and what the test results mean in the context of child safety. This is also true for mental health, domestic violence and other conditions which require input and consultation with professionals in order to decide about treatment services and testing to guide appropriate services.

5. Makes reasonable efforts to engage the nonresidential parent in the treatment plan as appropriate based on the safety assessment of that individual and any existing court orders. The nonresidential parent is usually the father but that may not always be the case.

Note: While the objections of the custodial or residential parent need to be considered in any plan to involve the non-custodial/nonresidential parent, CPS has a duty to discuss with the custodial parent the potential benefits that this involvement might have for the children and to attempt to engage the absent or nonresidential parent in planning for their children.

Discusses with resident or custodial parent (usually Mother) that Father involvement is good for children. Research has validated the following areas of benefit and can serve as basis for discussion.

Children with involved fathers:

- show more confidence and less anxiety,
- perform better in school, and
- are less likely to be involved in destructive behaviors.

Father involvement benefits mothers. An involved father:

- teaches sons to respect women,
- is more likely to have positive communication with the mother, and
- is more likely to provide economic support.

Fathers benefit too by knowing they are having a lifelong impact on a child's life and by enjoying an irreplaceable relationship. All this supports and enhances the opportunity for positive interaction with a family.

If a child has been assessed to be at imminent risk of removal due to present or impending danger (a candidate for IV-E foster care) without effective preventive services, this determination must be documented in the case plan.

Note: If child has not been removed but was determined to be at imminent risk of removal absent these services (a candidate for IV-E foster care), a decision about whether the child continues to be at imminent risk of removal must be made at the three month case staffing for high risk situations. This decision and the steps the agency is taking to address these continuing concerns must be documented in the case record. The case must be staffed every three months until risk is

reduced and every six months thereafter. Documentation must clearly show this assessment for IV-E eligibility.

If the child must come into foster care, specific information will be needed for the IV-E eligibility determination. See DSS Forms 1905 and 1903 to help guide information gathering.

The plan must include documentation of time frames for completing the treatment goals and schedules for evaluation and review of the treatment plan.

Note: The treatment plan may be updated to continue services initiated during the investigation/assessment period.

Note: Service planning must involve all members of the family (to include but not limited to, mothers, fathers, step parents, significant others) and any age appropriate children. Document efforts to involve all family members and why a specific person is not involved.

6. Arranges and coordinates services provided by non-Child Protective Services agency personnel.
7. Arranges for and refers to specific services such as financial assistance, housing and family support.
8. Refers clients who appear to meet criteria for need and income to Medicaid office for assistance in applying. Note that the client must provide proof of citizenship and personal identity as part of the application process. Other eligibility criteria remain the same.
9. Monitors delivery of treatment services which includes, at a minimum, contacting other service providers, seeing the child and parents once a month and making a home visit to continue to assess safety, risk and progress on the treatment plan. Documents in CAPSS the family's activities over the past month relating to the treatment plan.

Maintains contact with DJJ regarding services provided to a sibling incarcerated at DJJ, to include quarterly staffings on mutual clients. See Chapter 8, Foster Care, Section 819.02 and 821. Coordinates with BabyNet when early intervention services are being provided to a child under three years of age.

For situations where family members involved in the treatment plan leave the state, a substitute contact can be made and documented in CAPSS as a successful face to face monthly visit ONLY if the child is seen by a professional in CPS or related field, such as, state child protection worker, mental health therapist or medical professional engaged in treating the child, law enforcement office or school personnel directly involved with the child AND there is supervisory concurrence that this contact meets the requirement to assess the child's current condition.

If the adult or child resides in South Carolina and is geographically distant, the DSS office with case management can make arrangements with another DSS county office for face to face contact. If the client is in some sort of facility (prison, hospital, DJJ), the worker can use contact

with the facility's case management/social work staff who does have direct contact with the child as a substitute for face to face contact with that child but must still see the parents once a month for continuity and joint case planning purposes.

10. Completes case management activities including: service planning; coordination; referral; monitoring; reassessment; and evaluation.
11. Provides other casework services and activities to clients as needed.
12. Documents treatment planning activities on the automated system (CAPSS) to include in addition to ongoing and routine activity with the family but not limited to, the rationale for removing a person from the treatment case if formerly related, added in error, deceased, multiple person codes, etc. Completes the plan itself using the CFASP treatment plan. Provides a copy to the family and files a copy in paper file.
13. Notifies supervisor immediately when there is loss of contact with the family for any reason to discuss how to locate. Makes diligent search monthly for minimum of three months prior to closing case. Documents in CAPSS monthly efforts to locate family. If there is evidence to suggest where the family has moved, immediately contacts the other SC county, other state or jurisdiction to provide information for recommended follow-up.

The plan to locate should include, but not be limited to:

- * varying contact times with the family;
- * requesting that law enforcement assist in locating and documenting results in accordance with agency requirements in Section 717 and 719. * making contact with a client on their job site;
- * sending registered letters to the last known address;
- * contacting the post office, utility companies, schools, or other such entities;
- * contacting known relatives and associates;
- * contacting other involved community agencies; and
- * requesting a CPS Alert when there is evidence that the person and/or family has moved out of state.

Social Service Supervisor

14. Reviews treatment plan to assure that the social service worker's performance meets policy, procedure and legal mandates.
15. Provides oversight and concurrence as appropriate to alternative methods of monthly face to face contact and determines with worker when individual should no longer be associated with a case for the purposes of the treatment plan and specific CAPSS documentation (use of the "Formerly Related" role code).
16. Provides opportunities for professional development.

17. Provides consultation to social service worker regarding service delivery and treatment strategies.

Social Service Worker

18. Consults with supervisor during treatment plan evaluations.
19. Reviews and updates the family assessment once every six months at a minimum or when significant changes occur within the family.

NOTE: The family assessment on the automated system must be reviewed every six months at a minimum, more often based on the level of risk to the child. The worker must discuss with the family the safety plan every time the worker meets with the family to ensure that the safety plan is controlling/managing the identified safety threats. The safety plan stays in place until 1) the safety threat no longer exists or 2) an alternative plan (such as out of home placement) is required to control/manage the safety threats.

20. Completes a comprehensive evaluation and progress review with the family, service providers and supervisor at a minimum of every six months, but more often if needed based on the facts of the case. This comprehensive case evaluation will focus on recognizing the changes in behavior that have occurred in the family members over time that are needed to create a safe environment for children and identifying any other changes needed. Documents this comprehensive evaluation in CAPSS using the summary format on the Case Evaluation section and updates the treatment plan as appropriate. Prints copy for client signatures and provides a copy for family.
21. Convenes family meeting within three to five days of the case review to discuss the progress or lack of progress toward completing the treatment plan as well as the well-being of the children in alternative caregiver placement or potential alternative caregiver placement. The family meeting should include, at a minimum, the father, mother, age appropriate children, and extended family and other persons significant to the family if they have or will have a role in supportive services, treatment, or protection.

Social Service Supervisor

22. Conducts case record review within the first three months that a case is open to assess:
 - a. whether services are based on comprehensive assessment and are designed to eliminate the safety threats and reduce risk of future harm by changing the behavior that led to child being unsafe;
 - b. appropriateness of any informal relative placement and delivery of any services in the relative's home;
 - c. the efforts to involve the family in planning.
23. Reviews with the worker the ongoing assessment of the family every six months (or every three months if high risk situation) and evaluates the need to revise or continue the treatment plan. Evaluates whether a child initially assessed to be at imminent risk of removal (candidate for IV-E foster care) continues to be at risk of removal and what actions have been taken to reduce risk of removal. Reviews with the worker the safety assessment and considers

the impact on the child and family. Considers any children in an alternative caregiver arrangement, specifically, the plan to get the child back home and evaluation of prognosis for parental change that will allow child to return home or any planned court involvement. Uses the CPS In-Home Treatment Supervisory Review Checklist DSS Form 30229, as guide for this review. Documents the review in CAPSS.

24. Reviews treatment plan and ongoing assessment of child's need and case plan and approves or gives further instruction for completion.

Social Service Worker

25. When the family refuses to cooperate with the treatment plan and the agency determines there is a preponderance of evidence to believe protective services are necessary to protect the child from harm without removal of custody, consults with supervisor and agency attorney to initiate a complaint with the Family Court to request continued intervention.

26. Consults DJJ staff to consider the need for and coordinate a meeting to discuss the incarcerated sibling's needs and to share information regarding the outcome of the family meeting. (See Section 750, S. C. Code of Laws, §63-7-920 and §63-7-1650) Updates automated system.

27. If information is gathered or discovered during the treatment process that differs significantly from previous findings, or alleges a new incident of suspected abuse/neglect, initiates a new report to allow for a thorough investigation of the new allegations. (Reference Sections 711, Screening of Recurrent Referrals, and 719, Child Protective Services Investigation)

28. Staffs case with all involved service providers, including but not limited to DJJ, according to the time frames set forth in the treatment plan and documents in automated system.

29. When the monthly progress reports and periodic evaluations support that the family has progressed so that safety threats are controlled, risk factors have been reduced, and the behaviors of the parents that led to the abuse or neglect have changed, staffs the case for closure with the involved service providers and the family. This requires intensive planning, cooperation and communication between DSS, the family, and treatment providers.

In order to close a CPS treatment case with the child in the home when parents have been abusing or are dependent on alcohol and other drugs and/or when any other factors such as domestic violence or mental health problems have caused the child to be unsafe, there must be documentation in the agency record of the following:

1. The parent/caregiver in question must be involved in a treatment program designed to change the behaviors that made the child unsafe and demonstrated significant progress on the treatment plan goals and there is a second person in the home who is the protective caregiver and DSS case consultation has taken place with the treatment provider(s) and sufficient changes in behavior have been made that eliminate the safety threats and reduce risk of future harm.

OR

2. The parent/caregiver has completed treatment and the caregiver has demonstrated observable behavioral changes in their ability to keep the child safe

AND

DSS case consultation has taken place with specific treatment provider(s) and sufficient changes in behavior have been made that eliminate the safety threats and reduce risk of future harm.

In general, case closure requires that the parental behaviors that led to the child being unsafe have been changed and the agency can articulate the reasons that support the belief that the child is now safe in the parent's care.

Social Service Supervisor

30. Ensures that before a treatment case is closed, there is a staffing or consultation with the family and with the professionals involved in delivery of services to the family. For example, if caregivers are involved with illegal substances, one of the professionals must be a drug abuse specialist in order to fully consider the impact of the drug use/abuse/addiction on the caregivers' ability to provide safe care for the child. If the issues involved domestic violence or mental health concerns, the DV and/or mental health professional is to be involved. This staffing or consultation can be face to face, telephone or other means of communication.

Social Service Supervisor/Technical Assistance Consultant

31. Prior to the end of the 18th month, staffs active case with county worker and supervisor as deemed appropriate and document case staffing in automated system.

Note: Reference Section 734, Case Plan - Treatment Services, for steps to be taken to close a case.

731.01 Treatment Cases Shared With Intensive Foster Care and Clinical Services (IFCCS)

Purpose: To coordinate services when CPS/IFCCS jointly serve the same family.

County Social Service Worker

1. When a youth in foster care is being case managed by Intensive Foster Care and Clinical Services (IFCCS) and the family is or becomes a CPS treatment family, or if there are siblings at home who are listed on the court order, provides all CPS services to the family.
2. Arranges regular staff meetings with IFCCS to coordinate services, including, for example, treatment plans, Family Court hearings, and Foster Care Review Board Meetings.

IFCCS Service Coordinator

3. Serves the youth in foster care until such time as the youth leaves foster care or is transferred back to the county or to Adoptions.

County Director/IFCCS Regional Director

4. In the event there is a disagreement about plans, services or responsibilities that cannot be resolved by caseworkers and supervisors, the County Director and IFCCS Regional Director are to resolve the difference.

Note: For clarification of the roles of IFCCS, refer to Chapter 8, Section 822.01.

Referenced Documents

Human Services Manual Section 717

Human Services Manual Section 721

Revision Comments

October 2008 - Establishes requirement to staff cases prior to closure with involved professionals, particularly drug abuse specialists. Revises statute citations.

July 2014 - Adding clarifications of reporting requirements of allegations of abuse and neglect for open family preservation (treatment) program services.

CHAPTER 7, Child Protective and Preventive Services Revision Number: 10-01 Effective Date: 01/14/2010

733 Non-Emergency Removal Hearings

Purpose: To describe the procedures to be followed when the case must be heard by Family Court for hearings held pursuant to **S. C. Code of Laws, §63-7-1660**. **NOTE: Section 718, Referral to the Court**, details procedure to be followed. At any time during the delivery of services, the department may petition the Family Court for authority to intervene and provide protective services without removal of the child.

Social Service Worker

1. In consultation with supervisor, requests DSS attorney to petition Family Court pursuant to **§63-7-1660, S. C. Code of Laws**, to consider removal of a child when the department determines by a preponderance of the evidence a child is an abused or neglected child and the child cannot be protected from unreasonable risk of harm to life, physical health or safety or mental well-being. Considers the safety of a child at DJJ who will be returning to the home upon release and if it is appropriate to ask the court for custody of that child. Documents in record this analysis.

2. If the abuse or addiction to drugs or alcohol by the parents or guardians is an issue, refers to **§63-7-1660(F)** for guidance on presumption of child abuse and neglect.

DSS Attorney

3. Ensures that a complaint complying with the requirements of **§63-7-1660** is completed and filed with the Family Court.

Social Service Worker

4. Completes Part Two in the Child and Family Assessment and Service Planning tool, DSS Form 30231, for a comprehensive family assessment identifying the family strengths and concerns needing to be addressed and completes Part Three and Part Four to build a treatment plan with the mother and father and with age appropriate children. Plans are individualized for each child based on the assessment/ongoing assessment of child's needs. The case plan should include recommendations from DJJ regarding the incarcerated sibling and the impact on the family assessment. Updates automated system.

5. Prepares a treatment services/placement plan to present to court in anticipation of removal as required by **§63-7-1680**. Ensures that case plan addresses treatment services to include visitation, placement issues and needs of the incarcerated sibling.

6. Upon a finding that the child shall remain in the home and protective services shall continue, modifies the treatment plan:

a. to address any immediate danger to the child; and

b. services to the parents so that the child is not endangered further. (Reference §63-7-1670, S. C. Code of Laws)

7. Ensures either plan describes:

a. any changes in parental behavior or home conditions which must be made; and

b. any services which will be provided to the family to ensure that the child will not be endangered, to include, visitation, placement issues and needs of the incarcerated sibling.

8. Reviews the treatment plan with the CPS supervisor to specifically consider goals, objectives, services and expected outcomes which are designed to alleviate any danger to the child and to aid the parent to prevent further abuse.

Social Service Worker/DSS Attorney

9. If changes to the plan are made by the court, submits the revised plan according to the time table ordered by the court but no later than seven days and ensures compliance with requirements of §63-7-1680. (See Section 750, - S. C. Code of Laws) Updates automated system.

Social Service Worker

10. Completes or updates the initial individual comprehensive family assessment and child assessment/case plan prior to any subsequent court intervention which may be required.

Social Service Worker

11. Upon a finding by Family Court that the child must be removed from the home, places the child in accordance with the order of the court and requirements of law and policy. (Reference Chapter 8, Permanency Planning Manual.)

Social Service Worker/DSS Attorney

12. Presents to the court the Placement Plan as required by §20-7-764. (Reference §63-7-1680, S. C. Code of Laws)

13. Notifies DJJ of family court findings in cases involving same child served by both agencies.

14. Updates case activities in automated system.

Referenced Documents

Revision Comments May 2009 -
Revised statute citations.

CHAPTER 7, Child Protective and Preventive Services Revision Number: 10-01 Effective Date: 01/14/2010

733.01 Hearings to Compel Services

Purpose: To describe the procedures to be followed when the case must be heard by Family Court for hearings pursuant to **S. C. Code of Laws Ann. §63-7-1650**. **Note:** At any time during the delivery of services, the department may petition the Family Court for authority to intervene and provide protective services without removal of the child.

Social Service Worker

1. In consultation with supervisor and all involved service providers, decides whether to initiate a court proceeding.

DSS Attorney

2. Petitions Family Court for a hearing to be held within thirty-five days pursuant to **§63-7-1650, S. C. Code of Laws Ann.**

3. Completes complaint with a full description of the department's basis for believing that the child cannot be protected adequately without intervention as required in §20-7-738(B).

Social Service Worker

4. Completes the initial comprehensive and child assessment/ongoing assessment of child's need/case plan prior to court intervention and updates the initial comprehensive family assessment and child assessment/case plan. (**Reference Section 730, Family Assessment**) Updates the dictation on automated system.

5. Reviews the treatment plan with the CPS supervisor to specifically consider goals, objectives, services and expected outcomes which are designed to alleviate danger to the child and to aid the parent to prevent further abuse and updates the Case Plan - Treatment Services as appropriate.

Social Service Supervisor

6. Consults with the department's legal representative.

7. Reviews complaint and other documents which support the department's position.

8. Provides support and assistance to the worker in preparing court case.

DSS Attorney

9. Presents to the court at the hearing the department's rationale for believing that intervention must be ordered.

10. Presents to the court at the hearing, a copy of the Case Plan - Treatment Services screen, or appropriate equivalent which includes:

a. the identified goals and objectives to bring about changes in the parents' behavior or home condition which must be made to reduce risk;

b. the anticipated time frames;

c. services to be provided;

d. involvement of the parents, child, sibling placed in alternative placements such as incarcerated at DJJ and other service providers in the preparation of the case plan - treatment services; and any other considerations regarding the process;

Note: If the court orders revision to the plan, the revised plan must be submitted to the court within two weeks (Reference §63-7-1670, S. C. Code of Laws Ann.). Notifies DJJ of the court ordered revisions to treatment plan.

Social Service Worker

11. Provides the CPS supervisor with information as to the status of all case reviews, the findings and the subsequent decisions.

12. Documents all consultation in automated system to include dates, times, relevant issues and decisions.

DSS Attorney

13. Schedules a review hearing at least once every twelve months and/or as court ordered to determine if services continue to be needed.

Social Service Worker

14. Notifies involved service providers, including DJJ staff, of pending hearings. Obtain status of incarcerated sibling including an updated assessment, services provided, changes in behavior, parental participation and recommendations regarding integrating the child back into the family. Coordinates staffing to ensure consensus on recommendations to family court with appropriate follow-up. (See Section 733.02, Judicial Review Hearings)

15. Terminates protective services:

a. when court orders an end to court jurisdiction; or

b. automatically at eighteen months unless an extension of services is ordered by the court.

(See S. C. Code of Laws Ann. §63-7-1670)

c. If case closure is appropriate, closes case on automated system and documents any other actions on automated system. Reference CAPSS Handbook.

Note: Notifies service providers, including DJJ, of case closure.

Referenced Documents Revision
Comments May 2009 - Revised
statute citations.

**CHAPTER 7, Child Protective and Preventive Services Revision Number: 10-01 Effective
Date: 01/14/2010**

734 Case Plan - Treatment Services

Purpose: To outline actions to be taken to evaluate the department's efforts to assist the family and/or family network to eliminate the safety threats and to reduce the risk factors which contributed to the abuse and/or neglect and the progress toward enabling the family to provide a safe environment for their children without the involuntary services of DSS.

Social Service Worker

1. Using the Child and Family Assessment and Service Planning tool, completes a review of case plan for treatment services at a minimum of every six months or when significant events occur, updates the initial comprehensive family assessment/ child assessment/ongoing assessment of child's need/case plan and updates the case plan for treatment services. Reviews and evaluates the plan at three months for high risk situations until risk has been reduced, then every six months.

Note: A review and evaluation of a case means to consider whether the services planned and delivered address the concerns identified and have the effect of reducing the likelihood of future risk and have improved the immediate safety for the child.

2. Measures the goals and achievement criteria against those in the original treatment plan to determine the level of progress.
3. Consults with the family (both mother and father and age appropriate children and significant others as identified by the family), supervisor, clients and other professionals in evaluating and determining progress. Presents case as needed and appropriate to multidisciplinary teams for assistance.
4. Makes home visit to discuss with the client the decision to continue the original plan or alter the plan with each evaluation.
5. Considers whether or not to involve the court or greatly revise the case plan if no progress has been made and it appears no progress will be made.
6. Discusses recommended changes in plan with supervisor for approval.
7. Completes update of the treatment plan, initial comprehensive family assessment and case evaluation summary form. Note: Print copy of the treatment plan for signatures and provide copy to client.
8. Documents review finding on automated system.

9. If a family moves out of the state and has an open treatment case, assesses the motive for the move and its impact on the safety of children in the home and:
 - a. notifies all involved parties in South Carolina to include, but not limited to, guardian ad litem, family court, and law enforcement, of the change in circumstances;
 - b. notifies, by telephone, the state/ jurisdiction to which the family moved of the case situation, the level of risk and need for services;
 - c. follows up with written information to include, but not limited to, case summary, court orders and law enforcement reports.
10. Staffs possible case closure with immediate supervisor and documents staffing on the automated system. Completes a safety assessment in Part One of the CFASP to consider if safety is still a concern and ~~Completes the Family Strengths and Risk Assessment tool~~ to determine if the level of risk of future harm has been reduced to support closing the case.
11. Considers issues of closure specific to a case where a child is living with an alternative caregiver. A case should not be closed solely based on the alternative living arrangement, rather on the movement by the parents to change the circumstances that led to the abuse or neglect and the alternative living arrangement. If the parents cannot make the changes necessary to ensure the child's safety, family court involvement is required to determine the child's permanent living arrangements. The agency must not leave a child in a temporary alternative living arrangement but must bring the family to closure on the issues that brought the family to the agency's attention.
12. Conducts home visit to discuss case closure with client. Discusses closure with other service providers.
13. Closes the case or moves toward closure when:
 - a. the parents/family have made progress to the extent that the child is no longer at a level of risk requiring state intervention and the parents are providing minimum care; or
 - b. the family has made inconsistent, little, or no progress, there is no reason to believe that they will, but there is little risk to the child; or
 - c. there is not sufficient evidence to take the matter to court, the parent refuses further services, and there is little risk to the child; or
 - d. the agency has lost contact with the clients or the clients have died; or
 - e. the current problems are not of a child protective services nature; or
 - f. Judicial Order directs the case to be closed.
- Social Service Supervisor**
14. Approves or disapproves case closure; or
15. Offers worker alternatives in continuing work with the family.

DSS Attorney

16. Brings the case to court for review for closure if the case is under the jurisdiction of the court and if prior court orders do not authorize closure without further review.

Social Service Worker

17. Documents case closure on the automated system as required by the automated system guide, Chapter 3-23.

Referenced Documents

Revision Comments May 2009 -
clarified risk assessment.

**South Carolina Department of Social Services
Human Services Policy and Procedure Manual**

CHAPTER 7, CHILD PROTECTION AND PERMANENCY

Revision Number: HSP-14-20

Effective Date: 9/17/2014

750 Title 63 - South Carolina Children's Code

SECTION 63-7-10. Purpose.

(A) Any intervention by the State into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice. Child welfare services must be based on these principles:

- (1) Parents have the primary responsibility for and are the primary resource for their children.
- (2) Children should have the opportunity to grow up in a family unit if at all possible.
- (3) State and community agencies have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention to reduce occurrence of maltreatment.
- (4) Services for families should be accessible and designed to encourage and enable families to adequately deal with their problems within their own family system.
- (5) All child welfare intervention by the State has as its primary goal the welfare and safety of the child.
- (6) Child welfare intervention into a family's life should be structured so as to avoid a child's entry into the protective service and foster care systems if at all possible.

- (7) The state's child welfare system must be designed to be child-centered, family-focused, community-based, and culturally competent in its prevention and protection efforts.
 - (8) Neighborhoods and communities are the primary source of opportunities and supports for families and have a primary responsibility in assuring the safety and vitality of their members.
 - (9) The Department of Social Services shall collaborate with the community to identify, support, and treat families in a nonthreatening manner, in both investigative and family assessment situations.
 - (10) A family assessment approach, stressing the safety of the child, building on the strengths of the family, and identifying and treating the family's needs is the appropriate approach for cases not requiring law enforcement involvement or the removal of the child.
 - (11) Only a comparatively small percentage of current child abuse and neglect reports are criminal in nature or will result in the removal of the child or alleged perpetrator.
 - (12) Should removal of a child become necessary, the state's foster care system must be prepared to provide timely and appropriate placements for children with relatives or in licensed foster care settings and to establish a plan which reflects a commitment by the State to achieving permanency for the child within reasonable timelines.
 - (13) The Department of Social Services staff who investigates serious child abuse and neglect reports with law enforcement must be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention and assessment.
 - (14) Services should be identified quickly and should build on the strengths and resources of families and communities.
- (B) It is the purpose of this chapter to:
- (1) acknowledge the different intervention needs of families;
 - (2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;

- (3) ensure permanency on a timely basis for children when removal from their homes is necessary;
- (4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and
- (5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

SECTION 63-7-20. Definitions.

When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

- (1) "Abandonment of a child" means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.
- (2) "Affirmative determination" means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:
 - (a) the court;
 - (b) the Department of Social Services upon a final agency decision in its appeals process;
or
 - (c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court's finding must be the affirmative determination.
- (3) "Child" means a person under the age of eighteen.
- (4) "Child abuse or neglect" or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:
 - (a) 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 or physical discipline which:

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

(b) 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;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care 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 absences 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. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

(5) "Child protective investigation" means an inquiry conducted by the department in response to a report of child abuse or neglect made pursuant to this chapter.

- (6) "Child protective services" means assistance provided by the department as a result of indicated reports or affirmative determinations of child abuse or neglect, including assistance ordered by the family court or consented to by the family. The objectives of child protective services are to:
- (a) protect the child's safety and welfare; and
 - (b) maintain the child within the family unless the safety of the child requires placement outside the home.
- (7) "Court" means the family court.
- (8) "Department" means the Department of Social Services.
- (9) "Emergency protective custody" means the right to physical custody of a child for a temporary period of no more than twenty-four hours to protect the child from imminent danger.

Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

- (10) "Guardianship of a child" means the duty and authority vested in a person by the family court to make certain decisions regarding a child, including:
- (a) consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment;
 - (b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and
 - (c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.
- (11) "Indicated report" means 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.
- (12) "Institutional child abuse and neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is the employee of a public or private residential home, institution, or agency.
- (13) "Legal custody" means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a

child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.

- (14) "Mental injury" means an 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.
- (15) "Party in interest" includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.
- (16) "Person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, 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. An investigation pursuant to Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.
- (17) "Physical custody" means the lawful, actual possession and control of a child.
- (18) "Physical injury" means death or permanent or temporary disfigurement or impairment of any bodily organ or function.
- (19) "Preponderance of evidence" means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.
- (20) "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

- (21) "Protective services unit" means the unit established within the Department of Social Services which has prime responsibility for state efforts to strengthen and improve the prevention, identification, and treatment of child abuse and neglect.
- (22) "Subject of the report" means a person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.
- (23) "Suspected report" means all initial reports of child abuse or neglect received pursuant to this chapter.
- (24) "Unfounded report" means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise.

SECTION 63-7-30. Seeking assistance.

A person seeking assistance in meeting child care responsibilities may use the services and facilities established by this chapter, including the single statewide telephone number and local child protective services where available. These persons must be referred to appropriate community resources or agencies, notwithstanding whether the problem presented involves child abuse or neglect.

SECTION 63-7-40. Safe haven for abandoned babies.

(A) A safe haven in this State must, without a court order, take temporary physical custody of an infant who is voluntarily left with the safe haven by a person who does not express an intent to return for the infant and the circumstances give rise to a reasonable belief that the person does not intend to return for the infant. If the safe haven is a hospital or hospital outpatient facility, the hospital or hospital facility shall perform any act necessary to protect the physical health or safety of the infant; any other safe haven shall, as soon as possible, but no later than six hours after receiving an infant, transport the infant to a hospital or hospital outpatient facility. The person leaving the infant is not required to disclose his or her identity; however, the person must leave the infant in the physical custody of a staff member or employee of the safe haven.

(B)(1) The safe haven must offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

(2) The safe haven must ask the person leaving the infant to identify any parent of the infant other than the person leaving the infant with the safe haven. The safe haven also must attempt to obtain from the person information concerning the infant's background and medical history as specified on a form provided by the Department of Social Services. This information includes, but is not limited to, information concerning the use of a controlled substance by the infant's mother, provided that information regarding the use of a controlled substance by the infant's mother is not admissible as evidence of the unlawful use of a controlled substance in any court proceeding. The safe haven shall give the person a copy of the form and a prepaid envelope for mailing the form to the Department of Social Services if the person does not wish to provide the information to the safe haven. These materials must be provided to safe havens by the department.

(3) Any identifying information disclosed by the person leaving the infant must be kept confidential by the safe haven and disclosed to no one other than the department. However, if a court determines that the immunity provisions of subsection (H) do not apply, the safe haven may disclose the information as permitted by confidentiality protections applicable to records of the safe haven, if the safe haven has such confidentiality protections for records. The department shall maintain confidentiality of this information in accordance with Section 63-7-1990.

(C) Not later than the close of the first business day after the date on which a hospital or hospital outpatient facility takes possession of an infant pursuant to subsection (A), the hospital or hospital outpatient facility shall notify the department that it has taken temporary physical custody of the infant. The department has legal custody of the infant immediately upon receipt of the notice. The department shall assume physical control of the infant as soon as practicable upon receipt of the notice, but no later than twenty-four hours after receiving notice that the infant is ready for discharge from the hospital or hospital outpatient facility. Assumption of custody by the department pursuant to this subsection does not constitute emergency protective custody, and the provisions of Subarticle 3 of Article 3 do not apply. The department is not required to initiate a child protective services investigation solely because an infant comes into its custody under this subsection.

(D) Immediately after receiving notice from a hospital or hospital outpatient facility pursuant to subsection (C), the department shall contact the South Carolina Law Enforcement Division for assistance in assuring that the infant is not a missing infant. The South Carolina Law Enforcement Division shall treat the request as ongoing for a period of thirty days and shall contact the department if a missing infant report is received that might relate to the infant.

(E)(1) Within forty-eight hours after taking legal custody of the infant, the department shall publish notice, in a newspaper of general circulation in the area where the safe haven that initially took the infant is located, and send a news release to broadcast and print media in the area. The notice and the news release must state the circumstances under which the infant was left at the safe haven, a description of the infant, and the date, time, and place of the permanency planning hearing provided for in subsection (E)(2). The notice and the news release must also state that any person wishing to assert parental rights in regard to the infant must do so at the hearing. If the person leaving the infant identified anyone as being a parent of the infant, the notice must be sent by certified mail to the last known address of the person identified as a parent at least two weeks prior to the hearing.

(2) Within forty-eight hours after obtaining legal custody of the infant, the department shall file a petition alleging that the infant has been abandoned, that the court should dispense with reasonable efforts to preserve or reunify the family, that continuation of keeping the infant in the home of the parent or parents would be contrary to the welfare of the infant, and that termination of parental rights is in the best interest of the infant. A hearing on the petition must be held no earlier than thirty and no later than sixty days after the department takes legal custody of the infant. This hearing is the permanency planning hearing for the infant. If the court approves the permanent plan of termination of parental rights, the order must also provide that a petition for termination of parental rights on the grounds of abandonment must be filed within ten days after receipt of the order by the department.

(F) The act of leaving an infant with a safe haven pursuant to this section is conclusive evidence that the infant has been abused or neglected for purposes of Department of Social Services' jurisdiction and for evidentiary purposes in any judicial proceeding in which abuse or neglect of an infant is an issue. It is also conclusive evidence that the requirements for termination of parental rights have been satisfied as to any parent who left the infant or acted in concert with the person leaving the infant.

(G) A person who leaves an infant at a safe haven or directs another person to do so must not be prosecuted for any criminal offense on account of such action if:

- (1) the person is a parent of the infant or is acting at the direction of a parent;
- (2) the person leaves the infant in the physical custody of a staff member or an employee of the safe haven; and
- (3) the infant is not more than thirty days old or the infant is reasonably determined by the hospital or hospital outpatient facility to be not more than thirty days old.

This subsection does not apply to prosecution for the infliction of any harm upon the infant other than the harm inherent in abandonment.

- (H) A safe haven and its agents, and any health care professionals practicing within a hospital or hospital outpatient facility, are immune from civil or criminal liability for any action authorized by this section, so long as the safe haven, or health care professional, complies with all provisions of this section.
- (I) The department, either alone or in collaboration with any other public entity, shall take appropriate measures to achieve public awareness of the provisions of this section.
- (J) For purposes of this section:
- (1) "infant" means a person not more than thirty days old; and
 - (2) "safe haven" means a hospital or hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or any staffed house of worship during hours when the facility is staffed.
- (K) Annually the department shall submit a report to the General Assembly containing data on infants who come into the custody of the department pursuant to this section. The data must include, but are not limited to, the date, time, and place where the infant was left, the hospital to which the infant was taken, the health of the infant at the time of being admitted to the hospital, disposition and placement of the infant, and, if available, circumstances surrounding the infant being left at the safe haven. No data in the report may contain identifying information.

ARTICLE 3.

IDENTIFICATION, INVESTIGATION, AND INTERVENTION

SUBARTICLE 1.

IDENTIFYING AND REPORTING CHILD ABUSE AND NEGLECT

SECTION 63-7-310. Persons required to report.

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

(B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

(C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

SECTION 63-7-315. *Prohibit retaliation against employees for reports child abuse or neglect.*

(A) An employer must not dismiss, demote, suspend, or otherwise discipline or discriminate against an employee who is required or permitted to report child abuse or neglect pursuant to

Section 63-7-310 based on the fact that the employee has made a report of child abuse and neglect.

(B) An employee who is adversely affected by conduct that is in violation of subsection (A) may bring a civil action for reinstatement and back pay. An action brought pursuant to this subsection may be commenced against an employer, including the State, a political subdivision of the State, and an office, department, independent agency, authority, institution, association, or other body in state government. An action brought pursuant to this subsection must be commenced within three years of the date the adverse personnel action occurred.

(C) In an action brought pursuant to subsection (B), the court may award reasonable attorney's fees to the prevailing party; however, in order for the employer to receive reasonable attorney's fees pursuant to this subsection, the court must make a finding pursuant to Section 63-7-2000 that: (1) the employee made a report of suspected child abuse or neglect maliciously or in bad faith; or (2) the employee is guilty of making a false report of suspected child abuse or neglect pursuant to Section 63-7-440."

SECTION 63-7-320. Notification and transfer.

(A) Where reports are made pursuant to Section 63-7-310 to a law enforcement agency, the law enforcement agency shall notify the county department of social services of the law enforcement's response to the report at the earliest possible time.

(B) Where a county or contiguous counties have established multicounty child protective services, the county department of social services immediately shall transfer reports pursuant to this section to the service.

SECTION 63-7-330. Confidentiality of information.

(A) The identity of the person making a report pursuant to this section must be kept confidential by the agency or department receiving the report and must not be disclosed except as provided for in subsection (B) or (C) or as otherwise provided for in this chapter.

(B) When the department refers a report to a law enforcement agency for a criminal investigation, the department must inform the law enforcement agency of the identity of the person who reported the child abuse or neglect. The identity of the reporter must only be used

by the law enforcement agency to further the criminal investigation arising from the report, and the agency must not disclose the reporter's identity to any person other than an employee of the agency who is involved in the criminal investigation arising from the report. If the reporter testifies in a criminal proceeding arising from the report, it must not be disclosed that the reporter made the report.

(C) When a law enforcement agency refers a report to the department for an investigation or other response, the law enforcement agency must inform the department of the identity of the person who reported the child abuse or neglect. The department must not disclose the identity of the reporter to any person except as authorized by Section 63-7-1990.

SECTION 63-7-340. Previous reports.

When a report is referred to the department for an investigation or other response, the department must determine whether previous reports have been made regarding the same child or the same subject of the report. In determining whether previous reports have been made, the department must determine whether there are any suspected, indicated, or unfounded reports maintained pursuant to Section 63-7-930 regarding the same child or the same subject of the report.

SECTION 63-7-350. Reports for lack of investigation.

If the department does not conduct an investigation as a result of information received pursuant to this subarticle, the department must make a record of the information and must classify the record as a Category IV unfounded report in accordance with Section 63-7-930. The department and law enforcement are authorized to use information recorded pursuant to this section for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

SECTION 63-7-360. Mandatory reporting to coroner.

A person required under Section 63-7-310 to report cases of suspected child abuse or neglect, including workers of the department, who has reason to believe a child has died as the result of child abuse or neglect, shall report this information to the appropriate medical examiner or coroner. Any other person who has reason to believe that a child has died as a result of child abuse or neglect may report this information to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the appropriate law enforcement agency, circuit solicitor's office, the county department of social services and, if the institution making a report is a hospital, to the hospital.

SECTION 63-7-370. Domestic violence reporting.

The law enforcement officer upon receipt of a report of domestic violence may report this information to the Department of Social Services. The department may treat the case as suspected report of abuse and may investigate the case as in other allegations of abuse in order to determine if the child has been harmed.

SECTION 63-7-380. Photos and x-rays without parental consent.

A person required to report under Section 63-7-310 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, radiological, and other medical reports must be sent to the department at the time a report pursuant to Section 63-7-310 is made, or as soon as reasonably possible after the report is made.

SECTION 63-7-390. Reporter immunity from liability.

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions.

In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

SECTION 63-7-400. Department of Social Services immunity from liability.

An employee, volunteer, or official of the Department of Social Services required or authorized to perform child protective or child welfare-related functions or an individual with whom the department has contracted to convene family group conferences or a law enforcement officer required or authorized to perform child protective or child welfare related functions is immune from civil or criminal liability which might otherwise result by reason of acts or omissions within the scope of the official duties of the employee, volunteer, convener, officer, or official, as long as the employee, volunteer, convener, officer, or official acted in good faith and was not reckless, wilful, wanton, or grossly negligent. In all such civil or criminal proceedings good faith is rebuttably presumed. This grant of immunity is cumulative to and does not replace any other immunity provided under the South Carolina Tort Claims Act.

SECTION 63-7-410. Failure to report; penalties.

A person required to report a case of child abuse or neglect or a person required to perform any other function under this article who knowingly fails to do so, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

SECTION 63-7-420. Abrogation of privileged communication; exceptions.

The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client or clergy member, including Christian Science Practitioner or religious healer, and penitent, is abrogated and does not constitute grounds for failure to report or the exclusion of evidence in a civil protective proceeding resulting from a report pursuant to this article. However, a clergy member, including Christian Science Practitioner or religious healer, must report in accordance with this subarticle except when information is received from the alleged perpetrator of the abuse and

neglect during a communication that is protected by the clergy and penitent privilege as provided for in Section 19-11-90.

SECTION 63-7-430. Civil action for bad faith reporting.

(A) If the family court determines pursuant to Section 63-7-2000 that a person has made a report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63-7-440, the department may bring a civil action to recover the costs of the department's investigation and proceedings associated with the investigation, including attorney's fees. The department also is entitled to recover costs and attorney's fees incurred in the civil action authorized by this section. The decision of whether to bring a civil action pursuant to this section is in the sole discretion of the department.

(B) If the family court determines pursuant to Section 63-7-2000 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63-7-440, a person who was subject of the false report has a civil cause of action against the person who made the false report and is entitled to recover from the person who made the false report such relief as may be appropriate, including: (1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

SECTION 63-7-440. Knowingly making false report.

(A) It is unlawful to knowingly make a false report of abuse or neglect.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than ninety days, or both.

SECTION 63-7-450. Department of Social Services to provide information to public.

(A) The Department of Social Services Protective Services shall inform all persons required to report under this subarticle of the nature, problem, and extent of child abuse and neglect

and of their duties and responsibilities in accordance with this article. The department also, on a continuing basis, shall conduct training programs for department staff and appropriate training for persons required to report under this subarticle.

(B) The department, on a continuing basis, shall inform the public of the nature, problem, and extent of the child abuse and neglect and of the remedial and therapeutic services available to children and their families. The department shall encourage families to seek help consistent with Section 63-7-30.

(C) The department, on a continuing basis, shall actively publicize the appropriate telephone numbers to receive reports of suspected child abuse and neglect, including the twenty-four hour, statewide, toll-free telephone service and respective numbers of the county department offices.

SUBARTICLE 3.

EMERGENCY PROTECTIVE CUSTODY

SECTION 63-7-610. Statewide jurisdiction.

(A) A law enforcement officer investigating a case of suspected child abuse or neglect or responding to a request for assistance by the department as it investigates a case of suspected child abuse or neglect has authority to take emergency protective custody of the child pursuant to this subarticle in all counties and municipalities.

(B) Immediately upon taking emergency protective custody, the law enforcement officer shall notify the local office of the department responsible to the county in which the activity under investigation occurred.

(C) The department shall designate by policy and procedure the local department office responsible for procedures required by this subarticle when a child resides in a county other than the one in which the activity under investigation occurred. The probable cause hearing required by Section 63-7-710 may be held in the county of the child's residence or the county of the law enforcement officer's jurisdiction.

SECTION 63-7-620. Emergency protective custody.

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child's parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to Section 63-7-1660. When a child is taken into emergency protective custody following an incident of excessive corporal punishment, and the only injury to the child is external lesions or minor bruises, other children in the home shall not be taken into emergency protective custody solely on account of the injury of one child through excessive corporal punishment. However, the officer may take emergency protective custody of other children in the home if a threat of harm to them is further indicated by factors including, but not limited to, a prior history of domestic violence or other abuse in the home, alcohol or drug abuse if known or evident at the time of the initial contact, or other circumstances indicative of danger to the children;

(2) the child's parent, parents, or guardian has been arrested or the child has become lost accidentally and as a result the child's welfare is threatened due to loss of adult protection and supervision; and

(a) in the circumstances of arrest, the parent, parents, or guardian does not consent in writing to another person assuming physical custody of the child;

(b) in the circumstances of a lost child, a search by law enforcement has not located the parent, parents, or guardian.

(B)(1) If the child is in need of emergency medical care at the time the child is taken into emergency protective custody, the officer shall transport the child to an appropriate health care facility. Emergency medical care may be provided to the child without consent, as provided in Section 63-5-350. The parent or guardian is responsible for the cost of emergency medical care that is provided to the child. However, the parent or guardian is not responsible for the cost of medical examinations performed at the request of law enforcement or the department solely for the purpose of assessing whether the child has been abused or neglected unless it is determined that the child has been harmed as defined in this chapter.

(2) If the child is not in need of emergency medical care, the officer or the department shall transport the child to a place agreed upon by the department and law enforcement, and the



department within two hours shall assume physical control of the child and shall place the child in a licensed foster home or shelter within a reasonable period of time. In no case may the child be placed in a jail or other secure facility or a facility for the detention of criminal or juvenile offenders. While the child is in its custody, the department shall provide for the needs of the child and assure that a child of school age who is physically able to do so continues attending school.

SECTION 63-7-630. Notification of Department of Social Services.

When an officer takes a child into emergency protective custody under this subarticle, the officer immediately shall notify the department. The department shall notify the parent, guardian, or other person exercising temporary or permanent control over the child as early as reasonably possible of the location of the child unless there are compelling reasons for believing that disclosure of this information would be contrary to the best interests of the child.

SECTION 63-7-640. Preliminary investigation.

The department shall conduct within twenty-four hours after the child is taken into emergency protective custody by law enforcement or pursuant to ex parte order a preliminary investigation to determine whether grounds for assuming legal custody of the child exist and whether reasonable means exist for avoiding removal of the child from the home of the parent or guardian or for placement of the child with a relative and means for minimizing the emotional impact on the child of separation from the child's home and family. During this time the department, if possible, shall convene, a meeting with the child's parents or guardian, extended family, and other relevant persons to discuss the family's problems that led to intervention and possible corrective actions, including placement of the child.

SECTION 63-7-650. Risk assessment before placement.



Before agreeing to or acquiescing in a corrective action that involves placement of the child with a relative or other person or making an interim placement with a relative while retaining custody of the child or as soon as possible after agreeing to or acquiescing in a corrective action, the department shall secure from the relative or other person and other adults in the home an affidavit attesting to information necessary to determine whether a criminal history or

history of child abuse or neglect exists and whether this history indicates there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. As soon as possible, the department shall confirm the information supplied in the affidavit by checking the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the relative or other person resides and, to the extent reasonably possible, jurisdictions in which the relative or other person has resided during that period. The department must not agree to or acquiesce in a placement if the affidavit or these records reveal information indicating there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. The relative or other person must consent to a check of the above records by the department.

SECTION 63-7-660. Assumption of legal custody.

If the department determines after the preliminary investigation that there is probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in imminent and substantial danger, the department may assume legal custody of the child without the consent of the child's parent, guardian, or custodian. The department shall make every reasonable effort to notify the child's parent, guardian, or custodian of the location of the child and shall make arrangements for temporary visitation unless there are compelling reasons why visitation or notice of the location of the child would be contrary to the best interests of the child. The notification must be in writing and shall include notice of the right to a hearing and right to counsel pursuant to this article. Nothing in this section authorizes the department to physically remove a child from the care of the child's parent or guardian without an order of the court. The department may exercise the authority to assume legal custody only after a law enforcement officer has taken emergency protective custody of the child or the family court has granted emergency protective custody by ex parte order, and the department has conducted a preliminary investigation pursuant to Section 63-7-640.

SECTION 63-7-670. Returning child to parents; alternative procedures.

If emergency protective custody of the child was taken by a law enforcement officer pursuant to this subarticle, and the department concludes after the preliminary investigation that the child should be returned to the child's parent, guardian, or custodian, the department shall consult with the law enforcement officer who took emergency protective custody unless the

department and the law enforcement agency have agreed to an alternative procedure. If the officer objects to the return of the child, the department must assume legal custody of the child until a probable cause hearing can be held. The alternative procedure agreed to by the department and the law enforcement agency may provide that the child must be retained in custody if the officer cannot be contacted, conditions under which the child may be returned home if the officer cannot be contacted, other persons within the law enforcement agency who are to be consulted instead of the officer, or other procedures. If no alternative procedure has been agreed to and the department is unable to contact the law enforcement officer after reasonable efforts to do so, the department shall consult with the officer's designee or the officer's agency.

SECTION 63-7-680. Emergency protective custody extension.

The period of emergency protective custody may be extended for up to twenty-four additional hours if:

- (1) the department concludes that the child is to be placed with a relative or other person instead of taking legal custody of the child;
- (2) the department requests the appropriate law enforcement agency to check for records concerning the relative or other person, or any adults in that person's home; and
- (3) the law enforcement agency notifies the department that the extension is needed to enable the law enforcement agency to complete its record check before the department's decision on whether to take legal custody of the child.

SECTION 63-7-690. Relative placement.

(A) If within the twenty-four hours following removal of the child:

- (1) the department has identified a specified relative or other person with whom it has determined that the child is to be placed instead of the department's taking legal custody of the child; and
- (2) both the relative or other person with whom the child is to be placed and the child's parent or guardian have agreed to the placement, the department may retain physical custody of the child for no more than five additional days if necessary to enable

the relative or other person to make travel or other arrangements incident to the placement.

- (B) A probable cause hearing pursuant to Section 63-7-710 shall not be held unless the placement fails to occur as planned within the five-day period or the child's parent or guardian makes a written request for a hearing to the department. The department must give the child's parent or guardian written notice of the right to request a probable cause hearing to obtain a judicial determination of whether removal of the child from the home was and remains necessary. Upon receipt of a written request for a hearing from the child's parent or guardian, the department shall schedule a hearing for the next date on which the family court is scheduled to hear probable cause hearings.
- (C) If the placement does not occur as planned within the five-day period, the department immediately must determine whether to assume legal custody of the child and file a petition as provided in Section 63-7-700(B). The department shall assure that the child is given age-appropriate information about the plans for placement and any subsequent changes in those plans at the earliest feasible time.

SECTION 63-7-700. Emergency protective custody proceedings.

(A) If a law enforcement officer clearly states to the department at the time the officer delivers physical control of the child to the department that the child is not to be returned to the home or placed with a relative before a probable cause hearing regardless of the outcome of a preliminary investigation, the department immediately must take legal custody of the child. In this case, at a minimum, the department shall conduct a preliminary investigation as provided in Section 63-7-640 within seventy-two hours after the child was taken into emergency protective custody and shall make recommendations concerning return of the child to the home or placement with a relative or other person to the family court at the probable cause hearing or take other appropriate action as provided in this chapter.

(B)(1) The department, upon assuming legal custody of the child, shall begin a child protective investigation, including immediate attention to the protection of other children in the home, or other setting where the child was found. The department shall initiate a removal proceeding in the appropriate family court pursuant to Section 63-7-1660 on or before the next working day after initiating the investigation. If a noncustodial parent is not named as a party, the department shall exercise every reasonable effort to promptly notify the noncustodial parent that a removal proceeding has been initiated and of the date and time of any hearings scheduled pursuant to this subarticle.

(2) Upon a determination by the department before the probable cause hearing that there is not a preponderance of evidence that child abuse or neglect occurred, the department may place physical custody of the child with the parent, parents, guardian, immediate family member, or relative, with the department retaining legal custody pending the probable cause hearing.

(3) When the facts and circumstances of the report clearly indicate that no abuse or neglect occurred, the report promptly must be determined to be unfounded, and the department shall exercise reasonable efforts to expedite the placement of the child with the parent, parents, guardian, immediate family member, or relative.

(C) If the child is returned to the child's parent, guardian, or custodian following the preliminary investigation, a probable cause hearing must be held if requested by the child's parent, guardian, or custodian or the department or the law enforcement agency that took emergency protective custody of the child. The request must be made in writing to the court within ten days after the child is returned. A probable cause hearing pursuant to Section 63-7-710 must be scheduled within seven days of the request to determine whether there was probable cause to take emergency physical custody of the child.

SECTION 63-7-710. Probable cause hearing.

(A) The family court shall schedule a probable cause hearing to be held within seventy-two hours of the time the child was taken into emergency protective custody. If the third day falls upon a Saturday, Sunday, or holiday, the probable cause hearing must be held no later than the next working day. If there is no term of court in the county when the probable cause hearing must be held, the hearing must be held in another county in the circuit. If there is no term of family court in another county in the circuit, the probable cause hearing may be heard in another court in an adjoining circuit.

(B) The probable cause hearing may be conducted by video conference at the discretion of the judge.

(C) At the probable cause hearing, the family court shall undertake to fulfill the requirements of Section 63-7-1620 and shall determine whether there was probable cause for taking emergency protective custody and for the department to assume legal custody of the child and shall determine whether probable cause to retain legal custody of the child remains at the time of the hearing.

(D) At the probable cause hearing, the respondents may submit affidavits as to facts which are alleged to form the basis of the removal and to cross-examine the department's witnesses as to whether there existed probable cause to effect emergency removal.

(E) The hearing on the merits to determine whether removal of custody is needed, pursuant to Section 63-7-1660, must be held within thirty-five days of the date of receipt of the removal petition. At the probable cause hearing, the court shall set the time and date for the hearing on the merits. A party may request a continuance that would result in the hearing being held more than thirty-five days after the petition was filed, and the court may grant the request for continuance only if exceptional circumstances exist. If a continuance is granted, the hearing on the merits must be completed within sixty-five days following receipt of the removal petition. The court may continue the hearing on the merits beyond sixty-five days without returning the child to the home only if the court issues a written order with findings of fact supporting a determination that the following conditions are satisfied, regardless of whether the parties have agreed to a continuance:

(1) the court finds that the child should remain in the custody of the department because there is probable cause to believe that returning the child to the home would seriously endanger the child's physical safety or emotional well-being;

(2) the court schedules the case for trial on a date and time certain which is not more than thirty days after the date the hearing was scheduled to be held; and

(3) the court finds that exceptional circumstances support the continuance or the parties and the guardian ad litem agree to a continuance.

(F) The court may continue the case past the date and time certain set forth in subsection (E) only if the court issues a new order as required in subsection (E).

(G) The court may continue the case because a witness is unavailable only if the court enters a finding of fact that the court cannot decide the case without the testimony of the witness. The court shall consider and rule on whether the hearing can begin and then recess to have the witness' testimony taken at a later date or by deposition. The court shall rule on whether the party offering the witness has exercised due diligence to secure the presence of the witness or to preserve the witness' testimony.

(H) This section does not prevent the court from conducting a pendente lite hearing on motion of any party and issuing an order granting other appropriate relief pending a hearing on the merits.

(I) If the child is returned to the home pending the merits hearing, the court may impose such terms and conditions as it determines appropriate to protect the child from harm, including measures to protect the child as a witness.

(J) When a continuance is granted pursuant to this section, the family court shall ensure that the hearing is rescheduled within the time limits provided in this section and give the hearing priority over other matters pending before the court except a probable cause hearing held pursuant to this section, a detention hearing held pursuant to Section 63-19-830, or a hearing held pursuant to Section 63-19-1030 or 63-19-1210 concerning a child who is in state custody pursuant to Chapter 19. An exception also may be made for child custody hearings if the court, in its discretion, makes a written finding stating compelling reasons, relating to the welfare of the child, for giving priority to the custody hearing.

SECTION 63-7-720. Reasonable efforts to prevent removal.

(A) An order issued as a result of the probable cause hearing held pursuant to Section 63-7-710 concerning a child of whom the department has assumed legal custody shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

- (1) the services made available to the family before the department assumed legal custody of the child and how they related to the needs of the family;
- (2) the efforts of the department to provide services to the family before assuming legal custody of the child;
- (3) why the efforts to provide services did not eliminate the need for the department to assume legal custody;
- (4) whether a meeting was convened as provided in Section 63-7-640, the persons present, and the outcome of the meeting or, if no meeting was held, the reason for not holding a meeting;
- (5) what efforts were made to place the child with a relative known to the child or in another familiar environment;
- (6) whether the efforts to eliminate the need for the department to assume legal custody were reasonable including, but not limited to, whether services were

reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances, and whether efforts to place the child in a familiar environment were reasonable.

(B) -- If the court finds that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.

SECTION 63-7-730. Expedited placement of child with relative.

(A) If the court finds at the probable cause hearing that the department made reasonable efforts to prevent removal of the child and that continuation of the child in the home would be contrary to the welfare of the child, the court may order expedited placement of the child with a grandparent or other relative of the first or second degree. In making this expedited placement decision, the court shall consider the totality of the circumstances including, but not limited to, the individual's suitability, fitness, and willingness to serve as a placement for the child. A parent who complies with these requirements must be the first relative considered by the court for expedited placement. The court shall require the department to check the names of all adults in the home against the Central Registry of Child Abuse and Neglect, other relevant records of the department, county sex abuse registers, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the person resides and, to the extent reasonably possible, jurisdictions in which the person has resided during that period. The court may hold open the record of the probable cause hearing for up to twenty-four hours to receive these reports. Nothing in this section precludes the department from requesting or the court from ordering pursuant to the department's request either a full study of the individual's home before placement or the licensing or approval of the individual's home before placement.

(B) If the court orders expedited placement of the child with a grandparent or other relative of the first or second degree, the individual may be added as a party to the action for the duration of the case or until further order of the court.

SECTION 63-7-740. Ex parte emergency protective custody.

(A) The family court may order ex parte that a child be taken into emergency protective custody without the consent of parents, guardians, or others exercising temporary or permanent control over the child if:

- (1) the family court judge determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent and substantial danger to the child's life, health, or physical safety; and
- (2) parents, guardians, or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

(B) If the court issues such an order, the department shall conduct a preliminary investigation and otherwise proceed as provided in this subarticle.

SECTION 63-7-750. Doctor or hospital may detain child; civil immunity.

(A) A physician or hospital to which a child has been brought for treatment may detain the child for up to twenty-four hours without the consent of the person responsible for the child's welfare if the physician or hospital:

- (1) has reason to believe that the child has been abused or neglected;
- (2) has made a report to a law enforcement agency and the department pursuant to Section 63-7-310, stating the time the physician notified the agency or department that the child was being detained until a law enforcement officer could arrive to determine whether the officer should take emergency physical custody of the child pursuant to Subarticle 3; and
- (3) has reason to believe that release of the child to the child's parent, guardian, custodian, or caretaker presents an imminent danger to the child's life, health, or physical safety. A hospital must designate a qualified person or persons within the hospital who shall have sole authority to detain a child on behalf of the hospital.

(B) A physician or hospital that detains a child in good faith as provided in this section is immune from civil or criminal liability for detaining the child.

SECTION 63-7-760. Protocols.

The department and local law enforcement agencies shall develop written protocols to address issues related to emergency protective custody. The protocols shall cover at a minimum information exchange between the department and local law enforcement agencies, consultation on decisions to assume legal custody, and the transfer of responsibility over the child, including mechanisms and assurances for the department to arrange expeditious placement of the child.

SUBARTICLE 5.

INTAKE AND INVESTIGATION DUTIES OF THE DEPARTMENT OF SOCIAL SERVICES

SECTION 63-7-900. Purpose of the subarticle.

- (A) It is the purpose of this subarticle to encourage the voluntary acceptance of any service offered by the department in connection with child abuse and neglect or another problem of a nature affecting the stability of family life.
- (B) The department must be staffed adequately with persons trained in the investigation of suspected child abuse and neglect and in the provision of services to abused and neglected children and their families.
- (C) The department actively must seek the cooperation and involvement of local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.
- (D) In all instances, the agency must act in accordance with the policies, procedures, and regulations promulgated and distributed by the State Department of Social Services pursuant to this chapter.

SECTION 63-7-910. Duties of the department.

(A)(1) The Department of Social Services may maintain a toll-free number available to persons throughout the State for the referral of family-related problems, including:

- (a) the reporting of known or suspected cases of child abuse or neglect;
- (b) other problems of a nature which may affect the stability of family life.

(2) This telephone service shall operate continuously. Upon receipt of a call involving suspected abuse or neglect, the Department of Social Services shall transmit the full contents of the report to the appropriate county department office. Immediately upon transmitting the report the department shall destroy the contents of the suspected report. Upon receipt of a call involving other problems of a nature which may affect the stability of family life, the department shall refer the call to the appropriate county department office or other service agency where appropriate.

(B) The department shall have within it a separate organizational unit administered within the department with qualified staff and resources sufficient to fulfill the purposes and functions assigned to it by this article.

(C) The department's responsibilities shall include, but are not limited to:

- (1) assigning and monitoring initial child protection responsibility through periodic review of services offered throughout the State;
- (2) assisting in the diagnosis of child abuse and neglect;
- (3) coordinating referrals of known or suspected child abuse and neglect;
- (4) measuring the effectiveness of existing child protection programs and facilitating research, planning, and program development; and
- (5) establishing and monitoring a statewide Central Registry for Child Abuse and Neglect.

(D) The department may contract for the delivery of protective services, family preservation services, foster care services, family reunification services, adoptions services, and other related services or programs. The department shall remain responsible for the quality of the services or programs and shall ensure that each contract contains provisions requiring the provider to deliver services in accordance with departmental policies and state and federal law.

(E) The department may promulgate regulations and formulate policies and methods of administration to carry out effectively child protective services, activities, and responsibilities.

SECTION 63-7-920. Investigations and case determination.

(A)(1) Within twenty-four hours of the receipt of a report of suspected child abuse or neglect or within twenty-four hours after the department has assumed legal custody of a child pursuant to Section 63-7-660 or 63-7-670 or within twenty-four hours after being notified that a child has been taken into emergency protective custody, the department must begin an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is "indicated" or "unfounded".

(2) The finding must be made no later than forty-five days from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director's designee, for good cause shown, pursuant to guidelines adopted by the department.

(3) If the investigation cannot be completed because the department is unable to locate the child or family or for other compelling reasons, the report may be classified as unfounded Category III and the investigation may be reopened at a later date if the child or family is located or the compelling reason for failure to complete the investigation is removed. The department must make a finding within forty-five days after the investigation is reopened.

(B) The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will

not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

(D) The department must furnish to parents or guardians on a standardized form the following information as soon as reasonably possible after commencing the investigation:

- (1) the names of the investigators;
- (2) the allegations being investigated;
- (3) whether the person's name has been recorded by the department as a suspected perpetrator of abuse or neglect;
- (4) the right to inspect department records concerning the investigation;
- (5) statutory and family court remedies available to complete the investigation and to protect the child if the parent or guardian or subject of the report indicates a refusal to cooperate;
- (6) how information provided by the parent or guardian may be used;
- (7) the possible outcomes of the investigation; and
- (8) the telephone number and name of a department employee available to answer questions.

(E) This subarticle does not require the department to investigate reports of child abuse or neglect which resulted in the death of the child unless there are other children residing in the home, or a resident of the home is pregnant, or the subject of the report is the parent, guardian, or person responsible for the welfare of another child regardless of whether that child resides in the home.

SECTION 63-7-930. Classification categories.

(A) Reports of child abuse and neglect must be classified in the department's data system and records in one of three categories: Suspected, Unfounded, or Indicated. If the report is categorized as unfounded, the entry must further state the classification of unfounded reports as set forth in subsection (C). All initial reports must be considered suspected. Reports must be maintained in the category of suspected for no more than sixty days after the report was

received by the department. By the end of the sixty-day time period, suspected reports must be classified as either unfounded or indicated pursuant to the agency's investigation.

(B)(1) Indicated findings must be based upon a finding of the facts available to the department that there is a preponderance of evidence that the child is an abused or neglected child. Indicated findings must include a description of the services being provided the child and those responsible for the child's welfare and all relevant dispositional information.

(2) If the family court makes a determination or the process described in Subarticle 9 results in a determination that the indicated finding is not supported by a preponderance of evidence that there was any act of child abuse or neglect, the case classification must be converted to unfounded and Section 63-7-940 applies.

(3) If the family court makes a specific determination, or the process described in Subarticle 9 results in a determination that there is not a preponderance of evidence that the person who was the subject of the report committed an act of child abuse or neglect, but that the child was abused or neglected by an unknown person, the department must maintain the case as an indicated case and access to records of the case may be granted as provided in Section 63-7-1990. The department shall not delete from its data system or records information indicating that the person was the subject of the report. The department's data system and records must clearly record the results of the court or administrative proceeding. If the case record and data system included a designation with the name of the subject of the report indicating that the person committed the abuse or neglect, that designation must be removed following the determination that there is not a preponderance of evidence that the subject of the report committed an act of child abuse or neglect.

(C) All reports that are not indicated at the conclusion of the investigation and all records of information for which an investigation was not conducted pursuant to Section 63-7-350 must be classified as unfounded. Unfounded reports must be further classified as Category I, Category II, Category III, or Category IV.

(1) Category I unfounded reports are those in which abuse and neglect were ruled out following the investigation. A report falls in this category if evidence of abuse or neglect as defined in this chapter was not found regardless of whether the family had other problems or was in need of services.

(2) Category II unfounded reports are those in which the investigation did not produce a preponderance of evidence that the child is an abused or neglected child.

(3) Category III unfounded reports are those in which an investigation could not be completed because the department was unable to locate the child or family or for some other compelling reason.

- (4) Category IV unfounded reports are records of information received pursuant to Section 63-7-350, but which were not investigated by the department.

SECTION 63-7-940. Use of unfounded case information.

(A) Information concerning reports classified as unfounded contained in the statewide data system and records must be maintained for not less than five years after the finding. Information contained in unfounded cases is not subject to disclosure under the Freedom of Information Act as provided for in Chapter 4, Title 30. Access to and use of information contained in unfounded cases must be strictly limited to the following purposes and entities:

- (1) a prosecutor or law enforcement officer or agency, for purposes of investigation of a suspected false report pursuant to Section 63-7-440;
- (2) the department or a law enforcement officer or agency, for the purpose investigating allegations of abuse or neglect;
- (3) the department or a law enforcement officer or agency, when information is received that allows the reopening of a Category III unfounded report pursuant to Section 63-7-920(A);
- (4) as evidence in a court proceeding, if admissible under the rules of evidence as determined by a judge of competent jurisdiction;
- (5) a person who is the subject of a report in an action brought by a prosecutor or by the department, if otherwise subject to discovery under the applicable rules of procedure;
- (6) the department, for program improvement, auditing, and statistical purposes;
- (7) as authorized in Section 63-7-2000;
- (8) the Department of Child Fatalities pursuant to Section 63-11-1960; and
- (9)(a) the director or his designee who may disclose information to respond to an inquiry by a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review

information disclosed pursuant to this subitem must be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.

(b) The department shall state that the case was unfounded when disclosing information pursuant to this item."

(B) Except as authorized in this section, no person may disseminate or permit dissemination of information maintained pursuant to subsection (A). A person who disseminates or permits dissemination in violation of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both. A person aggrieved by an unlawful dissemination in violation of this subsection may bring a civil action to recover damages incurred as a result of the unlawful act and to enjoin its dissemination or use.

SECTION 63-7-950. Withholding health care.

(A) Upon receipt of a report that a parent or other person responsible for the welfare of a child will not consent to health care needed by the child, the department shall investigate pursuant to Section 63-7-920. Upon a determination by a preponderance of evidence that adequate health care was withheld for religious reasons or other reasons reflecting an exercise of judgment by the parent or guardian as to the best interest of the child, the department may enter a finding that the child is in need of medical care and that the parent or other person responsible does not consent to medical care for religious reasons or other reasons reflecting an exercise of judgment as to the best interests of the child. The department may not enter a finding by a preponderance of evidence that the parent or other person responsible for the child has abused or neglected the child because of the withholding of medical treatment for religious reasons or for other reasons reflecting an exercise of judgment as to the best interests of the child. However, the department may petition the family court for an order finding that medical care is necessary to prevent death or permanent harm to the child. Upon a determination that a preponderance of evidence shows that the child might die or suffer permanent harm, the court may issue its order authorizing medical treatment without the consent of the parent or other person responsible for the welfare of the child. The department may move for emergency relief pursuant to family court rules when necessary for the health of the child.

(B) Proceedings brought under this section must be considered child abuse and neglect proceedings only for purposes of appointment of representation pursuant to Section 63-7-1620.

(C) This section does not authorize intervention if the child is under the care of a physician licensed under Chapter 47, Title 40, who supports the decision of the parent or guardian as a matter of reasonable medical judgment.

SECTION 63-7-960. Consolidation and delivery of services.

The department is charged with providing, directing, or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their welfare or others exercising temporary or permanent control over these children. Services must not be construed to include emergency protective custody provided for in Subarticle 3.

SECTION 63-7-970. Children of incarcerated women.

The local office of the department responsible for the county of the mother's legal residence must provide, direct, or coordinate the appropriate and timely delivery of services to children born of incarcerated mothers where no provision has been made for placement of the child outside the prison setting. Referral of these cases to the appropriate local office is the responsibility of the agency or institution having custody of the mother.

SECTION 63-7-980. Cooperation between the department and law enforcement.

(A) The department must cooperate with law enforcement agencies within the area it serves and establish procedures necessary to facilitate the referral of child protection cases to the department.

(B)(1) Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the department must notify the appropriate law enforcement agency of those facts within

twenty-four hours of the department's finding for the purposes of police investigation. The law enforcement agency must file a formal incident report at the time it is notified by the department of the finding.

(2) When the intake report is of alleged sexual abuse, the department must notify the appropriate law enforcement agency within twenty-four hours of receipt of the report to determine if a joint investigation is necessary. The law enforcement agency must file a formal incident report at the time it is notified of the alleged sexual abuse.

(C) The law enforcement agency must provide to the department copies of incident reports generated in any case reported to law enforcement by the department and in any case in which the officer responsible for the case knows the department is involved with the family or the child. The law enforcement officer must make reasonable efforts to advise the department of significant developments in the case, such as disposition in summary court, referral of a juvenile to the Department of Juvenile Justice, arrest or detention, trial date, and disposition of charges.

(D) The department must include in its records copies of incident reports provided under this section and must record the disposition of charges.

SECTION 63-7-990. Access to sex offender registry.

Notwithstanding any other provision of law, upon request of the department, a criminal justice agency having custody of or access to state or local law enforcement records or county sex offender registries shall provide the department with information pertaining to the criminal history of an adult residing in the home of a child who is named in a report of suspected child abuse or neglect or in a home in which it is proposed that the child be placed. This information shall include conviction data, nonconviction data, arrests, and incident reports accessible to the agency. The department shall not be charged a fee for this service.

SUBARTICLE 7.

INSTITUTIONAL ABUSE AND NEGLECT

SECTION 63-7-1210. Department investigation of institutional abuse.

(A) The Department of Social Services is authorized to receive and investigate reports of abuse and neglect of children who reside in or receive care or supervision in residential institutions, foster homes, and childcare facilities. Responsibility for investigating these entities must be assigned to a unit or units not responsible for selecting or licensing these entities. In no case does the Department of Social Services have responsibility for investigating allegations of abuse and neglect in institutions operated by the Department of Social Services.

(B) Foster homes subject to this section are those which are supervised by or recommended for licensing by the department or by child placing agencies. Indicated reports must be based upon a finding that abuse or neglect is supported by a preponderance of the evidence available to the department.

(C) The Department of Social Services may initiate proceedings in the circuit court to enjoin the operations of a foster home, an institution, or a child placing agency or to require other corrective action if necessary for the safety of the children. The department shall take whatever steps it considers necessary to inform potential reporters of abuse and neglect of its responsibilities under this section.

(D) The Department of Social Services must investigate an allegation of abuse or neglect of a child where the child is in the custody of or a resident of a residential treatment facility or intermediate care facility for persons with intellectual disability licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health.

(E) The Department of Social Services has access to facilities for the purpose of conducting investigations and has authority to request and receive written statements, documents, exhibits, and other information pertinent to an investigation including, but not limited to, hospital records. The appropriate officials, agencies, departments, and political subdivisions of the State must assist and cooperate with the court and the Department of Social Services in furtherance of the purposes of this section.

(F) The Department of Social Services may file with the family court an affidavit and a petition to support issuance of a warrant at any time during an investigation. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the premises of the child, to inspect the premise where the child may be located or may reside, and to obtain copies of medical, school, or other records necessary for investigation of the allegations of abuse or neglect.

(G) The department shall promulgate regulations consistent with this authority. The regulations shall cover at a minimum investigation of reports, notice to the institutions and sponsoring agencies, and remedial action.

SECTION 63-7-1220. South Carolina Law Enforcement Division investigation of Department of Juvenile Justice and Department of Social Services institutional abuse cases.

The State Law Enforcement Division is authorized to receive and investigate reports of institutional abuse and neglect alleged to have occurred in any institution or foster home operated by the Department of Juvenile Justice and any institution or childcare facility operated by the Department of Social Services. The State Law Enforcement Division may promulgate regulations consistent with this authority to investigate these reports and take remedial action, if necessary.

SECTION 63-7-1230. Immediate entry in Central Registry of name of person determined to have abused child; notification; challenge.

When the investigation performed pursuant to this subarticle results in a determination that an individual has harmed a child or threatened a child with harm, as defined in Section 63-7-20, the name of that individual must be entered immediately in the Central Registry of Child Abuse and Neglect. The department must notify the individual in writing by certified mail that his name has been entered in the registry, of his right to request an appeal of the decision to enter his name in the registry, and of the possible ramifications regarding future employment and licensing if he allows his name to remain in the registry. The procedures set forth in Subarticle 9 apply when an individual challenges the entry of his name in the registry and challenges of the entry in the registry pursuant to this section must be given expedited review in the appellate process.

SUBARTICLE 9.

ADMINISTRATIVE APPEAL OF INDICATED CASES

SECTION 63-7-1410. Purpose.

The purpose of this subarticle is to provide a child protective services appeals process for reports that have been indicated pursuant to Subarticles 5 and 13 and are not being brought before the family court for disposition and for reports indicated and entered in the Central Registry pursuant to Section 63-7-1230 and not being brought before the family court for disposition. The appeals hearing must be scheduled and conducted in accordance with the department's fair hearing regulations. This process is available only to the person determined to have abused or neglected the child.

SECTION 63-7-1420. Appeal of judicial determinations.

If a person requests an appeal under this subarticle and the family court has determined that the person is responsible for abuse or neglect of the child, an appeal pursuant to this subarticle is not available. If the family court reaches such a determination after the initiation of the appeal provided for in this subarticle, the department shall terminate the appeal upon receipt of an order that disposes of the issue. If a proceeding is pending in the family court that may result in a finding that will dispose of an appeal under this subarticle, the department shall stay the appeal pending the court's decision.

SECTION 63-7-1430. Notice and opportunity to be heard.

(A) If the department determines that a report of suspected child abuse or neglect is indicated and the department is not taking the case to the family court for disposition, or if the case was entered in the Central Registry pursuant to Section 63-7-1230 and the department is not taking the case to family court for disposition, the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child. The notice must inform the person of the right to appeal the case decision and that, if he intends to appeal the decision, he must notify the department of his intent in writing within thirty days of receipt of the notice. The notice also must advise the person that the appeal process is for the purpose of determining whether a preponderance of evidence supports the case decision that the person abused or neglected the child. If the person does not notify the

department of his intent to appeal in writing within thirty days of receipt of the notice, the right to appeal is waived by the person and the case decision becomes final.

(B) Within fourteen days after receipt of a notice of intent to appeal, an appropriate official of the department designated by the director must conduct an interim review of case documentation and the case determination. The interim review may not delay the scheduling of the contested case hearing. If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department's case record and database as provided in Section 63-7-930(B)(2) or (3). If the person's name was in the Central Registry as a result of a determination pursuant to Section 63-7-1230 and the interim review results in a reversal of the decision that supports that entry, the person's name must be removed from the Central Registry.

(C) The state director shall appoint a hearing officer to conduct a contested case hearing for each case decision appealed. The hearing officer shall prepare recommended findings of fact and conclusions of law for review by the state director or the state director's designee who shall render the final decision. The designee under this subsection must not be a person who was involved in making the original case decision or who conducted the interim review of the original case decision. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

(D) After a contested case hearing, if the state director or the director's designee decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department's case record and database as provided in Section 63-7-930(B)(2) or (3). If the person's name was in the Central Registry as a result of a determination pursuant to Section 63-7-1230 and the state director or the director's designee reverses the decision that supports that entry, the person's name must be removed from the Central Registry. If the state director or the director's designee affirms the determination against the appellant, the appellant has the right to seek judicial review in the family court of the jurisdiction in which the case originated.

SECTION 63-7-1440. Judicial review.

An appellant seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The appellant shall serve a copy of the petition upon the department. The family court shall conduct a judicial review in accordance with the standards of review provided for in Section 1-23-380. The court may enter judgment upon the

pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed. The appellant is not entitled to a trial de novo in the family court.

SUBARTICLE 11.

JUDICIAL PROCEEDINGS

SECTION 63-7-1610. Jurisdiction and venue.

- (A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.
- (B) The county in which the child resides is the legal place of venue.

SECTION 63-7-1620. Legal representation of children.

In all child abuse and neglect proceedings:

- (1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to Section 63-11-530(C).
- (2) The family court may appoint legal counsel for the child. Counsel for the child may not be the same as counsel for:
 - (a) the parent, legal guardian, or other person subject to the proceeding;
 - (b) any governmental or social agency involved in the proceeding;
 - (c) the child's guardian ad litem.

(3) Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.

(4) The interests of the State and the Department of Social Services must be represented by the legal representatives of the Department of Social Services in any judicial proceeding.

SECTION 63-7-1630. Notice of hearings.

The department shall provide notice of a hearing held in connection with an action filed or pursued under Subarticle 3 or Section 63-7-1650, 63-7-1660, 63-7-1670, 63-7-1680, 63-7-1700, or 63-7-2550 to the foster parent, the preadoptive parent, or the relative who is providing care for a child. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, preadoptive parent, or relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action.

SECTION 63-7-1640. Family preservation.

(A) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child's health and safety must be the paramount concern.

(B) The family court may rule on whether reasonable efforts to preserve or reunify a family should be required in hearings regarding removal of custody, review of amendments to a placement plan, review of the status of a child in foster care, or permanency planning or in a separate proceeding for this purpose. The court may consider this issue on the motion of a named party, the child's guardian ad litem, or the foster care review board, provided that the foster care review board has reviewed the case pursuant to Section 63-11-720 or the child has previous entry into foster care.

(C) The family court may authorize the department to terminate or forego reasonable efforts to preserve or reunify a family when the records of a court of competent jurisdiction show or when the family court determines that one or more of the following conditions exist:

(1) the parent has subjected the child or another child while residing in the parent's domicile to one or more of the following aggravated circumstances:

- (a) severe or repeated abuse;
- (b) severe or repeated neglect;
- (c) sexual abuse;
- (d) acts the judge finds constitute torture; or
- (e) abandonment;

(2) the parent has been convicted of or pled guilty or nolo contendere to murder of another child, or an equivalent offense, in this jurisdiction or another;

(3) the parent has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child, or an equivalent offense, in this jurisdiction or another;

(4) the parent has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter of the child or another child while residing in the parent's domicile, or an equivalent offense, in this jurisdiction or another;

(5) physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting:

- (a) an offense against the person, as provided for in Title 16, Chapter 3;
- (b) criminal domestic violence, as defined in Section 16-25-20;
- (c) criminal domestic violence of a high and aggravated nature, as defined in Section 16-25-65; or
- (d) the common law offense of assault and battery of a high and aggravated nature, or an equivalent offense in another jurisdiction;

(6) the parental rights of the parent to another child of the parent have been terminated involuntarily;

(7) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental

illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child;

(8) other circumstances exist that the court finds make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the permanent plan for the child.

(D) The department may proceed with efforts to place a child for adoption or with a legal guardian concurrently with making efforts to prevent removal or to make it possible for the child to return safely to the home.

(E) If the family court's decision that reasonable efforts to preserve or reunify a family are not required results from a hearing other than a permanency planning hearing, the court's order shall require that a permanency planning hearing be held within thirty days of the date of the order.

(F) In determining whether to authorize the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must consider whether initiation or continuation of reasonable efforts to preserve or reunify the family is in the best interests of the child. If the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must make specific written findings in support of its conclusion that one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, and why continuation of reasonable efforts is not in the best interest of the child. If the court does not authorize the department to terminate or forego reasonable efforts where one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, the court must make specific written findings in support of its conclusion that continuation of reasonable efforts is in the best interest of the child. The court must not consider the availability or lack of an adoptive resource as a reason to deny the request to terminate or forego reasonable efforts.

(G) In any case in which the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the department shall file a petition for termination of parental rights within sixty days, unless there are compelling reasons why termination of parental rights would be contrary to the best interests of the child.

SECTION 63-7-1650. Services without removal.

(A) Upon investigation of a report under Section 63-7-920 or at any time during the delivery of services by the department, the department may petition the family court for authority to intervene and provide protective services without removal of custody if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be protected from harm without intervention.

(B) The petition shall contain a full description of the basis for the department's belief that the child cannot be protected adequately without department intervention, including a description of the condition of the child, any previous efforts by the department to work with the parent or guardian, treatment programs which have been offered and proven inadequate, and the attitude of the parent or guardian towards intervention and protective services.

(C) Upon receipt of a petition under this section, the family court shall schedule a hearing to be held within thirty-five days of the filing date to determine whether intervention is necessary.

(D) The parties to the petition must be served with a summons and notices of right to counsel and of the hearing date and time along with the petition. Personal jurisdiction over the parties is effected if they are served at least seventy-two hours before the hearing. No responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty-five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) Intervention and protective services must not be ordered unless the court finds that the allegations of the petition are supported by a preponderance of the evidence including a finding that the child is an abused or neglected child as defined in Section 63-7-20 and the child cannot be protected from further harm without intervention.

SECTION 63-7-1660. Services with removal.

(A) Upon investigation of a report received under Section 63-7-310 or at any time during the delivery of services by the department, the department may petition the family court to remove the child from custody of the parent, guardian, or other person legally responsible for the child's welfare if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be safely maintained in the home in that he cannot be protected from unreasonable risk of harm affecting the child's life, physical health, safety, or mental well-being without removal. If a noncustodial parent is not named as a party in the removal petition, the agency shall exercise every reasonable effort to promptly

notify the noncustodial parent that a removal proceeding has been initiated and of the date and time of any hearings scheduled pursuant to this section.

(B)(1) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including facts supporting the department's allegation that the child is an abused or neglected child as defined in Section 63-7-20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child's life, physical health or safety, or mental well-being and the child cannot reasonably be protected from this harm without being removed, a description of the condition of the child, any previous efforts to work with the parent or guardian, in-home treatment programs which have been offered and proven inadequate, and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition also shall contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child that may result upon removal.

(2) The petition for removal may include a petition for termination of parental rights. The petition for removal must include a petition for termination of parental rights if court records or other evidence indicate the existence of one or more of the conditions set forth in Section 63-7-1640(C)(1) through (8), unless there are compelling reasons for believing that termination of parental rights would be contrary to the best interests of the child.

(C)(1) Whether or not the petition for removal includes a petition for termination of parental rights, the petition shall contain a notice informing the parents of the potential effect of the hearing on their parental rights and a notice to all interested parties that objections to the sufficiency of a placement plan, if ordered, or of any recommendations for provisions in the plan or court order must be raised at the hearing. The notice must be printed in boldface print or in all upper case letters and set off in a box.

(2) If the petition includes a petition for termination of parental rights, the notice shall state: "As a result of this hearing, you could lose your rights as a parent".

(3) If the petition does not include a petition for termination of parental rights, the notice shall state: "At this hearing the court may order a treatment plan. If you fail to comply with the plan, you could lose your rights as a parent".

(D) Upon receipt of a removal petition under this section, the family court shall schedule a hearing to be held within thirty-five days of the date of receipt to determine whether removal is necessary. The parties to the petition must be served with a summons and notices of right to counsel and the hearing date and time along with the petition. Personal jurisdiction over the parties is effected if they are served at least seventy-two hours before the hearing. No

responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty-five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) The court shall not order that a child be removed from the custody of the parent or guardian unless the court finds that the allegations of the petition are supported by a preponderance of evidence including a finding that the child is an abused or neglected child as defined in Section 63-7-20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child's life, physical health or safety, or mental well-being and the child cannot reasonably be protected from this harm without being removed.

(F)(1) It is presumed that a newborn child is an abused or neglected child as defined in Section 63-7-20 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

(a) a blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant, or (b) the child has a medical diagnosis of fetal alcohol syndrome; and

(c) a blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant, or

(d) another child of the mother has the medical diagnosis of fetal alcohol syndrome.

(2) This presumption may be rebutted by proof that the father or another adult who will assume the role of parent is available and suitable to provide care for the child in the home of the mother. The father or the other adult must be made a party to the action and subject to the court's order establishing the conditions for maintaining the child in the mother's home. This statutory presumption does not preclude the court from ordering removal of a child upon other proof of alcohol or drug abuse or addiction by the parent or person responsible for the child who has harmed the child or threatened the child with harm.

(G) If the court removes custody of the child, the court's order shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

- (1) the services made available to the family before the removal of the child and how they related to the needs of the family;
- (2) the efforts of the agency to provide these services to the family before removal;
- (3) why the efforts to provide services did not eliminate the need for removal; and
- (4) whether the efforts to eliminate the need for removal were reasonable including, but not limited to, whether they were reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances. If the department's first contact with the child occurred under such circumstances that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.

SECTION 63-7-1670. Treatment plan.

(A) At the close of a hearing pursuant to Section 63-7-1650 or 63-7-1660 and upon a finding that the child shall remain in the home and that protective services shall continue, the family court shall review and approve a treatment plan designed to alleviate any danger to the child and to aid the parents so that the child will not be endangered in the future.

(B) The plan must be prepared by the department and shall detail any changes in parental behavior or home conditions that must be made and any services which will be provided to the family to ensure, to the greatest extent possible, that the child will not be endangered. Whenever possible, the plan must be prepared with the participation of the parents, the child, and any other agency or individual that will be required to provide services. The plan must be submitted to the court at the hearing. If any changes in the plan are ordered, the department shall submit a revised plan to the court within two weeks of the hearing, with copies to the parties and legal counsel. Any dispute regarding the plan must be resolved by the court. The terms of the plan must be included as part of the court order. The court order shall specify a date when treatment goals must be achieved and court jurisdiction ends, unless the court specifically finds that the matter must be brought back before the court for further review before the case may be closed. If the order requires further court review before case closure, the order shall specify a time limit for holding the next hearing.

(C)(1) Unless services are to terminate earlier, the department shall schedule a review hearing before the court at least once every twelve months to establish whether the conditions which required the initial intervention exist. If the conditions no longer exist, the court shall order

termination of protective services, and the court's jurisdiction shall end. If the court finds that the conditions which required the initial intervention are still present, it shall establish:

- (a) what services have been offered to or provided to the parents;
- (b) whether the parents are satisfied with the delivery of services;
- (c) whether the department is satisfied with the cooperation given to the department by the parents;
- (d) whether additional services should be ordered and additional treatment goals established; and
- (e) the date when treatment goals must be achieved and court jurisdiction ends.

(2) The court order shall specify a date upon which jurisdiction will terminate automatically, which must be no later than eighteen months after the initial intervention. Jurisdiction may be extended pursuant to a hearing on motion by any party, if the court finds that there is clear and convincing evidence that the child is threatened with harm absent a continuation of services.

SECTION 63-7-1680. Approval or amendment of plan.

- (A) If the court orders that a child be removed from the custody of the parent or guardian, the court must approve a placement plan. A plan must be presented to the court for its approval at the removal hearing or within ten days after the removal hearing. If the plan is presented subsequent to the removal hearing, the court shall hold a hearing on the plan if requested by a party. The plan must be a written document prepared by the department. To the extent possible, the plan must be prepared with the participation of the parents or guardian of the child, the child, and any other agency or individual that will be required to provide services in order to implement the plan.
- (B) The first section of the plan shall set forth the changes that must occur in the home and family situation before the child can be returned. These changes must be reasonably related to the reasons justifying removal of the child from the custody of the parents or guardian. This section of the plan must contain a notice to the parents or guardian that failure to make the indicated changes within six months may result in termination of parental rights.
- (C) The second section of the plan shall set forth:
 - (1) specific actions to be taken by the parents or guardian of the child; and

- (2) social or other services to be provided or made available to the parent or guardian of the child.

This section of the plan must include time frames for commencement or completion of specific actions or services. This section must contain a notice to the parents or guardian that completion of the indicated actions will not result in return of the child unless the changes set forth in section one of the plan have occurred.

- (D) The third section of the plan shall set forth rights and obligations of the parents or guardian while the child is in custody including, but not limited to:

- (1) the responsibility of the parents or guardian for financial support of the child during the placement; and
- (2) the visitation rights and obligations of the parents or guardian during the placement.

The department may move before the family court for termination or suspension of visits between the parent or guardian and the child. The family court may order termination or suspension of the visits if ongoing contact between the parent or guardian and the child would be contrary to the best interests of the child. This section of the plan must include a notice to the parents or guardian that failure to support or visit the child as provided in the plan may result in termination of parental rights.

- (E) The fourth section of the plan must address matters relating to the placement of the child including, but not limited to, the following:

- (1) the nature and location of the placement of the child, unless there are compelling reasons for concluding that disclosure of the location of the placement to the parents, guardian, or other person would be contrary to the best interests of the child. The placement must be as close to the child's home as is reasonably possible, unless there are compelling reasons for concluding that placement at a greater distance is necessary to promote the child's well-being. In the absence of good cause to the contrary, preference must be given to placement with a relative or other person who is known to the child and who has a constructive and caring relationship with the child;
- (2) visitation or other contact with siblings, other relatives, and other persons important to the child. The plan shall provide for as much contact between the child and these persons as is reasonably possible and consistent with the best interests of the child;

- (3) social and other supportive services to be provided to the child and the foster parents, including counseling or other services to assist the child in dealing with the effects of separation from the child's home and family; and
- (4) the minimum number and frequency of contacts that a caseworker with the department will have with the child, which must be based on the particular needs and circumstances of the individual child but which must not be less than once a month for a child placed in this State.

(F) The court shall approve the plan only if it finds that:

- (1) the plan is consistent with the court's order placing the child in the custody of the department;
- (2) the plan is consistent with the requirements for the content of a placement plan set forth in subsections (B) through (E);
- (3) if the parents or guardian of the child did not participate in the development of the plan, that the department made reasonable efforts to secure their participation; and
- (4) the plan is meaningful and designed to address facts and circumstances upon which the court based the order of removal.

If the court determines that any of these criteria are not satisfied, the court shall require that necessary amendments to the plan be submitted to the court within a specified time but no later than seven days. A hearing on the amended plan must be held if requested by a party.

(G) The court shall include in its order and shall advise defendants on the record that failure to remedy the conditions that caused the removal within six months, may result in termination of parental rights, subject to notice and a hearing as provided in Article 7. Before the court orders return of the child, the court must find that the changes in the home and family situation specified in section one of the plan have occurred and that the child can be safely returned to the home. Completion of the tasks specified in section two of the plan is not in itself sufficient basis for return of the child.

(H) The department immediately shall give a copy of the plan to the parents or guardian of the child, and any other parties identified by the court, including the child if the court considers it appropriate. If a copy of the plan is not given to the child, the department shall provide the child with age-appropriate information concerning the substance of the plan unless the court finds that disclosure of any part of the plan to the child would be inconsistent with the child's best interests. A copy of any part of the plan that directly pertains to the foster family or the foster child must be provided to the foster parents.

- (I) The plan may be amended at any time if all parties agree to the revisions, and the revisions are approved by the court. The amended plan must be submitted to the court with a written explanation for the proposed change. The plan also may be amended by the court upon motion of a party after a hearing based on evidence demonstrating the need for the amendment. A copy of the amended plan immediately must be given to the parties specified in subsection (H).
- (J) Any objections to the sufficiency of a plan or the process by which a plan was developed must be made at the hearing on the plan. Failure to request a hearing or to enter an objection at the hearing constitutes a waiver of the objection. The sufficiency of the plan or of the process for developing the plan may not be raised as an issue in a proceeding for termination of parental rights under Article 7.
- (K) Upon petition of a party in interest, the court may order the state or county director or other authorized representative of the department to show cause why the agency should not be required to provide services in accordance with the plan. The provisions of the plan must be incorporated as part of a court order issued pursuant to this section. A person who fails to comply with an order may be held in contempt and subject to appropriate sanctions imposed by the court.

SECTION 63-7-1690. Placement plans; substance abuse issues.

- (A) When the conditions justifying removal pursuant to Section 63-7-1660 include the addition of the parent or abuse by the parent of controlled substances, the court may require as part of the placement plan ordered pursuant to Section 63-7-1680:
 - (1) the parent to successfully complete a treatment program operated by the Department of Alcohol and Other Drug Abuse Services or another treatment program approved by the department before return of the child to the home;
 - (2) any other adult person living in the home who has been determined by the court to be addicted to or abusing controlled substances or alcohol and whose conduct has contributed to the parent's addiction or abuse of controlled substances or alcohol to successfully complete a treatment program approved by the department before return of the child to the home; and
 - (3) the parent or other adult, or both, identified in item (2) to submit to random testing for substance abuse and to be alcohol or drug free for a period of time to be determined by the court before return of the child. The parent or other adult identified in item (2) must continue random testing for substance abuse and must be alcohol or

drug free for a period of time to be determined by the court after return of the child before the case will be authorized to be closed.

- (B) Results of tests ordered pursuant to this section must be submitted to the department and are admissible only in family court proceedings brought by the department.

SECTION 63-7-1700. Permanency planning.

(A) The family court shall review the status of a child placed in foster care upon motion filed by the department to determine a permanent plan for the child. The permanency planning hearing must be held no later than one year after the date the child was first placed in foster care. At the initial permanency planning hearing, the court shall review the status of the child and the progress being made toward the child's return home or toward any other permanent plan approved at the removal hearing. The court's order shall make specific findings in accordance with this section. An action for permanency planning must be brought for a child who enters the custody of the department by any mechanism, including subarticle 3 or Section 63-7-1660 or 63-9-330. If the child enters the custody of the department pursuant to Section 63-9-330 and no action is pending in the family court concerning the child, the department may initiate the permanency planning hearing with a summons and petition for review. All parties must be served with the motion or the summons and petition at least ten days before the hearing, and no responsive pleading is required.

(B) The department shall attach a supplemental report to the motion or summons and petition which must contain at least:

- (1) that information necessary to support findings required in subsections (C) through (H), as applicable;
- (2) the recommended permanent plan and suggested timetable for attaining permanence;
- (3) a statement of whether or not the court has authorized the department to forego or terminate reasonable efforts pursuant to Section 63-7-1640; and
- (4) any reports of the local foster care review board which pertain to the child.

The department may use the same form for the supplemental report, reports from the department to the local foster care review board, and reports compiled for internal department reviews.

(C) At the permanency planning hearing, the court shall review the department's plan for achieving permanence for the child. If the department's plan is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the department must show compelling reasons for the selection of another permanent plan. If the court approves a plan that is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the court must find compelling reasons for approval of the plan and that the plan is in the child's best interests.

(D) If the court determines at the permanency planning hearing that the child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the court shall order the child returned to the child's parent. The court may order a specified period of supervision and services not to exceed twelve months. When determining whether the child should be returned, the court shall consider all evidence; if the removal of the child from the family was due to drug use by one or both parents, then a drug test must be administered to the parent or both parents, as appropriate, and the results must be considered with all other evidence in determining whether the child should be returned to the parents' care; and the supplemental report including whether the parent has substantially complied with the terms and conditions of the plan approved pursuant to Section 63-7-1680."

(E) Unless subsection (C), (F), or (G) applies, if the court determines at the permanency planning hearing that the child should not be returned to the child's parent at that time, the court's order shall require the department to file a petition to terminate parental rights to the child not later than sixty days after receipt of the order. If a petition to terminate parental rights is to be filed, the department shall exercise and document every reasonable effort to promote and expedite the adoptive placement and adoption of the child, including a thorough adoption assessment and child-specific recruitment. Adoptive placements must be diligently sought for the child and failure to do so solely because a child is classified as "special needs" is expressly prohibited. An adoption may not be delayed or denied solely because a child is classified as "special needs". For purposes of this subsection:

- (1) "thorough adoption assessment" means conducting and documenting face-to-face interviews with the child, foster care providers, and other significant parties; and
- (2) "child specific recruitment" means recruiting an adoptive placement targeted to meet the individual needs of the specific child including, but not be limited to, use of the media, use of photo listings, and any other in-state or out-of-state resources which may be utilized to meet the specific needs of the child, unless there are extenuating circumstances that indicate that these efforts are not in the best interest of the child.

(F) If the court determines that the criteria in subsection (D) are not met but that the child may be returned to the parent within a specified reasonable time not to exceed eighteen months after the child was placed in foster care, the court may order an extension of the plan approved pursuant to Section 63-7-1680 or may order compliance with a modified plan, but in no case may the extension for reunification continue beyond eighteen months after the child was placed in foster care. An extension may be granted pursuant to this section only if the court finds:

- (1) that the parent has demonstrated due diligence and a commitment to correcting the conditions warranting the removal so that the child could return home in a timely fashion;
- (2) that there are specific reasons to believe that the conditions warranting the removal will be remedied by the end of the extension;
- (3) that the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being;
- (4) that, at the time of the hearing, initiation of termination of parental rights is not in the best interest of the child; and
- (5) that the best interests of the child will be served by the extended or modified plan.

(G) If after assessing the viability of adoption, the department demonstrates that termination of parental rights is not in the child's best interests, the court may award custody or legal guardianship, or both, to a suitable, fit, and willing relative or nonrelative if the court finds this to be in the best interest of the child; however, a home study on the individual whom the department is recommending for custody of the child must be submitted to the court for consideration before custody or legal guardianship, or both, are awarded. The court may order a specified period of supervision and services not to exceed twelve months, and the court may authorize a period of visitation or trial placement prior to receiving a home study.

(H) If at the initial permanency planning hearing the court does not order return of the child pursuant to subsection (D), in addition to those findings supporting the selection of a different plan, the court shall specify in its order:

- (1) what services have been provided to or offered to the parents to facilitate reunification;
- (2) the compliance or lack of compliance by all parties to the plan approved pursuant to Section 63-7-1680;

- (3) the extent to which the parents have visited or supported the child and any reasons why visitation or support has not occurred or has been infrequent;
 - (4) whether previous services should continue and whether additional services are needed to facilitate reunification, identifying the services, and specifying the expected date for completion, which must be no longer than eighteen months from the date the child was placed in foster care;
 - (5) whether return of the child can be expected and identification of the changes the parent must make in circumstances, conditions, or behavior to remedy the causes of the child's placement or retention in foster care;
 - (6) whether the child's foster care is to continue for a specified time and, if so, how long;
 - (7) if the child has attained the age of sixteen, the services needed to assist the child to make the transition to independent living;
 - (8) whether the child's current placement is safe and appropriate;
 - (9) whether the department has made reasonable efforts to assist the parents in remedying the causes of the child's placement or retention in foster care, unless the court has previously authorized the department to terminate or forego reasonable efforts pursuant to Section 63-7-1640; and
 - (10) the steps the department is taking to promote and expedite the adoptive placement and to finalize the adoption of the child, including documentation of child specific recruitment efforts.
- (I) If after the permanency planning hearing, the child is retained in foster care, future permanency planning hearings must be held as follows:
- (1) If the child is retained in foster care and the agency is required to initiate termination of parental rights proceedings, the termination of parental rights hearing may serve as the next permanency planning hearing, but only if it is held no later than one year from the date of the previous permanency planning hearing.
 - (2) If the court ordered extended foster care for the purpose of reunification with the parent, the court must select a permanent plan for the child other than another extension for reunification purposes at the next permanency planning hearing. The hearing must be held on or before the date specified in the plan for expected completion of the plan; in no case may the hearing be held any later than six months from the date of the last court order.

- (3) After the termination of parental rights hearing, the requirements of Section 63-7-2580 must be met. Permanency planning hearings must be held annually, starting with the date of the termination of parental rights hearing. No further permanency planning hearings may be required after filing a decree of adoption of the child.
- (4) If the court places custody or guardianship with the parent, extended family member, or suitable nonrelative and a period of services and supervision is authorized, services and supervision automatically terminate on the date specified in the court order. Before the termination date, the department or the guardian ad litem may file a petition with the court for a review hearing on the status of the placement. Filing of the petition stays termination of the case until further order from the court. If the court finds clear and convincing evidence that the child will be threatened with harm if services and supervision do not continue, the court may extend the period of services and supervision for a specified time. The court's order must specify the services and supervision necessary to reduce or eliminate the risk of harm to the child.
- (5) If the child is retained in foster care pursuant to a plan other than one described in items (1) through (4), future permanency planning hearings must be held at least annually. (J) A named party, the child's guardian ad litem, or the local foster care review board may file a motion for review of the case at any time. Any other party in interest may move to intervene in the case pursuant to the rules of civil procedure and if the motion is granted, may move for review. Parties in interest include, but are not limited to, the individual or agency with legal custody or placement of the child and the foster parent. The notice of motion and motion for review must be served on the named parties at least ten days before the hearing date. The motion must state the reason for review of the case and the relief requested.

(K) The pendency of an appeal concerning a child in foster care does not deprive the court of jurisdiction to hear a case pursuant to this section. The court shall retain jurisdiction to review the status of the child and may act on matters not affected by the appeal.

SECTION 63-7-1710. Standards for terminating parental rights.

- (A) When a child is in the custody of the department, the department shall file a petition to terminate parental rights or shall join as party in a termination petition filed by another party if:

- (1) a child has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months;
 - (2) a court of competent jurisdiction has determined the child to be an abandoned infant;
 - (3) a court of competent jurisdiction has determined that the parent has committed murder, voluntary manslaughter, or homicide by child abuse of another child of the parent;
 - (4) a court of competent jurisdiction has determined that the parent has aided, abetted, conspired, or solicited to commit murder, voluntary manslaughter, or homicide by child abuse of another child of the parent;
 - (5) a court of competent jurisdiction has determined that the parent has committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent; or
 - (6) a court of competent jurisdiction has found the parent to be in wilful contempt on two occasions over a twelve-month period for failure to comply with the terms of the treatment plan or placement plan established pursuant to subarticle 11."
- (B) Concurrently with filing of the petition, the department shall seek to identify, recruit, process, and approve a qualified family for adoption of the child if an adoptive family has not yet been selected and approved.
- (C) This section does not apply:
- (1) to a child for whom the family court has found that initiation of termination of parental rights is not in the best interests of the child, after applying the criteria of Section 63-7-1700(C), (D), (F), or (G) and entering the findings required to select a permanent plan for the child from Section 63-7-1700(C), (D), (F), or (G). For this exemption to apply, the court must find that there are compelling reasons for selection of a permanent plan other than termination of parental rights;
 - (2) if the family court finds that the department has not afforded services to the parents provided for in the treatment plan approved pursuant to Section 63-7-1680 in a manner that was consistent with the time periods in the plan or that court hearings have been delayed in such a way as to interfere with the initiation, delivery, or completion of services, but only if:
 - (a) the parent did not delay the court proceedings without cause or delay or refuse the services;

(b) successful completion of the services in question may allow the child to be returned as provided for in Section 63-7-1700(F) within the extension period; and

(c) the case is not one for which the court has made a determination that reasonable efforts to preserve or reunify the family are not necessary pursuant to Section 63-7-1640.

SECTION 63-7-1720. Clerk of court and court administration progress reports.

(A) Beginning on January 1, 2000, or on the date of compliance with subsection (D), whichever is later, and on the first day of each month thereafter, each county clerk of court must make a report to Court Administration concerning each child protection case pending in family court in which a permanency planning order has not been filed. The report must include the case caption, the filing date, and, if applicable, the date of the permanency planning hearing and the permanency planning order. The clerk is not required to make a report concerning a case after a permanency planning order has been filed in the case.

(B) Court Administration must provide the administrative judge of the family court of each circuit with the information reported concerning cases pending in the circuit.

(C) On August fifteenth of each year, the Director of Court Administration must file with the Chief Justice of the South Carolina Supreme Court, with copies to the Department of Social Services and the Governor, a written report summarizing the information reported by the clerks of court pursuant to this section. The report shall contain, at a minimum, the following information summarized by county, by circuit, and by state:

(1) the number of new cases brought by the department during the preceding twelve months; and

(2) the number of cases filed more than twelve months in which a permanency planning order has not been filed.

The annual report must contain an analysis of the progress of these cases through the family court, identify impediments to complying with statutory mandates, and make recommendations for improving compliance.

(D) No later than January 1, 2000, Court Administration must institute the use of a separate code to identify child protection cases in its data systems. However, if the Chief Justice,

upon recommendation of Court Administration, determines that there is a compelling reason why it is not feasible to institute the use of a separate code by January 1, 2000, compliance with this subsection may be deferred for up to twelve months, as necessary, for making adjustments in the data systems. The date of compliance and the compelling reason for any delay beyond January 1, 2000, shall be included in the report required by subsection (E).

- (E) Court Administration shall conduct a study of the feasibility of collecting additional data necessary to monitor and ensure compliance with statutory time frames for conducting hearings in department cases, and no later than July 1, 2000, shall submit a report to the Chief Justice, with copies to the Department of Social Services and the Governor, containing recommendations for instituting the necessary data collection system.

SUBARTICLE 13.

CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT

SECTION 63-7-1910. Purpose.

The purpose of this subarticle is to establish a system for the identification of abused and neglected children and those who are responsible for their welfare, to provide a system for the coordination of reports concerning abused and neglected children, and to provide data for determining the incidence and prevalence of child abuse and neglect in this State. To further these purposes, the department must maintain one or more statewide data systems concerning cases reported to it pursuant to this article.

SECTION 63-7-1920. Department to maintain Central Registry.

- (A) The Department of Social Services must maintain a Central Registry of Child Abuse and Neglect within the department's child protective services unit in accordance with this subarticle and Subarticles 5 and 7 and Section 17-25-135. Perpetrators of child abuse and neglect must be entered in the registry only by order of a court as provided for in this subarticle and Section 17-25-135, or as provided for in Section 63-7-1230. Each entry in the registry must be

accompanied by information further identifying the person including, but not limited to, the person's date of birth, address, and any other identifying characteristics, and describing the abuse or neglect committed by the person.

(B) The Central Registry of Child Abuse and Neglect must not contain information from reports classified as unfounded. Other department records and databases must treat unfounded cases as provided for in Section 63-7-930.

SECTION 63-7-1930. Petition for placement in Central Registry.

(A) At any time following receipt of a report, the department may petition the family court for an order directing that the person named as perpetrator be entered in the Central Registry of Child Abuse and Neglect. The petition must have attached a written case summary stating facts sufficient to establish by a preponderance of evidence that the person named as perpetrator abused or neglected the child and that the nature and circumstances of the abuse indicate that the person named as perpetrator would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if placed in a position or setting outside of the person's home that involves care of or substantial contact with children. The department must serve a copy of the petition and summary on the person named as perpetrator. The petition must include a statement that the judge must rule based on the facts stated in the petition unless the clerk of court or the clerk's designee receives a written request for a hearing from the person named as perpetrator within five days after service of the petition. The name, address, and telephone number of the clerk of court or the clerk's designee must be stated in the petition. If the person named as perpetrator requests a hearing, the court must schedule a hearing on the merits of the allegations in the petition and summary to be held no later than five working days following the request.

(B) The department must seek an order placing a person in the Central Registry pursuant to subsection (A) in all cases in which the department concludes that there is a preponderance of evidence that the person committed sexual abuse.

SECTION 63-7-1940. Court order for placement in Central Registry.

(A) At a hearing pursuant to Section 63-7-1650 or 63-7-1660, at which the court orders that a child be taken or retained in custody or finds that the child was abused or neglected, the court:

- (1) shall order, without possibility of waiver by the department, that a person's name be entered in the Central Registry of Child Abuse and Neglect if the court finds that there is a preponderance of evidence that the person:
 - (a) physically abused the child; however, if the only form of physical abuse that is found by the court is excessive corporal punishment, the court only may order that the person's name be entered in the Central Registry if item (2) applies;
 - (b) sexually abused the child;
 - (c) wilfully or recklessly neglected the child; or
 - (d) gave birth to the infant and the infant tested positive for the presence of any amount of controlled substance, prescription drugs not prescribed to the mother, metabolite of a controlled substance, or the infant has a medical diagnosis of neonatal abstinence syndrome, unless the presence of the substance or metabolite is the result of a medical treatment administered to the mother of the infant during birth or to the infant;
- (2) may, except as provided for in item (1), order that the person's name be entered in the Central Registry if the court finds by a preponderance of evidence that:
 - (a) the person abused or neglected the child in any manner, including the use of excessive corporal punishment; and
 - (b) the nature and circumstances of the abuse indicate that the person would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if the person were in a position or setting outside of the person's home that involves care of or substantial contact with children.

(B) At the probable cause hearing, the court may order that the person be entered in the Central Registry if there is sufficient evidence to support the findings required by subsection (A).

SECTION 63-7-1950. Updated records requested.

In cases where a person has been placed in the Central Registry of Child Abuse and Neglect, the outcome of any further proceedings must be entered immediately by the department into the Central Registry of Child Abuse and Neglect. If it is determined that a report is unfounded, the department must immediately purge information identifying that person as a perpetrator from the registry and from department records as provided in Sections 63-7-1920 and 63-7-1960.

SECTION 63-7-1960. Destruction of certain records.

The names, addresses, birth dates, identifying characteristics, and other information unnecessary for auditing and statistical purposes of persons named in department records of indicated cases other than the Central Registry of Child Abuse and Neglect must be destroyed seven years from the date services are terminated. This section does not prohibit the department from maintaining an "indicated case" which contains identifying information on the child who is the subject of the indicated report and those responsible for the child's welfare without identifying a person as perpetrator, and it does not prohibit the department from providing child protective services to the child who is the subject of an indicated report and those responsible for the child's welfare.

SECTION 63-7-1970. Release of information.

Information in the central registry and other department records may be released only as authorized in Section 63-7-1990 or as otherwise specifically authorized by statute. Information in records of the department other than the Central Registry of Child Abuse and Neglect must not be used for screening potential employees or volunteers of any public or private entity, except as specifically provided by Section 63-7-1990 or as otherwise provided by statute. However, nothing in this section prevents the department from using other information in its records when making decisions associated with administration or delivery of the department's programs and services.

SECTION 63-7-1980. Screening against the Central Registry.

(A) When a statute or regulation makes determination of a person's history of child abuse or neglect a condition for employment or volunteer service in a facility or other entity regulated

by the department, the person must be screened against the Central Registry of Child Abuse and Neglect before employment or service in the volunteer role. The person must be screened each time the license, registration, or other operating approval of the facility or other entity is renewed.

(B) When a statute or regulation makes determination of an applicant's history of child abuse or neglect, a condition for issuance of a license, registration, or other operating approval by the department, the applicant must be screened against the Central Registry of Child Abuse and Neglect before issuance of the initial license, registration, or other approval and each time the license, registration, or other operating approval is renewed.

SECTION 63-7-1990. Confidentiality and release of records and information.

(A) All reports made and information collected pursuant to this article maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential. A person who disseminates or permits the dissemination of these records and the information contained in these records except as authorized in this section, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both.

(B) The department is authorized to grant access to the records of indicated cases to the following persons, agencies, or entities:

- (1) the ombudsman of the office of the Governor or the Governor's designee;
- (2) a person appointed as the child's guardian ad litem, the attorney for the child's guardian ad litem, or the child's attorney;
- (3) appropriate staff of the department;
- (4) a law enforcement agency investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;
- (5) a person who is named in a report or investigation pursuant to this article as having abused or neglected a child, that person's attorney, and that person's guardian ad litem;

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- (6) a child fourteen years of age or older who is named in a report as a victim of child abuse or neglect, except in regard to information that the department may determine to be detrimental to the emotional well-being of the child;
 - (7) the parents or guardians of a child who is named in a report as a victim of child abuse or neglect;
 - (8) county medical examiners or coroners who are investigating the death of a child;
 - (9) the State Child Fatality Advisory Committee and the Department of Child Fatalities in accordance with the exercise of their purposes or duties pursuant to Article 19, Chapter 11;
 - (10) family courts conducting proceedings pursuant to this article;
 - (11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order;
 - (12) a grand jury by subpoena upon its determination that access to the record is necessary in the conduct of its official business;
 - (13) authorities in other states conducting child abuse and neglect investigations or providing child welfare services;
 - (14) courts in other states conducting child abuse and neglect proceedings or child custody proceedings;
 - (15) the director or chief executive officer of a childcare facility, child placing agency, or child caring facility when the records concern the investigation of an incident of child abuse or neglect that allegedly was perpetrated by an employee or volunteer of the facility or agency against a child served by the facility or agency;
 - (16) a person or agency with authorization to care for, diagnose, supervise, or treat the child, the child's family, or the person alleged to have abused or neglected the child;
 - (17) any person engaged in bona fide research with the written permission of the state director or the director's designee, subject to limitations the state director may impose;

- (18) multidisciplinary teams impaneled by the department or impaneled pursuant to statute;
- (19) circuit solicitors and their agents investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;
- (20) prospective adoptive or foster parents before placement;
- (21) the Division for the Review of the Foster Care of Children, Office of the Governor, for purposes of certifying in accordance with Section 63-11-730 that no potential employee or no nominee to and no member of the state or a local foster care review board is a subject of an indicated report or affirmative determination;
- (22) employees of the Division for the Review of the Foster Care of Children, Office of the Governor and members of local boards when carrying out their duties pursuant to Article 7 of Chapter 11; the department and the division shall limit by written agreement or regulation, or both, the documents and information to be furnished to the local boards;
- (23) The Division of Guardian ad Litem, Office of the Governor, for purposes of certifying that no potential employee or volunteer is the subject of an indicated report or an affirmative determination.

(C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

(D) When a request for access to the record comes from an individual identified in subsection (B)(5), (6), or (7) or that person's attorney, the department shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the family as a whole, or to the care of the child. If the department determines that these conditions exist, before releasing the document, the department shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the department will release the report after ten days from the date notice was mailed to all parties and that any

party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the department and designates in writing that those reports or records are not to be further disclosed, the department must not disclose those documents to persons identified in subsection (B)(5), (6), or (7) or that person's attorney. The department shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(E) A disclosure pursuant to this section shall protect the identity of the person who reported the suspected child abuse or neglect. The department also may protect the identity of any other person identified in the record if the department finds that disclosure of the information would be likely to endanger the life or safety of the person. Nothing in this subsection prohibits the department from subpoenaing the reporter or other persons to court for the purpose of testimony if the department determines the individual's testimony is necessary to protect the child; the fact that the reporter made the report must not be disclosed.

(F) The department is authorized to summarize the outcome of an investigation to the person who reported the suspected child abuse or neglect if the person requests the information at the time the report is made. The department has the discretion to limit the information disclosed to the reporter based on whether the reporter has an ongoing professional or other relationship with the child or the family.

(G) (1) The state director of the department or the director's designee may disclose to the media information contained in child protective services records if the disclosure is limited to discussion of the department's activities in handling the case including information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, the party in interest or other public judicial proceedings. For purposes of this subsection, information is considered "placed in the public domain" when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial proceeding.

(2) The director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an allegation made by the alleged perpetrator, the attorney for the alleged perpetrator, the party in interest, or other public officials in public testimony before a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. The

department's response is limited to discussion of the department's activities in handling the case relating to the allegation made in public testimony.

(3) For all other information not subject to disclosure pursuant to subsection (G)(2), the director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. The information must be reviewed in a closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this item must be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure."

(H) The state director or the director's designee is authorized to prepare and release reports of the results of the department's investigations into the deaths of children in its custody or receiving child welfare services at the time of death.

(I) The department is authorized to disclose information concerning an individual named in the Central Registry of Child Abuse and Neglect as a perpetrator when screening of an individual's background is required by statute or regulation for employment, licensing, or any other purposes, or a request is made in writing by the person being screened. Nothing in this section prevents the department from using other information in department records when making decisions concerning licensing, employment, or placement, or performing other duties required by this act. The department also is authorized to consult any department records in providing information to persons conducting preplacement investigations of prospective adoptive parents in accordance with Section 63-9-520.

(J) The department is authorized to maintain in its childcare regulatory records information about investigations of suspected child abuse or neglect occurring in childcare facilities.

(1) The department must enter child abuse or neglect investigation information in its regulatory record from the beginning of the investigation and must add updated information as it becomes available. Information in the regulatory records must include at least the date of the report, the nature of the alleged abuse or neglect, the outcome of the investigation, any corrective action required, and the outcome of the corrective action plan.

(2) The department's regulatory records must not contain the identity of the reporter or of the victim child.

- (3) The identity of the perpetrator must not appear in the record unless the family court has confirmed the department's determination or a criminal prosecution has resulted in conviction of the perpetrator.
- (4) Nothing in this subsection may be construed to limit the department's authority to use information from investigations of suspected child abuse or neglect occurring in childcare facilities to pursue an action to enjoin operation of a facility as provided in Chapter 13.
- (5) Record retention provisions applicable to the department's child protective services case records are not applicable to information contained in regulatory records concerning investigations of suspected child abuse or neglect occurring in childcare facilities.
- (K) All reports made available to persons pursuant to this section must indicate whether or not an appeal is pending on the report pursuant to Subarticle 9.
- (L) The department may disclose to participants in a family group conference relevant information concerning the child or family or other relevant information to the extent that the department determines that the disclosure is necessary to accomplish the purpose of the family group conference. Participants in the family group conference must be instructed to maintain the confidentiality of information disclosed by the agency.
- (M) Nothing in this section may be construed to waive the confidential nature of the case record, to waive any statutory or common law privileges attaching to the department's internal reports or to information in case records, to create a right to access under the Freedom of Information Act, or to require the department to search records or generate reports for purposes of the Freedom of Information Act.

SECTION 63-7-2000. Retention and disclosure of records of unfounded cases.

- (A) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, records concerning unfounded reports must be retained and disclosed as provided in this section.
- (B) The alleged perpetrator in an unfounded report who has reason to believe that the report was made maliciously or in bad faith has the right to request in writing that records of the report be retained by the department for up to two years from the date of the case decision. The written request must be received by the department within thirty days of the person's receiving notice of the case decision. A person exercising this right may request a copy

of the record of the unfounded case and the department shall provide a copy of the record, subject to subsection (C).

(C) The department shall disclose to persons exercising the rights afforded them under this section whether the report was made anonymously. However, the identity of a reporter must not be made available to the person except by order of the family court.

(D) An alleged perpetrator in an unfounded case who believes the report was made maliciously or in bad faith may petition the family court to determine whether there is probable cause to believe that the reporter acted maliciously or in bad faith. The court shall determine probable cause based on an in camera review of the case record and oral or written argument, or both. If the court finds probable cause, the identity of the reporter must be disclosed to the moving party.

(E) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, a court conducting civil or criminal proceedings resulting from disclosures authorized by this section may order the department to release the record to any party to the case or the law enforcement.

SECTION 63-7-2010. Annual reports.

The Department of Social Services must furnish annually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from this harm, and any other data considered instructive.

ARTICLE 5.

FOSTER CARE

SECTION 63-7-2310. Protecting and nurturing children in foster care.

(A) To protect and nurture children in foster care, the Department of Social Services and its employees shall:

- (1) adhere strictly to the prescribed number of personal contacts, pursuant to Section 63-7-1680(B)(3). These contacts must be personal, face-to-face visits between the caseworker or member of the casework team and the foster child. These visits may be conducted in the foster home and in the presence of other persons who reside in the foster home; however, if the caseworker suspects that the child has been abused or neglected during the placement with the foster parent, the caseworker must observe and interview the child outside the presence of other persons who reside in the foster home;
- (2) ensure that a caseworker interviews the foster parent, either in person or by telephone, at least once each month. No less frequently than once every two months, ensure that a caseworker or member of the casework team interviews the foster parent face-to-face during a visit in the foster home;
- (3) ensure that a caseworker interviews other adults residing in the foster home, as defined in Section 63-1-40, face-to-face at least once each quarter. A foster parent must notify the department if another adult moves into the home, and the caseworker must interview the adult face-to-face within one month after receiving notice. Interviews of foster parents pursuant to item (2) and of other adults residing in the home pursuant to this item may be conducted together or separately at the discretion of the department;
- (4) ensure that its staff visit in the foster home and interview the foster parent or other adults in the home more frequently when conditions in the home, circumstances of the foster children, or other reasons defined in policy and procedure suggest that increased oversight or casework support is appropriate. When more than one caseworker is responsible for a child in the foster home, the department may assign one caseworker to conduct the required face-to-face interview with the other adults residing in the foster home;
- (5) provide to the foster child, if age appropriate, a printed card containing a telephone number the child may use to contact a designated unit or individual within the Department of Social Services and further provide an explanation to the child that the number is to be used if problems occur which the child believes his or her caseworker cannot or will not resolve;
- (6) strongly encourage by letter of invitation, provided at least three weeks in advance, the attendance of foster parents to all Foster Care Review Board proceedings held for children in their care. If the foster parents are unable to attend the proceedings, they must submit a progress report to the Office of the Governor, Division of Foster Care Review, at least three days prior to the proceeding. Failure of a foster parent to attend the Foster Care Review Board proceeding or failure to submit a

progress report to the Division of Foster Care Review does not require the board to delay the proceeding. The letter of invitation and the progress report form must be supplied by the agency;

(7) be placed under the full authority of sanctions and enforcement by the family court pursuant to Section 63-3-530(30) and Section 63-3-530(36) for failure to adhere to the requirements of this subsection.

(B) If the department places a child in foster care in a county which does not have jurisdiction of the case, the department may designate a caseworker in the county of placement to make the visits required by subsection (A).

(C) In fulfilling the requirements of subsection (A), the Department of Social Services shall reasonably perform its tasks in a manner which is least intrusive and disruptive to the lives of the foster children and their foster families.

(D) The Department of Social Services, in executing its duties under subsection (A)(4), must provide a toll free telephone number which must operate twenty-four hours a day.

(E) Any public employee in this State who has actual knowledge that a person has violated any of the provisions of subsection (A) must report those violations to the state office of the Department of Social Services; however, the Governor's Division of Foster Care Review must report violations of subsection (A)(4) in their regular submissions of advisory decisions and recommendations which are submitted to the family court and the department. Any employee who knowingly fails to report a violation of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(F) Foster parents have a duty to make themselves reasonably available for the interviews required by subsection (A)(2) and to take reasonable steps to facilitate caseworkers' interviews with other adults who reside in the home as required by subsection (A)(3). Failure to comply with either the duties in this subsection or those in subsection (A)(3) constitutes grounds for revocation of a foster parent's license or other form of approval to provide care to children in the custody of the department. Revocation would depend on the number of instances of noncompliance, the foster parents' wilfulness in noncompliance, or other circumstances indicating that noncompliance by the foster parents significantly and unreasonably interferes with the department's ability to carry out its protective functions under this section.

(G) To further this state's long-term goals and objectives on behalf of children in foster care, the Department of Social Services shall give to the General Assembly by January 15, 2000, a report of the status of the foster care system which includes improvements the department has

made to ensure the safety and quality of life of South Carolina's foster children. This report must include:

- (1) specific standards for the training of foster parents, including the type of training which is provided;
- (2) standards which address emergency situations affecting the maximum number of children placed in each foster home;
- (3) standards which provide for the periodic determination of the medical condition of a child during his stay in foster care; and
- (4) methods the department has developed to encourage the receipt of information on the needs of children in foster care from persons who have been recently emancipated from the foster care system.

SECTION 63-7-2320. Kinship Foster Care Program.

(A) As used in this section, unless the context otherwise requires:

- (1) "Department" means the Department of Social Services; and
- (2) "Foster parent" means any person with whom a child in the care, custody, or guardianship of the department is placed for temporary or long-term care.

(B) There is established a "Kinship Foster Care Program" in the State Department of Social Services.

(C) When a child has been removed from his home and is in the care, custody, or guardianship of the department, the department shall attempt to identify a relative who would be appropriate for placement of the child in accordance with the preliminary investigation requirements of Subarticle 3, Article 3 and in accordance with Section 63-7-1680(B)(6). If the department determines that it is in the best interest of a child requiring out-of-home placement that the child be placed with a relative for foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, and the relative is not already licensed to provide foster care, the department shall inform the relative of the procedures for being licensed as a kinship foster parent, assist the foster parent with the licensing process, and inform the relative of availability of payments and other services to kinship foster parents. If the relative is licensed by the department to provide kinship foster care services, in accordance with rules and regulations adopted by

the department regarding kinship foster care, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(D) The department shall establish, in accordance with this section and the rules and regulations promulgated hereunder, eligibility standards for becoming a kinship foster parent.

(1) Relatives within the first, second, or third degree to the parent or stepparent of a child who may be related through blood, marriage, or adoption may be eligible for licensing as a kinship foster parent.

(2) The kinship foster parent must be twenty-one years of age or older, except that if the spouse or partner of the relative is twenty-one years of age or older and living in the home, and the relative is between eighteen and twenty-one years of age, the department may waive the age requirement.

(3)(a) A person may become a kinship foster parent only upon the completion of a full kinship foster care licensing study performed in accordance with rules and regulations promulgated pursuant to this section. Residents of the household who are age eighteen years of age or older must undergo the state and federal fingerprint review procedures as provided for in Section 63-7-2340. The department shall apply the screening criteria in Section 63-7-2350 to the results of the fingerprint reviews and the licensing study.

(b) The department shall maintain the confidentiality of the results of fingerprint reviews as provided for in state and federal regulations.

(4) The department shall determine, after a thorough review of information obtained in the kinship foster care licensing process, whether the person is able to care effectively for the foster child.

(E)(1) The department shall involve the kinship foster parents in development of the child's permanent plan pursuant to Section 63-7-1700 and other plans for services to the child and the kinship foster home. The department shall give notice of proceedings and information to the kinship foster parent as provided for elsewhere in this chapter for other foster parents. If planning for the child includes the use of childcare, the department shall pay for childcare arrangements, according to established criteria for payment of these services for foster children. If the permanent plan for the child involves requesting the court to grant custody or guardianship of the child to the kinship foster parent, the department must ensure that it has informed the kinship foster parent about adoption, including services and financial benefits that might be available.

(2) The kinship foster parent shall cooperate with any activities specified in the case plan for the foster child, such as counseling, therapy or court sessions, or visits with the foster child's parents or other family members. Kinship foster parents and placements made in kinship foster care homes are subject to the requirements of Section 63-7-2310.

SECTION 63-7-2330. Placement with relatives.

(A) When the Department of Social Services has custody of a child and places that child with a relative who is licensed to provide foster care, the agency must provide the same services and financial benefits as provided to other licensed foster homes. Children placed pursuant to this section are subject to the permanency planning requirements in Section 63-7-1700.

(B) If the department has determined that it is in the best interest of a child requiring foster care that the child be placed with a relative, and the relative is not licensed to provide foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, the department shall inform the relative of the procedures for obtaining licensure and the benefits of licensure. The department also shall provide information and reasonable assistance to a relative seeking a foster care license to the same extent that it provides this information and assistance to other persons contacting the department about foster care licensing.

SECTION 63-7-2340. Fingerprint review.

(A) A person applying for licensure as a foster parent or for approval for adoption placement and a person eighteen years of age or older, residing in a home in which a person has applied to be licensed as a foster parent or an approved adoption placement, must undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprinting review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

(B) Any fee charged by the Federal Bureau of Investigation for the fingerprint review must be paid by the individual.

SECTION 63-7-2345. Payment of costs of Federal Bureau of Investigation fingerprint reviews.

Notwithstanding the provisions of Section 63-7-2350, the department is authorized to pay from funds appropriated for foster care the costs of Federal Bureau of Investigation fingerprint reviews for foster care families recruited and selected as potential adoption and foster care providers for children in the custody of the department.

SECTION 63-7-2350. Restrictions on foster care or adoption placements.

(A) No child in the custody of the Department of Social Services may be placed in foster care or for adoption with a person if the person or anyone eighteen years of age or older residing in the home:

- (1) has a substantiated history of child abuse or neglect; or
- (2) has pled guilty or nolo contendere to or has been convicted of:
 - (a) an "Offense Against the Person" as provided for in Chapter 3, Title 16;
 - (b) an "Offense Against Morality or Decency" as provided for in Chapter 15, Title 16;
 - (c) contributing to the delinquency of a minor as provided for in Section 16-17-490;
 - (d) the common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger;
 - (e) criminal domestic violence as defined in Section 16-25-20;
 - (f) criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65;
 - (g) a felony drug-related offense under the laws of this State;
 - (h) unlawful conduct toward a child as provided for in Section 63-5-70;
 - (i) cruelty to children as provided for in Section 63-5-80;
 - (j) child endangerment as provided for in Section 56-5-2947; or
 - (k) criminal sexual conduct with a minor in the first degree as provided for in Section 16-3-655(A).

(B) A person who has been convicted of a criminal offense similar in nature to a crime enumerated in subsection (A) when the crime was committed in another jurisdiction or under federal law is subject to the restrictions set out in this section.

(C) This section does not prevent foster care placement or adoption placement when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in subsection (A) has been pardoned. However, notwithstanding the entry of a pardon, the department or other entity making placement or licensing decisions may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited to provide foster care services.

SECTION 63-7-2360. Placement of minor sex offenders.

(A) No agency may place a minor in a foster home if the agency has actual knowledge that the minor has been adjudicated delinquent for, or has pled guilty or nolo contendere to, or has been convicted of a sex offense, unless the placement is in a therapeutic foster home or unless the minor is the only child in the foster home at the time of placement and for the length of that minor's placement in the foster home. Notwithstanding this provision, the placing agency may petition the court for an order allowing the minor to be placed in a foster home, other than a therapeutic home, if good cause is shown. Good cause shall include, but not be limited to, the fact that the minor is being placed in a home with his siblings.

(B) The placing agency must inform the foster parent in whose home the minor is placed of that minor's prior history of a sex offense. For purposes of this section the term "sex offense" means:

- (1) criminal sexual conduct in the first degree, as provided in Section 16-3-652;
- (2) criminal sexual conduct in the second degree, as provided in Section 16-3-653;
- (3) criminal sexual conduct in the third degree, as provided in Section 16-3-654;
- (4) criminal sexual conduct with minors in the first degree, as provided in Section 16-3-655(A);
- (5) criminal sexual conduct with minors in the second degree, as provided in Section 16-3-655(B);

- (6) criminal sexual conduct with minors in the third degree, as provided in Section 16-3-655(C);
- (7) engaging a child for a sexual performance, as provided in Section 16-3-810;
- (8) producing, directing, or promoting sexual performance by a child, as provided in Section 16-3-820;
- (9) assault with intent to commit criminal sexual conduct, as provided in Section 16-3-656;
- (10) incest, as provided in Section 16-15-20;
- (11) buggery, as provided in Section 16-15-120;
- (12) violations of Article 3, Chapter 15 of Title 16 involving a child when the violations are felonies;
- (13) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16-1-40;
- (14) attempt to commit any of the offenses enumerated herein; or
- (15) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the minor's offense should be considered a sex offense.

SECTION 63-7-2370. Disclosure of information to foster parents.

The department shall disclose to the foster parent at the time the department places the child in the home all information known by the person making the placement or reasonably accessible to the person making the placement which could affect either the ability of the foster parent to care for the child or the health and safety of the child or the foster family. This information includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to educational needs. If a person lacking this necessary information made the placement, a member of the child's casework team or the child's caseworker shall contact the foster parent and provide the information during the first working day following the placement. The child's caseworker shall research the child's record and shall supplement the information provided to the foster parent no later than the end of the first week of placement if additional information is found. When the child's caseworker acquires new information which could affect either the ability of the foster parent to care for the child or

the health and safety of the child or the foster family, the department shall disclose that information to the foster parent. The obligation to provide this information continues until the placement ends.

SECTION 63-7-2380. Foster parent training.

The Department of Social Services shall establish standards for foster parent training so as to ensure uniform preparedness for foster parents who care for abused or neglected children in the custody of the State. These standards shall specifically prohibit the viewing of standard television programs or reading of articles from popular magazines or daily newspapers as complying with the completion of pre-service or annual foster parent training requirements.

SECTION 63-7-2390. Loss for uninsured damages.

A state agency which places a child in a foster home may compensate a foster family, who has made its private residence available as a foster home, for the uninsured loss it incurs when its personal or real property is damaged, destroyed, or stolen by a child placed in its home, if the loss is found by the director of the placing state agency, or his designee, to have occurred, to have been caused solely or primarily by the acts of the child placed with the foster family, and if the acts of the foster family have not in any way caused or contributed to the loss. Compensation may not be in excess of the actual cost of repair or replacement of the damaged or destroyed property but in no case may compensation exceed five hundred dollars for each occurrence.

ARTICLE 7.

TERMINATION OF PARENTAL RIGHTS

SECTION 63-7-2510. Purpose.

The purpose of this article is to establish procedures for the reasonable and compassionate termination of parental rights where children are abused, neglected, or abandoned in order to protect the health and welfare of these children and make them eligible for adoption by persons who will provide a suitable home environment and the love and care necessary for a happy, healthful, and productive life.

SECTION 63-7-2520. Jurisdiction.

The family court has exclusive jurisdiction over all proceedings held pursuant to this article. For purposes of this article jurisdiction may continue until the child becomes eighteen years of age, unless emancipated earlier.

SECTION 63-7-2530. Filing procedures.

- (A) A petition seeking termination of parental rights may be filed by the Department of Social Services or any interested party.
- (B) The department may file an action for termination of parental rights without first seeking the court's approval of a change in the permanency plan pursuant to Section 63-7-1680 and without first seeking an amendment of the placement plan pursuant to Section 63-7-1700.
- (C) The hearing on the petition to terminate parental rights must be held within one hundred twenty days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing being held more than one hundred twenty days after the petition was filed, and the court may grant a continuance in its discretion. If a continuance is granted, the court must issue a written order scheduling the case for trial on a date and time certain.

SECTION 63-7-2540. Content of petition.

A petition for the termination of parental rights must set forth the:

- (1) basis of the court's jurisdiction;

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- (2) name, sex, date, and place of birth of the child, if known;
 - (3) name and address of the petitioner and the petitioner's relationship to the child;
 - (4) names, dates of birth, and addresses of the parents, if known;
 - (5) names and addresses of a:
 - (a) legal guardian of the child; or
 - (b) person or agency having legal custody of the child; and
 - (6) grounds on which termination of parental rights are sought and the underlying factual circumstances.

SECTION 63-7-2550. Service of petition.

(A) A summons and petition for termination of parental rights must be filed with the court and served on:

- 
- (1) the child, if the child is fourteen years of age or older;
 - (2) the child's guardian ad litem, appointed pursuant to Section 63-7-2560(B), if the child is under fourteen years of age;
 - (3) the parents of the child; and
 - (4) an agency with placement or custody of the child.

(B) The right of an unmarried biological father, as defined in Section 63-9-820, to receive notice of a termination of parental rights action must be governed by the notice provisions of Section 63-9-730(B)(1), (3), (4), (5), and (6), and Subarticle 8, Chapter 9.

SECTION 63-7-2560. Representation by counsel; guardian ad litem.

(A) Parents, guardians, or other persons subject to a termination of parental rights action are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court, unless the defendant is in default.

(B) A child subject to any judicial proceeding under this article must be appointed a guardian ad litem by the family court. If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested.

SECTION 63-7-2570. Grounds.

The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

- (1) The child or another child while residing in the parent's domicile has been harmed as defined in Section 63-7-20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child may be considered.
- (2) The child has been removed from the parent pursuant to Subarticle 3 or Section 63-7-1660 and has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal.
- (3) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child's placement from the parent's home must be taken into consideration when determining the ability to visit.
- (4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent's means. The court may consider all relevant circumstances in determining whether or not the parent has wilfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.

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- (5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of the parental rights of the presumptive legal father.
- (6) The parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, addiction to alcohol or illegal drugs, prescription medication abuse, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child. It is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.
- (7) The child has been abandoned as defined in Section 63-7-20.
- (8) The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months.
- (9) The physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or an assault and battery offense as provided in Article 7, Chapter 3, Title 16.
- (10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.
- (11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct when neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.
- (12) The parent of the child pleads guilty or nolo contendere to or is convicted of murder, voluntary manslaughter, or homicide by child abuse, of another child of the parent."
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SECTION 63-7-2580. Permanency of order.

- (A) If the court finds that a ground for termination, as provided for in Section 63-7-2570, exists, the court may issue an order forever terminating parental rights to the child. Where the petitioner is an authorized agency, the court shall place the child in the custody of the petitioner or other child-placing agency for adoption and shall require the submission of a plan for permanent placement of the child within thirty days after the close of the proceedings to the court and to the child's guardian ad litem. Within an additional sixty days the agency shall submit a report to the court and to the guardian ad litem on the implementation of the plan. The court, on its own motion, may schedule a hearing to review the progress of the implementation of the plan.
- (B) If the court finds that no ground for termination exists and the child is in the custody of the Department of Social Services, the order denying termination must specify a new permanent plan for the child or order a hearing on a new permanent plan.
- (C) If the court determines that an additional permanency hearing is not needed, the court may order:
- (1) the child returned to the child's parent if the parent has counterclaimed for custody and the court determines that the return of the child to the parent would not cause an unreasonable risk of harm to the child's life, physical health or safety, or mental well-being. The court may order a specified period of supervision and services not to exceed twelve months;
 - (2) a disposition provided for in Section 63-7-1700(E) if the court determines that the child should not be returned to a parent.
- (D)(1) If the court determines that an additional permanency hearing is required, the court's order shall schedule a permanency hearing to be held within fifteen days of the date the order is filed. The court's order must be sufficient to continue jurisdiction over the parties without any need for filing or service of pleadings by the department. The permanency hearing must be held before the termination of parental rights trial if reasonably possible.
- (2) At the hearing, the department shall present a proposed disposition and permanent plan in accordance with Section 63-7-1700. No supplemental report may be required. The hearing and any order issuing from the hearing shall conform to Section 63-7-1700.

(3) If the court approves retention of the child in foster care pursuant to Section 63-7-1700(E), any new plan for services and placement of the child must conform to the requirements of Section 63-7-1680. Section 63-7-1680 requires the plan to address conditions that necessitated removal of the child, but the plan approved pursuant to this subsection shall address conditions that necessitate retention of the child in foster care.

SECTION 63-7-2590. Effect of order.

- (A) An order terminating the relationship between parent and child under this article divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent. A right of inheritance is terminated only by a final order of adoption.
- (B) The relationship between a parent and child may be terminated with respect to one parent without affecting the relationship between the child and the other parent.

SECTION 63-7-2600. Confidentiality.

All papers and records pertaining to a termination of parental rights are confidential and all court records must be sealed and opened only upon order of the judge for good cause shown.

SECTION 63-7-2610. Effect on adoption laws.

The provisions of this article do not, except as specifically provided, modify or supersede the general adoption laws of this State.

SECTION 63-7-2620. Construction of law.

This article must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent-

child relationship. The interests of the child shall prevail if the child's interest and the parental rights conflict.

Referenced Documents

Title 63 South Carolina Children's Code

Revision Comments

Updated to incorporate Act 281 (Jaidon's Law) and Act 291. See sections 63-7-1680, 63-7-1690, 63-7-1700, 63-7-1710, 63-7-1940, 63-7-2570, 63-7-315, 63-7-940 and 63-7-1990.



Denise Crockett <drcrockett12@gmail.com>

dead animals

7 messages

Kaci May <kaci_may2000@yahoo.com> Fri, Mar 10, 2017 at 9:08 AM
 Reply-To: Kaci May <kaci_may2000@yahoo.com>
 Cc: "baird marion (SHES Admin/teacher)"
 <mbaird@dorchester2.k12.sc.us>, Deborah Butcher
 <dbutcher@camdensc-law.com>, Denise Crockett
 <drcrockett12@gmail.com>, LEAP <leapinsc@comcast.net>, "marous
 bobbie (SHES School Psychologist)"
 <bmarous@dorchester2.k12.sc.us>

Dr C,

I am not accusing anyone at this time of inappropriate behavior. I am documenting. I feel alone in the need to document, but feel confident it is the right thing to do. I believe my husband is in denial or I am crazy.

J [REDACTED] wrote this note and presented it to her dad last night. I picked it up this morning. Yesterday, I had C [REDACTED] haul off the third unexplained "injured" chicken which died the following day or two in the past month.

So the history is something like this:

J [REDACTED] has had a fish tank in her bedroom forever (3 fish)

Last year one fish died, whatever

Around Christmas I purchased about 6 more nice fish that J [REDACTED] and I chose.

Within a month, they ALL mysteriously died. I couldn't figure out why. I've had fish for long time, whatever. Mental note.

Last month, J [REDACTED] was "playing" with our chickens in a manner I specifically requested she not play. J [REDACTED] always participates in J [REDACTED]'s play when he is around. He is never a leader or instigator that I observe. When he is not "playing" with J [REDACTED] or pushing L [REDACTED] back and forth up and down road 5 million times in plastic car, he lies in pipe and stares at nothing or stares at blades of grass. ZERO imagination.

The chicken was hurt and J [REDACTED] and J [REDACTED] tried to nurse chicken back to health for a couple days before telling me. I put all of the pieces together and J [REDACTED] then confessed after I figured it all out and told her everything as if I knew for sure. I was fairly positive. We tried together to doctor the chicken, but called my cousin to come get chicken because she has the magic chicken touch. I don't like touching the chickens. It's yucky to me, but I get the kids to do all that. ;-) That chicken went to live with Cousin Donna and healed.

After that, J [REDACTED] has reported to me 3 more mysterious injuries of chickens and he has "no idea how they got hurt, they were just there". Then dead soon after.



I'm on ALERT. Am I CRAZY to be on alert?

My husband says I'm creating issues. NOT. He says we should handle by not allowing children to play outside when chickens are loose in yard. Really? That could be managed, but doesn't address potential mental health problem, if there is a problem. And since both of the children I suspect like playing with the chickens and test boundaries, I suspect they will find a way to sneak into chicken coop and then I'll be left to investigate and figure out problem and solution again.

Then my husband says everyone will believe me if I ever get to point when I report so and so is (may be) killing animals. I am not convinced of this. At Developmental Peds appt with Dr Kasey Hamlin-Smith, I suggested L had been exposed to drugs and alcohol, trauma past. She said she cannot assume that without evidence. What? Why do people NOT believe me? Why would I lie?

I asked Warren what he thinks about getting cameras and he is adamantly against the idea and I am not for it, but I want to be believed. I hate having to prove everything without shadow of doubt when common sense should do. At some point, I am wandering if I will have to choose between my children's lives and my marriage. So, do you think I need to dig deep and choose to insist on cameras in and out of our home for safety and protection of everyone and animals, as evidence?

What more can I do? I am so sorry to burden you with so much. Nobody else listens and takes my concerns seriously. I spend every minute of my time advocating for J, J, J and L. My time is seen as wasted by everyone who doesn't understand my struggles. Am I crazy?

Thank you.
Kaci May

2017-03-09 -JHM Note to her dad.pdf
210K

Denise Crockett

Fri, Mar 10, 2017 at 9:41

<drcrockett12@gmail.com>

AM

To: Kaci May <kaci_may2000@yahoo.com>

You are over your head in the middle of a severe traumatic break. How you feel....paranoid, suspicious, obsessions may be part of symptoms of your own PTSD. You are drowning, and someone needs to help you also. I will talk to Debbie and get back with you.

[Quoted text hidden]

Denise Crockett

Fri, Mar 10, 2017 at 9:42

<drcrockett12@gmail.com>

AM

To: Deborah Butcher <dbutcher@camdensc-law.com>

[Quoted text hidden]

Kaci May <kaci_may2000@yahoo.com> Fri, Mar 10, 2017 at 9:48 AM

Reply-To: Kaci May <kaci_may2000@yahoo.com>

To: Denise Crockett <drcrockett12@gmail.com>

I totally agree that I am way over my head! That does not change facts. I should be concerned about the animals, that does seem suspicious, right?

Or not?

From: Denise Crockett <drcrockett12@gmail.com>

To: Kaci May <kaci_may2000@yahoo.com>

Sent: Friday, March 10, 2017 9:41 AM

Subject: Re: dead animals

[Quoted text hidden]

Denise Crockett

Fri, Mar 10, 2017 at 9:51

<drcrockett12@gmail.com>

AM

To: Kaci May <kaci_may2000@yahoo.com>

From my perspective, it is a strong indicator.

about you, I have to find someone there to help you cope. Can't leave you out. :)

[Quoted text hidden]

Kaci May

Fri, Mar 10, 2017 at 10:07

<kaci_may2000@yahoo.com>

AM

Reply-To: Kaci May <kaci_may2000@yahoo.com>

To: Denise Crockett <drcrockett12@gmail.com>

I saw my therapist yesterday. I actually feel much better and clearer after talking to her.

I came home and my husband decided he was going to try to support me and remind me that this is about the children, not me. I'm fine with all of that.

Then he got a call from the pastor of our church who wants to set me straight. He is angry and now wants to give us resources to shut me up about them not allowing J [REDACTED] in Children's Ministries so I won't make them look bad. That's my take away.

I emailed him and suggested that he and his team find a counselor to become informed about trauma and how they can be helpful then we could talk. I have been furious that each Sunday I would find J [REDACTED] and J [REDACTED] in the bathrooms unsupervised. When I would address it, they staff would tell me they just don't see the symptoms I describe. That means they don't believe me and therefore refuse to protect my children and all other children.

3/14/2017

ROA 000678

Small dead animals

March 10, 2017

FCA Bates No. 003741

I begged Warren to let us attend a smaller church after 16 years, he refused my request until yesterday. He has finally agreed that we would go elsewhere. So I am leaving many people I love, many that have supported me because leadership does not believe me and want me to shut up because they are uncomfortable.

I am not the one who is crazy. They cannot help me. So, first step is to remove people who are hurting me and refusing to believe me. I will document like a crazy woman if that is what it takes to get the right resources in place for myself and children.

I'm simply covering my bases. That doesn't change the fact that my partner, my best friend, my husband doesn't get it, and like my therapist has told me, he is not equipped to ever get it. Warren has not changed at all. He is exactly the same man I married. He grew up in a wonderful family and has experienced zero trauma. I am his trauma, LOL. He loves me still and we will be okay, but it still hurts which is why I try to rally all of my other human resources.

Thank you , Denise. I do feel validated. Bill me.
Kaci

From: Denise Crockett <drcrockett12@gmail.com>
To: Kaci May <kaci_may2000@yahoo.com>
Sent: Friday, March 10, 2017 9:51 AM
Subject: Re: dead animals

[Quoted text hidden]

Denise Crockett
<drcrockett12@gmail.com>
To: Kaci May <kaci_may2000@yahoo.com>

Fri, Mar 10, 2017 at 1:08 PM

Call me.
[Quoted text hidden]

ROA 000678

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	
Kaci May and Kacy May as guardian ad	)	
litem for A.R.M., J.H.M., J.T.M., C.B.M.,	)	C.A. No. 2017-CP-18-02001
J.R.M., and J.W.M.,	)	
	)	DEFENDANT SCHOOL DISTRICT'S
Plaintiff,	)	RESPONSES TO PLAINTIFFS' FIRST SET
	)	OF DISCOVERY REQUESTS
vs.	)	
	)	
Dorchester School District Two, South	)	
Carolina Department of Social Services,	)	
Michael Leach, and Jasmine Flemister,	)	
	)	
Defendants.	)	
	)	

TO: ROBERT J. BUTCHER, ESQ., AND DEBORAH J. BUTCHER, ESQ., COUNSEL FOR PLAINTIFFS

Defendant Dorchester School District Two, hereby responds to Plaintiffs' First Set of Discovery Requests as follows:

I. Interrogatories to all parties, Defendants Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Dr. Marion "Wally" Baird. The only written statement from Dr. Baird is his affidavit previously file with the court on July 24, 2019, and served on all parties as an attachment to the District's Memorandum of Law in Opposition to Plaintiff's Request for a

TRO.

SRO Deputy Pryor. Lisa Smith, Bailey Pete, and Ayisha Brown.

No statements have been taken from these witnesses.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

See Bates 1-285.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

None.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

Dr. Baird is knowledgeable of the District's practices and procedures when SCDSS requests to interview students on District property during school hours as well as the May family and any SCDSS interviews of the May children he participated in or was made aware of.

Deputy Pryor sat in on an interview SCDSS conducted on March 30, 2017.

Lisa Smith was present for an interview SCDSS conducted on September 22, 2017.

Ayisha Brown was the school counselor familiar with the May family.

5. Please list any specific statutory authority, regulatory authority, or decisional law that waives the Plaintiffs' First, Fourth, Fifth, and Fourteenth Amendment Rights under the United States Constitution and/or waives the Plaintiffs rights under Article I, §3 and 10.

ANSWER:

Objection. This calls for a legal conclusion. To the extent that a response is required despite this objection, the District references S.C. Children's Code, and specifically S.C. Code Section 63-7-920, as to the authority of DSS to interview children who are the alleged victims of abuse and or neglect.

II. Interrogatories to Defendant Dorchester School District 2.

1. Please state, for each year, how many times SCDSS and its employees interrogated or interviewed children, without obtaining their parent's or legal guardian's permission, at Sand Hill Elementary School from the 2013-2014 school year through the 2018-2019 school year.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information. To the extent that a response is required despite this objection, District records reflect the following number of SCDSS contacts at Sand Hill Elementary School for the respective years:

**16/17 - 25
17/18 - 41
18/19 - 45
19/20 - 44**

The District does not have information as to whether permission by parents or guardians was obtained prior to those contacts.

2. Please state, for each year, how many times SCDSS and its employees searched or strip-searched children, without their parent's or legal guardian's permission, at Sand Hill Elementary School from the 2013-2014 school year through the 2018-2019 school year.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information. To the extent that a response is required despite this objection, the District does not have information responsive to this request.

3. Please state, for each year, how many times SCDSS and its employees interrogated or interviewed children, without obtaining their parent's or legal guardian's permission, at Gregg Middle School from the 2013-2014 school year through the 2018-2019 school year.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information and seeks information that is unduly burdensome to retrieve. To the extent that a response is required despite this objection, the District is aware that SCDSS interviewed J.T.M. on September 22, 2017.

4. Please state, for each year, how many times SCDSS and its employees searched or strip-searched children, without their parent's or legal guardian's permission, at Gregg Middle School from the 2013-2014 school year through the 2018-2019 school year.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information. To the extent that a response is required despite this objection, the District does not have information responsive to this request.

5. Please state, for each year, how many times SCDSS and its employees interrogated or interviewed children, without obtaining their parent's or legal guardian's permission, at Dorchester School District Two Schools from the 2013-2014 school year through the 2018-2019 school year. N.B. While this request would require some work, Plaintiffs will accept an estimation based upon the review of records from sample of a few of the elementary and middle schools.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information and seeks information that is unduly burdensome to retrieve. To the extent that a response is required despite this objection, the District has not been able search all individual students records to provide information responsive to this request.

6. Please state, for each year, how many times SCDSS and its employees searched or strip-searched children, without their parent's or legal guardian's permission, Dorchester School District Two Schools from the 2013-2014 school year through the 2018-2019 school year. N.B. While this request would require some work, Plaintiffs will accept an estimation based upon the review of records from sample of a few of the elementary and middle schools.

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information and seeks information that is unduly burdensome to retrieve. To the extent that a response is required despite this objection, the District has not been able to search all individual student records to provide information responsive to this request.

7. Please state the School District's policies and procedures for facilitating SCDSS interviews, interrogations, searches, and/or strip-searches.

ANSWER:

The District follows S.C. law allowing SCDSS to interview children at school. The District requires SCDSS workers to produce their ID badges or other credentials prior to any interviews. For younger children particularly, the District encourages a member of the school personnel to be present during the interview.

8. Does the School District require a School District Employee to be present when SCDSS interviews, interrogations, searches, and/or strip-searches a child while at school?

ANSWER:

See above.

9. Does the School District inform parents and legal guardians that SCDSS interviewed, interrogated, searched, and/or strip-searched their child while at school?

ANSWER:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information and seeks information that is unduly burdensome to retrieve. To the extent that a response is required despite this objection, the District does not have information responsive to this request nor does it have a policy that addresses such.

10. Please list each and every occasion SCDSS attempted to contact the Plaintiff minor children at school from 2015-2020. Please state the name of the school, whether the attempted contact was successful, what occurred during the contact, whether children were required to remove or pull up clothing to expose skin, and what was said by the Agency and the children.

ANSWER:

See Bates 1-7 for all of the information maintained regarding those interviews.

11. Please provide the names of any school personnel who facilitated, monitored, supervised, sat-in, or participated in the contact with SCDSS, listed above.

ANSWER:

Dr. Baird, Deputy Pryor, Lisa Smith, and possibly, Bailey Pete, Ayisha Brown.

12. For each contact by SCDSS, please state whether the School District informed the Plaintiffs' parents, and if not, why.

ANSWER:

The District did not contact Plaintiffs' parents. S.C. Code Section 63-7-920 sets forth the legal obligations regarding interviews and notification. In general, the District would not contact alleged perpetrators of abuse/neglect if it might jeopardize the safety of the victim child or the course of the investigation.

13. Please state whether any of these interviews, interrogations, searches, or strip-searches were conducted in compliance of a court order, a warrant, a subpoena, and/or exigent circumstances. For any exigent circumstances provided by SCDSS or observed by the School District, please list them below.

ANSWER:

Objection. This interrogatory calls for a legal conclusion. To the extent that a response is required, the District does not have independent information to either confirm or deny whether any interviews were conducted in compliance with a court order.

14. Please state the substance of any unwritten policies related to the interview, interrogation, search, and seizure of children, without their parent's or legal guardian's permission, by SCDSS at school.

ANSWER:

The District follows S.C. law allowing DSS to interview children at school. The District requires SCDSS workers to produce their ID badges or other credentials prior to any interviews. For younger children particularly, the District encourages a member of the school personnel to be present during the interview.

III. Requests for Production of Documents and Things all parties, Defendants Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister.

1. Please produce any and all documents that counsel referred to in responding to Plaintiff's Interrogatories.

RESPONSE:

See Bates 1-285.

2. Please produce a privilege log.

RESPONSE:

N/A

3. Please produce any policies and procedures related to SCDSS's authority and the School District's authority to allow and/or comply with the interview, interrogation, search, and strip-search of children, without their parent's or legal guardian's permission, by SCDSS at school.

RESPONSE:

See S.C. Code Section 63-7-920.

4. Please produce any policies and procedures related to the notification of parents or legal guardians that their child was interviewed, interrogated, searched, and strip-searched, without their parent's or legal guardian's permission, by SCDSS at school.

RESPONSE:

None.

5. Please produce any court order, warrant, or subpoena authorizing SCDSS to interview, interrogate, search, and/or strip-search the Plaintiff children from 2015-2020.

RESPONSE:

The District was not presented any court orders, warrants, or subpoenas prior to any SCDSS interviews.

6. Please produce all school records, to include IEPs and complete special service files for the Plaintiff children.

RESPONSE:

Objection. This interrogatory seeks information that is not relevant or likely to lead to relevant information. To the extent that a response is required despite this objection, school records for the children are enclosed.

7. Please produce the entire SCDSS file for the Plaintiff children and their parents to include emails, texts, correspondence, and any and all records obtained by the Agency from 2015-2020.

RESPONSE:

N/A.

8. Please produce any and all documents obtained through a subpoena and/or freedom of information act request issued in this litigation or the associated family court litigation in 2017.

RESPONSE:

None.

9. Please produce any documents and correspondence that demonstrates exigent circumstances to justify the warrantless interview, interrogation, search, and/or strip-search the Plaintiff children from 2015-2020.

RESPONSE:

Objection. This request calls for a legal conclusion. To the extent that a response is required despite this objection, see Plaintiff's Bates 4219-4234.

10. Please produce and specifically identify, by Bates Number, any and all documents and communications related to the interview, interrogation, search, and/or strip-search the Plaintiff children from 2015-2020.

RESPONSE:

See enclosed Bates 1-7.

IV. Requests to Admit to Dorchester School District Two.

1. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency's contact with J.H.M. on March 29, 2017 at 12:58 p.m. and A.R.M. later, at 1:13 p.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies the request.

2. Admit that the School District allowed SCDSS to seize J.H.M. and A.R.M. on March 29, 2017 at 12:58 p.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

3. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency’s contact with J.H.M., J.R.M., and C.B.M. on March 30, 2017 at 9:13 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies the request.

4. Admit that the School District allowed SCDSS to seize J.H.M., J.R.M., and C.B.M. on March 30, 2017 at 9:13 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

5. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency’s contact with J.H.M., J.R.M., J.T.M., and A.R.M. on May 12, 2017 at 9:13 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response

is required despite this objection, the District denies the request.

6. Admit that the School District allowed SCDSS to seize J.H.M., J.R.M., J.T.M., and A.R.M. on May 12, 2017 at 9:13 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

7. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency’s contact with J.T.M. and C.B.M. on May 25, 2017 at 10:15 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies the request.

8. Admit that the School District allowed SCDSS to seize J.T.M. and C.B.M. on May 25, 2017 at 10:15 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

9. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency’s contact with A.R.M., C.B.M., and J.T.M. at 9:03 a.m. on September 19, 2017.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies the request.

10. Admit that the School District allowed SCDSS to seize A.R.M., C.B.M., and J.T.M. at 9:03 a.m. on September 19, 2017.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

11. Admit that the School District was not aware of any exigent circumstances or probable cause requiring the Agency’s contact with A.R.M., C.B.M., and J.T.M. on November 20, 2017 at 10:11 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies the request.

12. Admit that the School District allowed SCDSS to seize A.R.M., C.B.M., and J.T.M. on November 20, 2017 at 10:11 a.m.

RESPONSE:

Objection. This request calls for a legal interpretation. To the extent that a response is required despite this objection, the District denies any “seizure” and admits that SCDSS interviewed or attempted to interview these children on that date.

13. Admit that SCDSS ended its child protective services abuse and neglect investigation of the May family on May 22, 2017. See Plaintiff’s Bates No. 002208, 002210, 002212, 003935, 003937.

RESPONSE:

The District can neither truthfully admit nor deny the meaning or authenticity of the documents referenced as they are not documents created or maintained by the District.

14. Admit that Warren May specifically requested that the School District contact Kaci May or Deborah J. Butcher “before anyone interviews...” Jeremy, Anna Rose, Corbin, Jasmine, or Johnston May. See Attached Exhibit 4.

RESPONSE:

Admitted.

15. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on March 29, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on March 29, 2017.

16. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on March 30, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on March 30, 2017.

17. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on May 12, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on May 12, 2017.

18. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on May 25, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on May 25, 2017.

19. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on September 19, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on September 19, 2017.

20. Admit that no warrant, court order, or subpoena was presented by SCDSS to authorize seizure of any of the Plaintiff children by SCDSS on November 20, 2017.

RESPONSE:

The District admits only that no warrant, court order, or subpoena was presented by SCDSS when it came to interview Plaintiff children by SCDSS on November 20, 2017.

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Susan M. Fittipaldi
Susan M. Fittipaldi, S.C. Bar No. 14225
sfittipaldi@hmwlegal.com

Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendants Dorchester School
District Two

August 7, 2020

Columbia, South Carolina

CERTIFICATE OF SERVICE BY E-MAIL

The undersigned of Halligan Mahoney Williams Smith Fawley & Reagle, PA, hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANT SCHOOL DISTRICT'S RESPONSES TO PLAINTIFFS' FIRST SET OF DISCOVERY REQUESTS** by e-mailing a copy of same to the following on this 7th day of August, 2020:

Robert J. Butcher, Esq.
Deborah J. Butcher, Esq.
The Camden Law Firm, PA
PO Box 610
Camden, SC 29021

Kenneth P. Woodington, Esq.
William H. Davidson II, Esq.
Davidson, Wren & DeMasters, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29202

s/ Susan M. Fittipaldi

Susan M. Fittipaldi

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
Kaci May, and Kacy May, as guardian	)	
ad litem for A.R.M., J.H.M., J.T.M.,	)	Civil Action No. 2017-CP-18-02001
C.B.M., J.R.M., and J.W.M.,	)	
	)	
Plaintiff,	)	
	)	RESPONSES TO PLAINTIFFS'
v.	)	FIRST SET OF
	)	REQUESTS FOR ADMISSIONS
Dorchester School District Two, Wally	)	(DEFENDANTS SOUTH CAROLINA
Baird, Joseph R. Pyre, South Carolina	)	DEPARTMENT OF SOCIAL SERVICES,
Department of Social Services, Susan	)	ALFORD AND FLEMISTER)
Alford, and Jasmine Flemister,	)	
	)	
Defendants.	)	

Defendants South Carolina Department of Social Services, Susan Alford, and Jasmine Flemister respond to Plaintiffs' first set of Requests for Admissions as follows:

1. Admit that each document in Plaintiff's N=Bates Number 000053 – 000063, 000073-000074 was produced and made publicly available by SCDSS on their website.

RESPONSE #1: Admitted, although the relevance of this information is denied.

2. Admit that the data contained within each document in compiled in Plaintiff's Bates Number 000053-000063, 000073-000074 was true and accurate, to the best of SCDSS's knowledge, when it was reported and published.

RESPONSE #2: Admitted, although the relevance of this information is denied.

3. Admit that there were no exigent circumstances or probable cause requiring the Agency's contact with J.H.M. on March 29, 2017 at 12:58 p.m. and A.R.M. later, at 1:13 p.m.

RESPONSE #3: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these Defendants deny this request, except to the extent admitted in the Response to Request 4 concerning the date and time of the contact or attempted contact or contacts.

4. Admit that SCDSS seized J.H.M. and A.R.M. on March 29, 2017 at 12:58 p.m.

RESPONSE #4: It is admitted that SCDSS interviewed A.R.M., or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

5. Admit that there were no exigent circumstances or probable cause requiring the Agency's contact with J.H.M., J.R.M. and C.B.M on March 30, 2017 at 9:13 a.m.

RESPONSE #5: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these Defendants deny this request, except to the extent admitted in the Response to Request 6 concerning the date and time of the contact or attempted contact or contacts.

6. Admit that SCDSS seized J.H.M., J.R.M. and C.B.M. on March 30, 2017 at 9:13 a.m.

RESPONSE #6: It is admitted that SCDSS interviewed, or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

7. Admit that there were no exigent circumstances or probable cause requiring the Agency's contact with J.H.M., J.R.M., J.T.M. and A.R.M. on May 12, 2017 at 9:13 a.m.

RESPONSE #7: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these Defendants deny this request, except to the extent admitted in the Response to Request 6 concerning the date and time of the contact or attempted contact or contacts.

8. Admit that SCDSS seized J.H.M., J.R.M., J.T.M. and A.R.M. on May 12, 2017 at 9:13 a.m.

RESPONSE #8: It is admitted that SCDSS interviewed, or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

9. Admit that there were no exigent circumstances or probable cause requiring the Agency's contract with J.T.M. and C.B.M. on May 25, at 10:15 a.m.

RESPONSE #9: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these

Defendants deny this request, except to the extent admitted in the Response to Request 10 concerning the date and time of the contact or attempted contact or contacts.

10. Admit that SCDSS seized J.T.M. and C.B.M. on May 25, 2017 at 10:15 a.m.

RESPONSE #10: It is admitted that SCDSS interviewed, or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

11. Admit that there were no exigent circumstances or probable cause requiring the Agency's contact with A.R.M., C.B.M. and J.T.M. at 9:03 a.m. on September 19, 2017.

RESPONSE #11: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these Defendants deny this request, except to the extent admitted in the Response to Request 12 concerning the date and time of the contact or attempted contact or contacts.

12. Admit that SCDSS seized A.R.M., C.B.M. and J.T.M. at 9:03 a.m. on September 19, 2017.

RESPONSE #12: It is admitted that SCDSS interviewed, or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

13. Admit that there were no exigent circumstances or probable cause requiring the Agency's contact with A.R.M., C.B.M. and J.T.M. on November 20, 2017 at 10:11 a.m.

RESPONSE #13: These Defendants object to this request, because it seeks to apply the standard that applies under the Fourth Amendment to the U.S. Constitution or Article I, Section 10 of the South Carolina Constitution to the contact referenced in this request. The agency's contact was not a search or seizure. To the extent that a response is required despite this objection, these Defendants deny this request, except to the extent admitted in the Response to Request 14 concerning the date and time of the contact or attempted contact or contacts.

14. Admit that SCDSS seized A.R.M., C.B.M. and J.T.M. on November 20, 2017 at 10:11 a.m.

RESPONSE #14: It is admitted that SCDSS interviewed, or attempted to interview, those individuals on or about that date and that approximate time, but it is denied that those individuals were seized, as stated in this request.

15. Admit that the agency ended its child protective services abuse and neglect investigation of the May family on May 22, 2017. See Plaintiff's Bates No. 002208, 002210, 002212, 003935, 003937.

RESPONSE #15: It is admitted that the child protective services abuse and neglect investigation of the May family ended on May 22, 2017, but the reason the investigation ended was not that the case was closed, but rather was that physical neglect of the children by Kaci and Warren May was indicated. As a result, a treatment case was instituted against Kaci and Warren May on May 22, 2017.

DAVIDSON, WREN & DEMASTERS, P.A.

BY: s/ Kenneth P. Woodington

KENNETH P. WOODINGTON #6213

WILLIAM H. DAVIDSON, II #1558

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Email: kwoodington@dml-law.com

Email: wdauidson@dml-law.com

*Counsel for Defendants South Carolina Department
of Social Services, Susan Alford, and Jasmine
Flemister*

Columbia, South Carolina

August 7, 2020

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Kaci May, and Kacy May as guardian ad
litem for A.R.M., J.H.M., J.T.M., C.B.M.,
J.R.M., and J.W.M.,

Plaintiffs,

v.

Dorchester School District Two, South
Carolina Department of Social Services,
Susan Alford, and Jasmine Flemister,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT
Case No.: 2017-CP-18-02001

PLAINTIFFS' PRE-TRIAL BRIEF

Pursuant to Rule 16(c), SCRPC, Plaintiff submits the following pre-trial brief:

(1) A concise, non-argumentative statement of the facts of the case.

a. Policy.

It is SCDSS's policy to interrogate children at school once a case is initiated without providing any notification to a child's parents or caregivers. Although S.C. Code Ann. §63-7-920(C) requires SCDSS to provide notice of the interrogation afterwards, the Agency rarely follows the statute. SCDSS will continue to interrogate children at school at least once a month throughout the life of the case. If a parent or caregiver denies SCDSS access to their child, SCDSS will continue to interrogate the children at school. If SCDSS makes an administrative determination of abuse and/or neglect against a parent or caregiver, SCDSS will continue to interrogate their children at school during the administrative appeal. If SCDSS files an action in Family Court against the parent or caregiver, SCDSS will continue to interrogate their children at

school at least once a month, even after the family court has appointed a guardian ad litem for the minor children.

It is Dorchester School District Two's policy to allow SCDSS to interrogate a child whenever the Agency wishes and the School District does not require the Agency to provide any cause, reason, or justification for the interrogation. While the School District will assert that it does not allow these interrogations to occur during instructional time, the May children were all interrogated, at some point, during instructional time. The School District does not report SCDSS interrogations to parents or guardians of children.

b. Facts relevant to this matter.

On March 28, 2017 SCDSS received an allegation of abuse and/or neglect against Kaci May and Warren May regarding J.H.M., J.R.M., and J.T.M. SCDSS would interrogate these children over the next eight months at school, without the permission of Kaci May and Warren May. Even after Kaci May and Warren May asked SCDSS not to interrogate their children at school, SCDSS continued to do so.

The following children were interrogated on the following days:

Interrogations		
Date	Children	Caseworker
03/29/2017	J.H.M., J.T.M., A.R.M.	Geathers, Smalls, King
03/30/2017	C.B.M., J.H.M., J.R.M.	Hullstrung, Smalls
05/12/2017	J.T.M., J.H.M., C.B.M., J.R.M., A.R.M.	Hullstrung
05/25/2017	J.T.M., C.B.M.	Hullstrung
09/19/2017	C.B.M., A.R.M., J.W.M.	Flemister
09/22/2017	J.T.M.	Flemister
11/20/2017	C.B.M., A.R.M., J.W.M.	Flemister
11/20/2017	Attempted J.T.M.	Flemister

It is SCDSS's and the School District's position that SCDSS can interrogate students any time and for any reason, or no reason at all.

Plaintiff Mother and Plaintiff Children seek injunctive relief under Amendments I and IV, U.S. Const. and S.C.Const. Article I, § 3, 10, and 12, asking the Court to restrain SCDSS from interrogating the May children and the School District from allowing interrogations of the May children unless there are circumstances excepting the warrant requirement, or presentation of a court order or warrant.

(2) An objective statement of the facts in controversy.

It appears all facts are in controversy. Plaintiff submitted a 29 page proposed stipulation of facts on Friday, August 7, 2020. The Defendants did not respond.

a. SCDSS was created by the South Carolina General Assembly to investigate, identify, and remedy child abuse and neglect in our communities.

The South Carolina General Assembly has attempted to address child abuse and neglect by establishing a children’s policy through the Children’s Code, Title 63. S.C. Code Ann. § 63-1-20(a). SCDSS is a statutory creature and its organic statute is found at S.C. Code Ann. § 43-1-10. See also, *City of Rock Hill v. S.C. Dep’t of Health & Envtl. Control*, 394 S.E.2d 327, 330 (1990); *Captain’s Quarters Motor Inn v. S.C. Coastal Council*, 413 S.E.2d 13, 14 (1991). SCDSS’s first substantive statute is found at S.C. Code Ann. § 43-1-80. SCDSS is charged with supervising and administering the, “public welfare activities and functions of the State...and child protective services as referred to in Title 63, Chapter 7...”. S.C. Code Ann. § 43-1-80.

The South Carolina General Assembly also required that Title 63 “...shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State...”. S.C. Code Ann. § 63-1-30.

All child welfare intervention by the State has as its primary goal the welfare and safety of the child. S.C. Code Ann. § 63-7-10(A)(5). South Carolina’s Child Protection and Permanency statutes require SCDSS to “establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members.” S.C. Code Ann. 63-7-10(B)(4).

SCDSS’s responsibilities shall include, but are not limited to, assigning and monitoring initial child protection responsibility through periodic review of services offered throughout the State; [and] assisting in the diagnosis of child abuse and neglect. S.C. Code Ann. § 63-7-910(C)(1 – 2).

a. Schools are essential partners in the identification and investigation of child abuse and neglect.

Without a doubt, and as the Plaintiffs conceded during argument, school attendance is often the only time an abused or neglected child is seen outside of the home. Schools are often the first line of defense in the identification of child abuse and neglect in our communities. Similarly, schools are often the only places SCDSS and/or law enforcement may have contact with a child without the undue influence of an abusive or neglectful caregiver.

The South Carolina General Assembly recognized this when it charged the State to “...encourage community involvement in the provision of children’s services including, as an integral part, local government, public and private voluntary groups, public and private nonprofit groups and private-for-profit groups in order to encourage and provide innovative strategies for children’s services.” S.C. Code Ann. § 63-1-20(C). “The children’s policy provided for in this chapter shall be implemented through the cooperative efforts of state, county and municipal legislative, judicial and executive branches, as well as other public and private resources. S.C. Code Ann. § 63-1-20(E). It also required SCDSS “to actively...seek the cooperation and

involvement of local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.” S.C. Code Ann. § 63-7-900(C).

b. Child abuse and neglect investigations are limited by statute.

The execution of child abuse and neglect investigations are codified in S.C. Code Ann. § 63-7-920. This statute is discussed in detail below and provides timelines, procedures for obtaining a warrant to interview a child, inspect the condition of a child, inspect a premises, and to obtain medical, school, and other records. SCDSS may promulgate regulations and formulate policies and methods of administration to carry out effectively child protective services, activities, and responsibilities. S.C. Code Ann. § 63-7-910(E).

The Children’s Code states that SCDSS has sixty days to conclude an investigation for child abuse and/or neglect. S.C. Code Ann. §§ 63-7-920(A)(2) and 63-7-930(A).

c. The Plaintiffs’ background and allegations.

Plaintiff Kaci May is the mother of seven children, A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., J.W.M., and L.C.M. Complaint, *1, filed December 7, 2017. She brings this lawsuit on behalf of A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M. Complaint, *1. Plaintiffs J.H.M., J.R.M., and L.C.M. are a sibling group that was adopted by Kaci May and her husband through SCDSS. Complaint, *4. A.R.M., J.T.M., C.B.M., and J.W.M. are the biological children of Kaci May and her husband. Complaint, *4.

The Plaintiff Children are zoned for Dorchester School District Two.

Well before J.H.M., J.R.M., and L.C.M. were adopted, the children were sexually abused by their biological family, and later, while under the control and in the custody of Defendant SCDSS from March 14, 2013 through November 8, 2013, they were also sexually abused. Complaint, *4; Affidavit of Kaci May, *2, filed July 26, 2019. Despite knowing about the

sexual abuse, the Plaintiffs allege SCDSS failed to provide treatment to these children while they were in foster care. Complaint, *4; Affidavit of Kaci May, *2.

Since her adoption, J.H.M. has exhibited signs of severe sexual abuse to include touching herself, masturbating in public, and touching other children. Affidavit of Kaci May, *2.

Kaci May informed the School District Defendants that due to her prior sexual abuse, J.H.M., age 10, is sexually reactive and that she openly masturbates. Complaint, *4. These behavioral and psychological issues are a function of J.H.M.'s prior sexual abuse. Complaint, *4. The Plaintiffs allege that the School District Defendants failed to supervise J.H.M. at school which endangered both J.H.M. and her peers. Complaint, *4; Affidavit of Kaci May, *2. Kaci May, her husband, and the School District agreed to a plan to protect J.H.M. and her peers. Affidavit of Kaci May, *2. The Plaintiffs alleged that the School District did not abide by the plan and failed to supervise J.H.M. in the bathroom with other children, wandering the halls by herself, and on the playground with her peers. Affidavit of Kaci May, *2. The School District Defendants denied these allegations. Affidavit of Dr. Marion "Wally" Baird, filed July 24, 2019.

The Plaintiffs assert that despite numerous notes, calls, and in person conversations with teachers and administrators, J.H.M. was not supervised at school. Affidavit of Kaci May, *3. Kaci May addressed the safety of the child and the safety of her classmates in an Individualized Education Program (IEP) meeting for J.H.M. with the School District Defendants. Complaint, *5; Affidavit of Kaci May, *3. The Plaintiffs allege that the School District Defendants retaliated against Kaci May and reported her for child sexual abuse on March 28, 2017. Complaint, *5; Affidavit of Kaci May, *3 and Exhibit 1 and 2.

In response to allegations of abuse or neglect, the School District Defendants allowed three SCDSS caseworkers to interrogate J.H.M. on March 29, 2017 at 12:58 p.m. and A.R.M. later, at 1:13 p.m. Affidavit of Kaci May, *4 and Exhibit 3, *1. The caseworkers were Melissa

Geathers, Vanessa Smalls, and Priscilla King. Affidavit of Kaci May, *4 and Exhibit 3, *1.

SCDSS did not have a warrant or a Court Order.

The School District Defendants allowed SCDSS to interrogate J.H.M., J.R.M., and C.B.M. on March 30, 2017 at 9:13 a.m. with a law enforcement officer, Deputy Pryor. Affidavit of Kaci May, *4 and Exhibit 3, *2. The SCDSS caseworkers were Kenyn Hullstrong and Vanessa Smalls. Affidavit of Kaci May, *4 and Exhibit 3, *2. SCDSS did not have a warrant or a Court Order.

On May 12, 2017 the School District Defendants allowed SCDSS to interrogate J.H.M., J.R.M., J.T.M., and A.R.M. at 9:13 a.m. Affidavit of Kaci May, *4 and Exhibit 3, *3. The SCDSS caseworker was Kenyn Hullstrong. Affidavit of Kaci May, *4 and Exhibit 3, *3. SCDSS did not have a warrant or a Court Order.

The School District Defendants also allowed SCDSS and Kenyn Hullstrong to interrogate J.T.M. and C.B.M. on May 25, 2017 at 10:15 a.m. Affidavit of Kaci May, *4 and Exhibit 3, *4. SCDSS did not have a warrant or a Court Order.

SCDSS investigated the complaint and concluded its investigation on May 22, 2017. Complaint, *5. SCDSS made an administrative finding of physical neglect against Plaintiff Kaci May and Warren May. Complaint, *5. This administrative finding was appealed by Plaintiff Kaci May and Warren May pursuant to S.C. Code Ann. §§ 63-7-1410 – 1440 on June 7, 2017. Complaint, *5.

On June 23, 2017 SCDSS stayed the administrative appeal and stated that it would file an action in family court. Complaint, *5. SCDSS did not file an action in family court until September 14, 2017. Complaint, *5.

At the beginning of the 2017-2018-2017 school year, Kaci May explicitly informed the School District Defendants, including Wally Baird, that they were not to allow SCDSS to interrogate her children. Affidavit of Kaci May, *4 and Exhibit 4.

On September 14, 2017 SCDSS filed an action in the Dorchester Family Court to remove the May children. SCDSS v. May, 2017-DR-18-01334.

Well after the statutory time for SCDSS to conduct its investigation had passed,¹ and without Kaci May or Warren May agreeing to a treatment plan or agreeing to school visits by SCDSS, the School District Defendants allowed SCDSS and Defendant Jasmine M. Flemister to interrogate A.R.M., C.B.M., and J.T.M. at 9:03 a.m. on September 19, 2017. Affidavit of Kaci May, *4, and Exhibit 5, *1. SCDSS did not have a warrant or a Court Order.

On October 4, 2017 Kaci May was picking up her children early from school and Jasmine Flemister, a SCDSS caseworker, followed her out of the school. Affidavit of Kaci May, *4. The next day, Kaci May spoke with Cori Grubler, the front office receptionist at Sand Hill Elementary School. Affidavit of Kaci May, *4. Kaci May reminded her that she was to be notified if SCDSS attempted to speak with her children. Affidavit of Kaci May, *4.

On October 16, 2017 counsel for Kaci May sent a letter to Dorchester School District Two, Wally Barid, and Joseph R. Pye reminding them not to allow her children to be interrogated by SCDSS. Complaint, *6; Affidavit of Kaci May, *4, and Exhibit 6. Kaci May took five copies of the letter to the school and gave them to Deputy Pryor, the school resource officer. She also gave copies to a different front office receptionists, and asked that the copies be delivered to the school nurse, the guidance counselor, and Defendant Wally Baird. Affidavit of Kaci May, *4.

¹ S.C. Code Ann. 63-7-930(A): ... By the end of the sixty-day time period, suspected reports must be classified as either unfounded or indicated pursuant to the agency's investigation.

On November 20, 2017 at 10:11 a.m. the School District Defendants allowed SCDSS and Jasmine M. Flemister to interrogate A.R.M., C.B.M., and J.T.M. Complaint, *6; Affidavit of Kaci May, *5, and Exhibit 5, *2. SCDSS did not have a warrant or a Court Order.

Neither the School District Defendants, the SCDSS Defendants, nor law enforcement notified the Plaintiff Children's parents of these interrogations pursuant to S.C. Code Ann. § 63-7-920(C).²

Defendant Dorchester School District Two has a policy to allow SCDSS caseworkers to interrogate children when there are complaints of abuse and neglect. Complaint, *5, Affidavit of Wally Baird, *1-2. The Plaintiffs allege that even when there are no complaints of abuse and neglect, Dorchester School District Two allows SCDSS caseworkers to interrogate children without noticing their parents, without providing children with counsel, without advising children of their rights, and without informing the parents of these children afterwards. Complaint, *5. This is confirmed in through the School District Defendants' submission of the Affidavit of Dr. Marion "Wally" Baird, filed July 24, 2019 (DSS does not need permission from the school to interview students). Dr. Baird continues his affidavit by stating:

"I am not aware of any legal or other authority that would have allowed me to refuse DSS caseworkers or law enforcement entry to Sand Hill Elementary to meet with students or otherwise interfere with DSS investigative procedures."

Affidavit of Wally Baird, *2.

SCDSS's training shows that interrogation of children at school is conducted as a matter of policy without regard for due process considerations such as securing a warrant, court order, or parental permission. Plaintiffs' Exhibit 8, *9, 12, 13, 20, Child Welfare Basic Certification.

² S.C. Code Ann. § 63-7-920(C). (C) ...The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation...

Both the SCDSS Defendants and the School District Defendants rely on statutory approval to allow SCDSS to interrogate Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M. at school at any time and for any reason without a warrant, a court order, or exigent circumstances. It is also undisputed that the children were interrogated without notice to their parents, without the provision of counsel, without advisement to the children of their rights, and without informing the parents afterwards. Complaint, *5 and 6. This includes Sand Hills Elementary School and Gregg Middle School. Complaint, *6.

d. Subsequent SCDSS and CPS investigations.

While J.H.M. was at Three Rivers PRTF SCDSS conducted an out-of-home abuse and neglect investigation because J.H.M. sexually acted out with another child.

Another investigation was initiated by Dorchester County Department of Social Services on or about December 21, 2017 because a reporter alleged, “J.H.M. is mentally and emotionally abused by her adoptive mother Kaci may. It’s reported that the mother is verbally abusive, aggressive, and brutal towards the child and makes allegations of behavior issues against the child that have not been observed by anyone else.” Trial Exhibit 1, *51. The Mays were never notified of the investigation, SCDSS indicated the case for neglect against Kaci May but never notified her, and the allegations were never shared with the Mays’ attorneys. It’s like SCDSS burned Kaci May in effigy.

This past year, J.H.M. was involved in a sexual acting out incident at her PRTF in Arkansas and Arkansas Department of Children & Family Services and State Police have investigated. L.C.M. has also demonstrated severe mental health issues and was voluntarily committed to MUSC Institute of Psychiatry in May 2020.

e. Statistical data of CPS Investigations published by SCDSS and submitted by the Plaintiffs.

The Plaintiffs submitted data compiled by the South Carolina Department of Social Services that showed most Child Protective Services Intakes³ received by the Agency are unfounded. Plaintiff's Exhibit 11, CPS Intakes. Cases that are investigated only result in founded, or indicated cases, between 29% to 49% of the time. When data is isolated for Dorchester County, intakes are founded between 14% and 28% of the time. Investigations in Dorchester County result in founded, or indicated cases, 28% and 49% of the time.

f. Disposition of the Family Court matter.

SCDSS dismissed its CPS action in *SCDSS v. May, et al.*, 2017-DR-18-01334 on June 14, 2018 pursuant to Rule 41(a)(1)(B), SCRCP. Plaintiff's Exhibit 9, Stipulation for Voluntary Dismissal.

(3) The legal issues involved. This includes the law applicable to the cause of action and the defense.

a. Injunctive relief.

To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); *Ray v. City of Rock Hill*, 428 S.C. 358, 368, 834 S.E.2d 464, 469 (Ct.App. 2019). See also, Rule 65(c-d).

b. Statutory Get Out of Jail Free Card – S.C. Code Ann. §63-7-920(c).

SCDSS's and the School District's assertion that S.C. Code Ann. § 63-7-920(c) requires schools to allow SCDSS to interrogate children wherever and whenever it wishes is

³ An intake is a report of child abuse and/or neglect.

unconstitutional, as applied by the Defendants. No state statute can diminish Federal and State Constitutional protections in the manner the Defendants set forth. The statute, as applied by Defendants, is facially unconstitutional. *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600-601, 550 S.E.2d 287, 291 (2001) (A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. To meet the “stringent” test for standing, “the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61). See also, *Jowers v. S.C. Dep't of Health & Environmental Control*, 423 S.C. 343, 353, 815 S.E.2d 446 (2018).

The Defendants reliance upon S.C. Code Ann. § 63-7-920(C) is without merit and fails to acknowledge due process protections enumerated in paragraph (B). Paragraphs (B) and (C) of the statute state:

(B) The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing

child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

S.C. Code Ann. § 63-7-920(B -C).

Paragraph (B) of S.C. Code Ann. § 63-7-920 provides tools to facilitate SCDSS in conducting its investigation, but with judicial oversight and due process protections. The requirement of an affidavit in support of a petition for a warrant is no different than the same requirements for law enforcement and other state officers. See S.C. Code Ann. § 17-13-140 (law enforcement); § 41-15-260 (Commission of Labor); § 44-53-1400 (Lead Poisoning Prevention and Control); § 61-6-4540 (Alcoholic Beverage Control); § 44-53-500 (DHEC Narcotic and Controlled Substances). Paragraph (C) cannot be read in isolation and absent the due process provisions of the preceding paragraph.

The Defendants' assertion that S.C. Code Ann. § 63-7-920 completely abrogates the protections of the First and Fourth Amendments of the United States Constitution and Article I, § 10 of the South Carolina Constitution is without merit.

There is no doubt, as all of the parties have stated, the State and our communities have a legitimate, vested interest in the protection of children from abuse and neglect. "South Carolina, as *parens patriae*, protects and safeguards the welfare of its children." *In the Interest of Stephen W.*, 409 S.C. 73, 78, 761 S.E.2d 231 (2014) (*Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992) (citation omitted); see also *State v. Cagle*, 111 S.C. 548, 552, 96 S.E. 291, 292 (1918) ("The state is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare."). "The State has a profound interest in the welfare of the child, particularly his or her being sheltered from abuse. The right to familial relations is not absolute." *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002); *Brokaw v. Mercer County*, 235 F.3d 1000, 1018 (2000). The liberty interest in familial privacy

and integrity is limited by the compelling governmental interest in the protection of children particularly where the children need to be protected from their own parents and does not include the right to be free from child abuse investigations. *Brown v. Newberger*, 291 F.3d 89, 94 (1st Cir. 2002); *Watterson v. Page*, 987 F.2d 1, 8 (1st Cir. 1993).

The South Carolina General Assembly recognized the countervailing interests of protecting the health, welfare, and best interests of South Carolina's children against the due process and fundamental liberties of the First, Fourth, and Fourteenth Amendments of the United States Constitution when it wrote the Children's Code, requiring SCDSS to "establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members." S.C. Code Ann. 63-7-10(B)(4).

There are legitimate circumstances when interrogation of a child at school without a court order or a warrant would be appropriate. Such exigent circumstances would occur on a case by case basis and would include probable cause that suspected abuse and/or neglect that threatened the life and safety of a child was imminent and certain or that certain evidence would be destroyed or wasted. Otherwise, there is no compelling reason for SCDSS caseworkers to be exempt from the warrant requirement of the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution. *Doe v. Heck*, 327 F.3d 492, 509 (7th Cir. 2003) (Citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (the Fourth Amendment's prohibition against unreasonable searches and seizures protects against warrantless intrusions during civil as well as criminal investigations by the government. Thus, the strictures of the Fourth Amendment apply to child welfare workers, as well as all other governmental employees.)

The law thus seeks to strike a balance among the rights and interests of parents, children, and the State. *Tenenbaum v. Willaims*, 193 F.3d 581, 595 (2d Cir. 1999) (Citing *Franz v. Lytle*,

997 F.2d 784, 792-93 (10th Cir. 1993). “While the paramount importance of the child’s well-being can be effectuated only by rendering State officials secure in the knowledge that they can act quickly and decisively in urgent situations and that the law will protect them when they do, there is a critical difference between necessary latitude and infinite license.” Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 Wm. & Mary L. Rev. 413, 417 (2005)

The majority of Courts across the country have found school children retain a fundamental right to be free from search and seizure by social services workers. *Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003) (holding that 20-minute interview of eleven-year-old boy was a seizure where the child was escorted from class by the principal, caseworkers, and a uniformed police officer into church’s empty nursery and questioned by the caseworkers, with the police officer present, about whether the principal or his parents had spanked him); *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (holding that two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005) (holding that an “emotionally vulnerable” 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew “had the authority to determine her custodial care,” confined her for an “hour or two” in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father).

c. Objection to Kaci May acting as Guardian ad Litem for her minor children.

The SCDSS Defendants have argued i Kaci May does not have standing to represent the interests of her own children in this matter and also asserts that she has a conflict which prevents her from asserting those claims on behalf of the children simply because she was accused of child abuse and neglect.

The fact that SCDSS voluntarily dismissed the CPS action in Family Court and stipulated, “Plaintiff SCDSS’s Investigation on or about March 28, 2017 resulting in a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned”, requires the Court to find the Mays did not abuse or neglect the children and the SCDSS Defendants are collaterally estopped from arguing or insinuating otherwise. Exhibit 9, Stipulation for Voluntary Dismissal, *SCDSS v. May*, 2017-DR-18-01334, filed June 24, 2018; *Meyer v. McGowan*, 2:16-cv-00777-RMG (D.S.C. September 10, 2018) (J. Gergel) (Citing *Carolina Renewal, Inc. v. S.C Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779 (S.C. Ct. App. 2009). (Under South Carolina law, collateral estoppel requires the issue of fact or law in the present lawsuit was: “(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.”).

The law of the case is that the Mays were vindicated of the allegations of child abuse and/or neglect and any insinuation otherwise is impermissible. A vindicated parent, such as Kaci may, has every right to bring such a matter on behalf of their children.

The SCDSS Defendants have cited *M.M. et al. v. Mitchum, et al.*, 3:17-cv-00416 (D.S.C.) in which the case was dismissed without prejudice because the parent brought the case on behalf of several children, some of whom had sexually abused each other, seeking damages from SCDSS and individual officers due to the sexual abuse. The *M.M.* case is distinguished because it was a civil rights and personal injury case where the damages were due to the sexual abuse. While this matter does involve facts related to child-on-child sexual abuse, the facts are incidental to whether or not the Defendants have the absolute right to interrogate or facilitate interrogations of school children for any reason at any time they please. The District Court perceived the possibility in the *M.M.* case that the parent could have a conflict in making prosecutorial, settlement and partition of proceeds when several of the children in the *M.M.*

matter, who were no longer in her custody and who had sexually abused her own biological children, who were also plaintiffs.

What also distinguishes this matter is the fact that it is limited in scope and time to one issue and the Plaintiffs are not seeking damages – they are seeking vindication of fundamental rights. If this were a damages action regarding the sexual abuse issues of these children, Judge Gergel’s opinion in the M.M. case would be both instructive and compelling. The potential for a parental conflict in asserting these rights for both her adopted children and her biological children is at most, insignificant and unlikely.

d. Jurisdiction.

The Defendants argue this Court lacks subject jurisdiction in their various Motions to Dismiss. The Defendants rely upon S.C. Code Ann. § 63-7-1610(A), which states, “The family court has exclusive jurisdiction over all proceedings held pursuant to this article.”

“The Family Court is a statutory court created by the Legislature and, therefore, is of limited jurisdiction.” *S.C. Dep’t of Mental Health v. State*, 301 S.C. 75, 78, 390 S.E.2d 185 (1990). See also, S.C. Code Ann. § 63-3-10 (There hereby are created courts of limited jurisdiction to be known and designated in this title as “family courts.” The number and boundaries of such family courts shall be the same as the judicial circuits.) Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the Court is set forth in the Children’s Code. *S.C. Dep’t of Mental Health* at 78.

The Family Court’s only has jurisdiction over adjudication of abused, neglected, and delinquent children (S.C. Code Ann. § 63-3-510; 63-3-520; 63-3-540, 63-7-1610); domestic matters (S.C. Code Ann. § 63-3-530); termination of parental rights (S.C. Code Ann. § 63-7-2620), and adoptions (S.C. Code Ann. § 63-9-40).

On the other hand, the Circuit Court is the state's court of general jurisdiction. The state constitution defines the subject matter jurisdiction of the Circuit Court:

The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.

S.C. Const. art V, § 11. Subject matter jurisdiction is “the power to hear and determine cases of the general class to which the proceedings in question belong.” *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598, 600 (1994) (citing *Bank of Babylon v. Quirk*, 472 A.2d 21, 22 (Conn. 1984)); accord *Balcon, Inc. v. Sadler*, 244 S.E.2d 164 (N.C. App. 1978) (citing C.J.S. Courts § 23, pp. 36-37).

The South Carolina Supreme Court defined subject matter jurisdiction as “the power to hear and determine cases of the general class to which the proceedings in question belong”. *Id.* This means that there is subject matter jurisdiction so long as the complaint alleges a claim within the competence of the court, and consequently, that subject matter jurisdiction almost always exists.

The Plaintiffs have sought injunctive relief against SCDSS, a state agency, its Agency Head, and the School District for violations of their constitutional rights under both the South Carolina and the United States Constitution. The Plaintiffs have sought relief for their federal constitutional rights under 42 U.S.C. § 1983. The South Carolina General Assembly vested jurisdiction with the Circuit Court for all actions affecting State agencies and officials:

...to hear and determine all questions, actions and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, affecting boards, commissions and agencies of this State, and officials of the State in their official capacities in the circuit where such question, action or controversy shall arise.

S.C. Code Ann. § 15-77-50.

The Defendants have failed to provide any statute, rule, or decisional law that would allow the Family Court to adjudicate a cause of action for injunctive relief pursuant to 42 U.S.C. § 1983.

While it is true that the part of the Plaintiffs' claims could have been adjudicated in the Family Court, it is also true that constitutional claims for injunctive relief are, "clearly a part of the general class of cases which the court of common pleas has the jurisdiction to hear." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 422, 567 S.E.2d 231 (2002) (Citing *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994)) (When State University failed to assert exclusivity provision of Workers Compensation, the Circuit Court had subject matter jurisdiction to hear employment action).

Similarly, actions that may appear to be related to Domestic Relations and fall within the purview of the Family Court are exclusively adjudicated in the Circuit Court. For instance, the circuit court, rather than the family court, has jurisdiction to impose a constructive trust or partition property that was not part of the divorce settlement. *Sims v. Sims*, 290 S.C. 190, 348 S.E.2d 835 (1986); *Eichor v. Eichor*, 290 S.C. 484, 351 S.E.2d 353 (Ct. App. 1986).. Likewise, actions for breach of contract are in the circuit court unless the obligation arises directly out of an order or litigation in the family court. *Lighty v. South Carolina Dep't Social Servs.*, 285 S.C. 508, 330 S.E.2d 529 (1985) (action by agency to recover child support payment from parent not in family court jurisdiction); *Zwerling v. Zwerling*, 273 S.C. 292, 255 S.E.2d 850 (1979) (enforcement of money judgment for breach of contract separate from divorce decree is in Circuit Court). Thus, an action by a hospital under the necessities doctrine is brought in circuit court. *Amisub of South Carolina, Inc. v. Passmore*, 316 S.C. 112, 447 S.E.2d 207 (1994).

Other actions involving child abuse and SCDSS do not fall in the exclusive jurisdiction of the Family Court. They include torts, 42 U.S.C. § 1983 damages actions, and 42 U.S.C. § 1983

injunctive relief actions. *Bass v. SCDSS*, 414 S.C. 558, 780 S.E.2d 252 (2015) (Upholding verdict for SCDSS's gross negligence during investigation); *Doe ex rel. Johnson v. SCDSS*, 597 F.3d 163 (4th Cir. 2010) (Setting qualified immunity standard for SCDSS caseworkers and remanding gross negligence claims to Common Pleas for allowing foster child to be sexually abused in foster care); *Michelle H. v. McMaster, et al.*, 2:15-cv-00134-RMG (D.S.C. October 4, 2016) (Dkt. No. 48, Final Judgment and Order Approving Class Action Settlement placing SCDSS under Federal Court Supervision).

Lastly, if the Court agreed with the Defendants that the Plaintiffs' complaints are only justiciable in the Family Court there would be no means for Parents and children to address these rights if SCDSS chooses to close an investigation and not pursue a CPS action against the parents in the Family Court – any remedy would be foreclosed as there is no statutory means for a caregiver or child to address these grievances in the Family Court.

For the reasons stated above, it is clear that this Court has jurisdiction to adjudicate the Plaintiffs' claims.

e. Justiciability and mootness.

The SCDSS Defendants assert that there is no active case or controversy because four of the seven children are now homeschooled, there is no active SCDSS investigation, and the Family Court case was dismissed. The SCDSS Defendants assert that the Plaintiffs' fears that the Defendants' actions are capable of repetition yet incapable of review is mere speculation.

The Plaintiffs submissions included statistical data compiled by SCDSS regarding Child Protective Services Intakes and Investigations, found in Plaintiffs' Exhibit 11. The data shows that in 2017-2018 fiscal year, 37,837 cases were investigated statewide and only 10,928 cases were founded or indicated. In Dorchester County, 1,070 cases were investigated and only 378

cases were founded or indicated. This means almost 27,000 cases statewide and almost 1,200 Dorchester County cases were never taken to the Family Court or administratively adjudicated.

The Defendants have wholeheartedly asserted that there are no limitations to SCDSS's rights to interrogate children at school, citing S.C. Code Ann. § 63-7-920(C). Similarly, the SCDSS training documents submitted by the Plaintiffs utilize in school interrogations as a matter of course and it appears, at least within the submissions presented by the Plaintiffs, that there is little to no training regarding limitations on such interrogations.

Based upon the pleadings, affidavits, and submissions, it appears that some of the May children have severe mental health and/or behavioral issues as some of the children have been placed in Pediatric Residential Treatment Facilities and have Individual Education Plans with their schools. Some of these issues involve sexually inappropriate behavior with other children. It would not be unreasonable to assume that this family has a higher probability of coming into future contact with social services and the Child Protective Services system simply because the children have severe problems and they are in constant contact with physicians, therapists, teachers, and other service providers who are mandatory reporters.

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Mathis v. S.C. State Highway Dep't.*, 260 S.C. 344, 195 S.E.2d 713 (1973); *see also Linda Mc Co v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (202010); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006); *Seabrook v. Knox*, 369 S.C. 191, 631 S.E.2d 907 (2006); *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (2002).

The South Carolina Supreme Court has adopted a less restrictive approach to the “capable of repetition but evading review” requirement, no longer requiring courts to make a finding concerning the reasonable expectation that the same complaining party would be subjected to the same actions again. *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861 (1996). Because the Plaintiff Children are still minors living in Dorchester County, they remain subject to the County’s child welfare system and therefore, it is not clear that the allegedly wrongful behaviors could not reasonably be expected to recur. *United States v. Concentrated Phosphate Export Ass’n, Inc.*, 393 U.S. 199, 203, 89 S. Ct. 361, 21 L. Ed. 2d 344 (1968).

Another exception to the Mootness doctrine raised by the Plaintiffs relates to questions of imperative and manifest urgency. The SCDSS Defendants and the School District Defendants’ absolute reliance upon S.C. Code Ann. § 63-7-920(C) coupled with the refusal to acknowledge temporal and exigence factors and fundamental constitutional protections is concerning. While the Plaintiffs have provided no breakdown of the SCDSS data regarding the number of school age children involved in each investigation, there is a reasonable concern that tens of thousands of children are interrogated in schools every year, sometimes on multiple occasions, without any concerns for their constitutional rights or the constitutional rights for their families. The Plaintiffs have also shown evidence that SCDSS interrogates children when there is immediate concern or suspicion of child abuse and neglect. Plaintiffs’ Exhibits 5 and 6.

The Plaintiffs’ claims fall within two of the exceptions to the Mootness Doctrine.

f. The School District Defendants’ claim of qualified immunity is inapplicable in a claim for injunctive relief.

“A “qualified immunity” defense applies in respect to damages actions, but not to injunctive relief.” *Morse v. Frederick*, 551 U.S. 393, 432, 127 S. Ct. 2618 168 L. Ed. 2d 290

(2007) (Citing *Wood v. Strickland*, 420 U.S. 308, 314, n 6, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975)). According to the United States Supreme Court, qualified immunity is meant to protect individual officials not only from liability, but also from suit. *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

As stated above, this lawsuit seeks injunctive relief and the Plaintiff's do not seek damages. The individual defendants in this matter were sued in the official capacity. See Complaint, *2. The School District Defendants' arguments asserting qualified immunity are not applicable.

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

a. Exhibits.

- i. Exhibit 1, SCDSS Dictation;
- ii. Exhibit 2, School District Sign-In Documents;
- iii. Exhibit 3, SCDSS Intake Summary;
- iv. Exhibit 4, Guided Supervision Staffing;
- v. Exhibit 5, Email correspondence between Kaci May and SCDSS;
- vi. Exhibit 6, Texts between Kaci May and SCDSS;
- vii. Exhibit 7, Administrative Appeal documents;
- viii. Exhibit 8, SCDSS Form 3062, Case Transfer and/or Staffing;
- ix. Exhibit 9, Sand Hill Elementary School Contact Face Sheets;
- x. Exhibit 10, Dorchester County Department of Social Services Legal Cover Sheet;
- xi. Exhibit 11, Dorchester School District Student Transfer/Withdrawal Form;

- xii. Exhibit 12, Family Court Complaint packet, *SCDSS v. May*, 2017-DR-18-1334;
- xiii. Exhibit 13, Three Rivers Face Sheet;
- xiv. Exhibit 14, Letter from Foster Care Abuse Law Firm, PA to Wally Baird and Joseph Pye, October 16, 2017;
- xv. Exhibit 15 – Subpoenas issued by SCDSS in Family Court matter, *SCDSS v. May*, 2017-DR-18-1334;
- xvi. Exhibit 16, Stipulation for Voluntary Dismissal, *SCDSS v. May*, 2017-DR-18-1334;
- xvii. Exhibit 17, Rule 1006, SCRE Summary, SCDSS Data for Intakes, Assessments, and Indicated Cases & SCDSS Face-to-Face Contacts at Sand Hill Elementary School;
- xviii. Exhibit 18, Excerpts from South Carolina Department of Social Services Human Services Policy and Procedure Manual, Chapter 7, Child Protective and Preventative Services;
- xix. Exhibit 19, Dorchester School District Two Policies and Procedures:
 - 1. Policy JIH – Student Interrogations, Searches, and Arrests;
 - 2. Policy AR JIH-R – Student Interrogations, Searches, and Arrests;
 - 3. Policy JIH-E – Student Interrogations, Searches, and Arrests;
 - 4. Policy AR JRA-R – Student Records;
 - 5. Policy CFA – School Principals/Building Administrators;
 - 6. Policy JA – Student Policies Goals and Objectives;
 - 7. Policy JI – Student Rights and Responsibilities;
 - 8. Policy JLF – Student Welfare;

9. Policy KBB – Parent Rights and Responsibilities;

10. Policy KI – Visitors

xx. Exhibit 20 – School/SCDSS Trash about Kaci May;

xxi. Exhibit 21, Affidavit of Dr. Marion “Wally” Baird;

b. Witnesses:

i. Kaci May;

ii. C.B.M.;

iii. A.R.M.;

iv. Marion Baird;

v. Jasmine Flemister;

vi. Garry James; and

vii. Donna Barton;

(5) Any unusual problems relating to evidence to be introduced.

a. None.

(6) Any unusual question or matter which should be brought to the attention of the court.

a. None.

(7) A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

a. Mediation was conducted on August 7, 2020. No agreement could be reached.

Respectfully Submitted,

THE FOSTER CARE ABUSE LAW FIRM, PA

s/Robert J. Butcher

Deborah J. Butcher

S.C. Bar No. 74029

Fed. Bar No. 1073
Robert J. Butcher
S.C. Bar No. 74722
Fed. Bar No. 9767
The Foster Care Abuse Law Firm, PA
P.O. Box 610
Camden, South Carolina 29020
Telephone: (803) 432-7599
Facsimile: (803) 432-7499
d butcher@camdensc-law.com
r butcher@camdensc-law.com

Attorneys for Plaintiffs

Dated: August 12, 2020
Camden, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER) IN THE COURT OF COMMON PLEAS

Kaci May, and Kacy May, as guardian)
 ad litem for A.R.M., J.H.M., J.T.M.,) Civil Action No. 2017-CP-18-02001
 C.B.M., J.R.M., and J.W.M.,)
)

Plaintiff,)

PRE-TRIAL BRIEF

v.)

**(Defendants South Carolina Department of
 Social Services, Michael Leach, and Jasmine
 Flemister)**

Dorchester School District Two, Wally)
 Baird, Joseph R. Pyre, South Carolina)
 Department of Social Services, Michael)
 Leach, and Jasmine Flemister,)
)

Defendants.)
)
 _____)

Defendant South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister, pursuant to Rule 16(c), SCRCPP, respectfully submit the following pre-trial brief. An Addendum (pp. 9-14) sets forth the legal arguments in more detail.

1. A concise, non-argumentative statement of the facts of the case.

A. Procedural history.

This action was filed on December 7, 2017. Plaintiff Kaci May, claiming to act as guardian ad litem for the seven minor children in her family, seeks injunctive relief against the South Carolina Department of Social Services and Dorchester School District Two. Specifically, Plaintiffs have sought an injunction prohibiting the both DSS and the school district from conducting, or (in the case of the school district) assisting with, interviews of the Plaintiff Children by DSS at school unless there is a court order or a new allegation of abuse and/or neglect. Complaint, Prayer for Relief, ¶ (C).

At the time of the filing of the Complaint (December 7, 2017), Plaintiffs also filed a Motion for Temporary Restraining Order, seeking, on a temporary basis, the same relief as noted above. That motion was never brought before the Court by Plaintiffs until July 29, 2019, over a year and a half after it was filed. This Court denied the motion for temporary relief at a motion hearing on July 29, 2019, the Court concluding that Plaintiff had not made a showing of irreparable harm.

All Defendants had filed Motions to Dismiss in early 2018. Those motions were also heard on July 29, 2019. By Form 4 Order filed March 17, 2020, the Court dismissed certain individual Defendants, but did not dismiss DSS, the School District, or the official-capacity DSS Defendants (the agency head and a county caseworker).

The case is now before the Court for a bench trial on the merits, although as will be seen, there are few if any disputed factual issues.

B. Facts.¹

Plaintiff Kaci May is the parent of seven children, four of whom are her biological children, and the other three of whom were a sibling group adopted by the Mays in 2015. (Ms. May's husband, Warren May, passed away in April of this year.) One or more of the adopted children suffered sexual abuse while in their biological family.

On March 27, 2017, there was a daylong meeting between Kaci and Warren May and school district personnel regarding four of the May children. At the meeting, according to her affidavit dated December 29, 2017, Plaintiff May became "exasperated," and advised that "J.H.M. [a female child who was adopted by the Mays] raped my babies." She pointed out that "While this is not the nicest thing to say, it is a truthful reality statement" Ms. May disclosed in graphic detail that one child in the household had brutally raped other children in the household; that the child had dragged the victim children across the floor to rape them and those children dug their nails into the floor; and that the child used a wood paddle or utensil to rape the other children.

This and other statements by Ms. May at that meeting were reported to DSS, which by statute (S.C. Code Ann. § 63-7-920) was required under those circumstances to conduct an investigation into the issue of whether there was abuse or neglect of the children by the parents or others. This in turn led to DSS in-school interviews with four of the seven May children: one child was interviewed on March 29, 2017, and three others on the following day, March 30, 2017.

On March 31, 2017, two county DSS caseworkers went to the May residence to make initial contact with Kaci May and the three other children who had not been interviewed at school. One of the case managers read the allegations. Ms. May stated that nothing like that is occurring now. She further stated that she has an attorney (Deborah Butcher) and that the case managers needed to speak with her attorney. The case managers observed the children, but Ms. May would not allow them to interview the children, nor would Ms. May allow the case managers into her home. Ms. May expressed her dislike for DSS and stated "it was [DSS's] fault" The case managers observed Ms. May's behaviors to be very erratic.

DSS continued to work on the May case in April and early May 2017. On May 12, 2017, DSS interviewed three of the children in a single interview at their school. Later that day, DSS

¹ Most or all of the facts set forth herein are taken from DDS records, which Plaintiffs have indicated they will introduce into evidence. Exhibit numbers can be supplied after the trial.

issued a Determination Fact Sheet which stated that physical neglect was indicated. The Mays, through counsel, filed an administrative appeal of that determination.

On June 15, 2017 Dorchester County DSS Director John Dunne advised the Mays' attorney that he had conducted an interim review of the case and "concluded that the decision to indicate the case for Neglect is supported by a preponderance of the evidence." The County Director also informed that they would seek intervention in the Family Court. The Mays' administrative appeal was stayed, and a Family Court case for non-emergency removal of the children from the home was filed on September 14, 2017.

During June, July and August 2017, Ms. May resisted all efforts by DSS to contact the children or visit the home, instead referring the caseworkers to Ms. May's attorney. At the beginning of the following (2017-2018) school year, Ms. May purported to advise the school district that no further interviews of her children could occur unless either she or her counsel were contacted first.

Between the time the administrative proceeding was commenced on May 12, 2017, and the time of the filing of the present Common Pleas case on December 7, 2017, DSS caseworkers saw the May children on several occasions without speaking to them. DSS also interviewed two of the children on May 25, 2017. After that, the only in-school interviews that occurred were one with three of the May children on September 18, 2017, another one with one other child on September 22, 2017, and one short interview with three of the children all at once on November 20, 2017.

The Complaint seeks an order "restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect." Prayer for Relief, ¶ (C). Consistently with that request, Ms. May has conceded that if new allegations were to arise, it would be appropriate for DSS to interview the children at school.

In effect, the only challenge to DSS practices made by Ms. May is to DSS conducting interviews after abuse and neglect is indicated and there is an open pending case against the parents, as was the case here when the interviews of some of the children in late May, September and November occurred.

The concerns of DSS are reflected in the caseworker's notes for September 22, 2017:

Kaci and Warren May have not allowed the department in their home. No assessments have been made for this family. The May's have not been in direct contact with the department. The family's attorney is not responding to emails to schedule visits. . . . The department is concerned about the allegations and the inability to get in the home. The department is unable to properly assess for the safety and wellbeing of the minor children.

In the meantime, in the Family Court case, Plaintiff May filed a counterclaim seeking, among other things, an order restraining DSS caseworkers from speaking with the Mays about legal issues in this matter. In addition, and in connection therewith, Plaintiff Kaci May filed a

motion in that Family Court action seeking, among other things, “[a]n order restraining SCDSS from interrogating Defendants’ children at school.” That is the same relief as is sought in the present case. Apparently, no such order was ever issued by the Family Court.

On June 14, 2018, the Family Court action was dismissed by voluntary stipulation. DSS agreed that “Plaintiff SCDSS’s investigation beginning on or about March 28, 2017 resulting in a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned.”.

It is undisputed that DSS has not interviewed any of the minor children at school in over two and a half years, that is, since November 20, 2017. DSS closed its case involving the minor children on or about June 21, 2018, shortly after the Family Court case was dismissed. DSS has no information at present that would indicate a need to interview any of the May children, and has made no contact with the children since November 2017.

2. An objective statement of the facts in controversy.

Subject to anything that may unexpectedly arise during the presentation of Plaintiffs’ case, these Defendants are not aware of any material facts in controversy. This is a case in which the presentation of a certain amount of testimony would probably benefit the Court in understanding the legal issues involved in this case, but at present, no contested material facts appear to exist.

3. The legal issues involved. This includes the law applicable to the cause of action and the defense.

The legal issues are summarized very briefly below, starting with certain affirmative defenses pertaining to justiciability and jurisdiction. Appended to this Pretrial Brief is an Addendum discussing the legal issues in more detail.

a. Mootness and lack of a live case or controversy.

The last DSS school interview of any of the May children occurred in November 2017, over two and half years ago. The DSS Family Court action was dismissed in June 2018. The Stipulation of Dismissal recited that “Plaintiff SCDSS’s investigation beginning on or about March 28, 2017 resulting a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned.”

No new allegations of abuse and neglect have been received since the ones that gave rise to the now-dismissed 2017 Family Court case. DSS has not attempted to contact the May children since late 2017.

While Plaintiffs claim that the possibility of additional in-school interviews still exists, Ms. May has conceded that if new allegations of abuse or neglect were to arise, DSS would be acting properly to conduct at least an initial in-school interview. After that, if she wished to try to have DSS enjoined from conducting additional in-school interviews, she would be able to seek a TRO or other preliminary relief, even though she did not actually pursue such immediate relief in the present case.

This issue is discussed in more detail in the Addendum, pp. 9-10.

- b. **Lack of standing of Ms. May to serve as the GAL for her children when she was the person alleged to have committed physical neglect.**

Plaintiff Kaci May's authority to file this action, ostensibly on behalf of her children, is untenable. As shown in the statement of facts above, Ms. May in effect self-reported a situation of unsupervised child-on-child sexual assault within her family and shortly thereafter, aggressively resisted DSS's effort to investigate. She prohibited DSS from entering her home, and asked DSS to contact her only through her counsel.

Identical facts were present in a recent federal case, No. 3:17-0416, *M.M., et al. v. Mitchum, et al.* In that case, District Judge Gergel on his own motion removed a non-natural parent from serving as GAL for the person's custodial children when the GAL had alleged that the custodial children sexually assaulted the natural children. As Judge Gergel held,

Under the present circumstances, where various custodial children are alleged to have sexually assaulted each other, it would appear that a single GAL for all four children is inappropriate as each probably requires his or her own GAL. Further, it is inconceivable that Ms. Mitchell could serve as the GAL for minors she has alleged sexually assaulted her own children.

M.M., supra, (Order dated 5/6/2017)(attached)(emphasis added). The facts of the present case are identical. Ms. May should not be permitted to bring this action on behalf of "minors she has alleged sexually assaulted her own children." She has no other basis that would give her standing to maintain this action.

This issue is discussed in more detail in the Addendum, p. 11.

- c. **Lack of subject matter jurisdiction.** The Family Court has exclusive jurisdiction over claims such as those in the present case. S.C. Code Ann. § 63-7-1610(A) provides that "The family court has exclusive jurisdiction over all proceedings held pursuant to this article." The Family Court case that was pending was a such a proceeding, and the investigation was conducted pursuant to the same article of the Code.

This issue is discussed in more detail in the Addendum, p. 12.

- d. **Even if the Court reaches the merits of this case, Plaintiffs' legal claims are meritless.** In essence, Plaintiff Kaci May claims that a Fourth Amendment standard (such as probable cause or exigent circumstances) should apply to in-school interviews of children by DSS when DSS is conducting a statutorily-mandated

investigation of a report of suspected child abuse or neglect. There is virtually no legal authority for this claim. To the contrary, such interviews are authorized by S.C. Code Ann. § 63-7-920(C), which provides in pertinent part that “(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents.”

Plaintiff Kaci May also contends that even though DSS had found that the facts indicated physical neglect of the May children, and had commenced an administrative proceeding followed by a Family Court case for non-emergency removal of the children from the home, DSS lacked authority to conduct any subsequent interviews of the children outside the presence of the allegedly abusive parents. However, DSS policy requires that during the time a case for child protective services is open and pending, “Child Protective Services staff will conduct at least one face to face interview once a calendar month with the victim child, siblings and any other children in the home, and parents, protective adult, and/or other caregiver. . . .” (DSS Human Services Policy and Procedure Manual, Policies 701(7)). This policy reflects the prudent practice of requiring DSS to maintain frequent contact with the children during the pendency of an abuse and neglect case, in order to ensure that no additional harm to the children occurs in the meantime.

Issues regarding the merits of Plaintiffs’ claims are discussed in more detail in the Addendum, pp. 12-14.

e. Standard for granting an injunction. These Defendants adopt and incorporate by reference the points made by the School District in its pre-trial brief on the legal requirements that Plaintiffs need to satisfy in order to obtain an injunction.

4. A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

Exhibits: These Defendants anticipate that almost all, if not all, of the exhibits in this case will be offered by counsel for Plaintiffs, using documents from DSS’s file, court documents, or documents from the school district’s files.

Plaintiffs may attempt to offer statistics and other evidence regarding DSS cases involving other children and other locations throughout the state. DSS objects to such evidence as irrelevant, because this case involves only the May family. These Defendants also anticipate making numerous other objections on relevance and hearsay grounds.

Plaintiffs may also attempt to call witnesses from the state DSS office to testify about policies. Those witnesses were subpoenaed at the last minute. DSS intends to object both to the timing of the naming of those witnesses, and to the substance of their testimony, which is not yet completely known.

These Defendants reserve the right to introduce into evidence any document identified in discovery by any other party.

Witnesses:

Jasmine Flemister (Dorchester County DSS)

These Defendants reserve the right to call any witness as necessary during trial who was identified in discovery or otherwise identified by any other party.

5. Any unusual problems relating to evidence to be introduced, such as “Business Records as Evidence Act,” hearsay, use of depositions, etc.

Plaintiffs seek to introduce evidence about years of interviews by DSS of other children in the Dorchester County schools and elsewhere. These Defendants object to this evidence as irrelevant to any legal claim by the Plaintiffs, for whose sole benefit this case has been brought. This is not a class action.

The pertinent records in this case contain many references to seven different minor children, four of whom have “J” as a first initial. These Defendants suggest that in order to avoid the considerable confusion which can occur as a result, the exhibits should be presented under seal rather than in redacted form using only initials.

6. Any unusual question or matter which should be brought to the attention to the court.

None at this time.

7. A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

Mediation was held in this matter on August 7, 2020, with Robert L. Brown, Esquire. However, it concluded at an impasse.

Respectfully submitted,

DAVIDSON, WREN & DEMASTERS, P.A.

BY: s/ Kenneth P. Woodington

KENNETH P. WOODINGTON #6213

WILLIAM H. DAVIDSON, II #1558

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Email: kwoodington@dml-law.com

Email: wdavidson@dml-law.com

*Counsel for Defendants South Carolina Department
of Social Services, Susan Alford, and Jasmine
Flemister*

Columbia, South Carolina

August 10, 2020

Civil Action No. 2017-CP-18-02001

**ADDENDUM TO
PRE-TRIAL BRIEF
(Legal Issues)**

**(Defendants South Carolina Department of
Social Services, Michael Leach, and Jasmine
Flemister)**

Defendants.

In light of these circumstances, there is no longer a live case or controversy that requires intervention by this Court, even if, as discussed below, this Court has jurisdiction over this matter and Ms. May can serve as the GAL, which she almost certainly cannot. The appellate courts of South Carolina routinely hold that “A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.” *Jowers v. S.C.*

Dep't of Health & Envtl. Control, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018), quoting *Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004). The Court in *Jowers*, *supra*, further held that “a . . . court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all.” 423 S.C. at 361, 815 S.E.2d at 455.

Those holdings describe the state of the present case. Plaintiff offers nothing but unfounded speculation that at some future time there might be another allegation of abuse and neglect in the May household. Plaintiff has claimed that this case is “capable of repetition, yet evading review.” However, Plaintiff offers only speculation that the facts of this matter might repeat themselves later. Even if another instance of suspected abuse or neglect were to occur, however, Plaintiff cannot show any reason the Family Court could not enjoin DSS interviews upon a proper showing. In other words, such events are not “incapable of review” in the future. And as noted below, far from being the appropriate person to seek an injunction against future misconduct that may be her own, Ms. May is hopelessly conflicted from representing the children’s interests in this matter.

Finally, it follows that the absence of a live claim defeats the ability of Plaintiff to obtain injunctive relief. *See, e.g., O’Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)(“[p]ast exposure to [allegedly] illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects”). As our Supreme Court has held, “[a]n injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014). Where, as here, there is no showing that adverse future events may occur at all, it follows that there has also been no showing of irreparable harm.

2. **Plaintiff Kaci May has no standing to represent the interests of the children in not being interviewed, and in fact has a conflict which prevents her from asserting those claims on behalf of the children.**

It is undisputed that the now-dismissed family court case referenced above pertained to allegations of possible abuse or neglect against the present Plaintiff, Kaci May. While the case was ultimately dismissed by stipulation in June 2018, Ms. May was in effect attempting to have the Family Court and this Court enjoin interviews by DSS of the very children she was alleged to have been subjecting to some form of abuse or neglect. As a result, Ms. May is the last person who should be permitted to maintain this action on behalf of the children. Imagine a scenario in which this Court's Order would be utilized to shield an alleged child abuser and allow the abuser to prevent questioning the victim child outside the presence of the abuser—providing a tool and an advantage to the abuser rather than the investigators.

The facts of this case are identical to those in No. 3:17-0416, *M.M., et al. v. Mitchum, et al.*, in which Judge Gergel, on his own motion, removed a non-natural parent from serving as GAL for the person's custodial children when the GAL had alleged that the custodial children sexually assaulted the natural children. As Judge Gergel held,

Under the present circumstances, where various custodial children are alleged to have sexually assaulted each other, it would appear that a single GAL for all four children is inappropriate as each probably requires his or her own GAL. Further, it is inconceivable that Ms. Mitchell could serve as the GAL for minors she has alleged sexually assaulted her own children.

M.M., supra, ECF No. 46 (Order dated 5/6/2017)(emphasis added)(copy attached). The identical conflict is present here. Ms. May should be removed as GAL, with the issue to be raised at a in the appropriate forum by a proper GAL at such time, if ever, as an actual case or controversy arises in the future, as discussed in the previous section of this memorandum.

3. **This Court lacks subject matter jurisdiction over the issues raised in the Complaint herein, because the issues raised in this case pertain to child abuse and neglect proceedings which, pursuant to S.C. Code Ann. §63-7-1610(A), are within the exclusive jurisdiction of the Family Court.**

S.C. Code Ann. § 63-7-1610(A) provides that “[t]he family court has exclusive jurisdiction over all proceedings held pursuant to this article.” The interviews with the children were conducted in connection with an investigation of child abuse and neglect or in connection with a “proceeding held pursuant to this article,” the latter being the Family Court case for non-emergency removal filed pursuant to § 63-7-1660. As a result, that court, and not the Court of Common Pleas, is the only court with subject matter jurisdiction over disputes of the nature of the present dispute, at least at the time when it was a live controversy. In addition, the investigation was also conducted pursuant to the same article of the Code. (Title 63, Chapter 7, Article 3).

In the past in this case, Plaintiffs have attempted to argue that a number of reasons why the relief they seek could not be obtained from a Family Court. If Plaintiffs continue to argue any of those points, DSS will respond accordingly. However, DSS would note that Plaintiffs actually did seek such an injunction in the Family Court proceeding in this case. Even though it was not granted in that case, undersigned counsel are not are aware of anything that occurred in the Family Court that would suggest the impossibility of obtaining such relief there.

4. **DSS is expressly authorized by statute to interview children in public schools, and Plaintiff’s claims of potential constitutional violations are without support.**

S.C. Code Ann. §63-7-920(C) authorizes interviews in schools in this context:

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law

enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

The existence of this statute would end the question, but for Plaintiff's argument that such interviews violate the Fourth Amendment.² That argument is unavailing, for several different reasons set forth below.

First, the Supreme Court of South Carolina follows the general rule that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *State v. Robinson*, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014), quoting *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978). Plaintiff Kaci May is not the person injured, and she is manifestly barred from serving as GAL for the reasons set forth above.

Secondly, even if Ms. May could overcome the jurisdictional and justiciability issues raised hereinabove, the Fourth Amendment prohibits only "unreasonable searches and seizures. . . ." The Fourth Circuit has held that "In determining whether a search and seizure is reasonable, we must balance the government's need to search with the invasion endured by the plaintiff. *New Jersey v. T.L.O.*, 469 U.S. 325, 337, (1985). *Wildauer v. Frederick Cty.*, 993 F.2d 369, 372 (4th Cir. 1993). In *Wildauer*, the Fourth Circuit held that investigative visits by social workers, even

² Plaintiffs appear to claims that the standard for search warrants in §63-7-920(B) applies to interviews under subsection –(C), the interview provision, as well. However, subsection –(B) by its terms, applies only when "the investigation cannot be completed without issuance of the warrant." In other words, a warrant is sought only when other means authorized by the statute are unavailable. Such warrants are referred to in practice as "inspection warrants."

when the home itself is visited, “are not subject to the same scrutiny as searches in the criminal context.” *Id.* Continuing, *Wildauer* noted that “[W]e cannot say that the Constitution requires that a visual inspection of the body of a child who may have been the victim of child abuse can only be undertaken when the standards of probable cause or a warrant are met.” *Id.* at 373. The Fourth Circuit has further held that “A state has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse.” *Martin v. Saint Mary's Dep't Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003).

Plaintiffs in the past have cited many Fourth Amendment cases, but only one, *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009), contains a holding favorable to Plaintiff on the Fourth Amendment under the present facts, and the Ninth Circuit’s opinion in that case was vacated in part based on mootness, 563 U.S. 692 (2011), with the Supreme Court declining to rule on that issue. *Greene* is countered by an Eleventh Circuit case, *Loftus v. Clark-Moore*, 690 F.3d 1200, 1205 (11th Cir. 2012), which holds that a social worker was “entitled to qualified immunity on the ground that she did not violate any clearly established right protected by the Fourth Amendment when she interrogated [a child at school] as part of an investigation of the child's welfare”). As far as counsel for these Defendants can tell, there is no case which definitively holds that the kind of interviews conducted by DSS in this case violate children’s Fourth Amendment rights, and certainly none in South Carolina or even in the Fourth Circuit. Plaintiff’s Fourth Amendment claims are therefore without merit, but it does not appear necessary for this Court to reach that issue, given the other issues discussed above that should require dismissal of this action.

CONCLUSION

For the foregoing reasons, the DSS Defendants respectfully submit that this action should be dismissed.

Respectfully submitted,

DAVIDSON, WREN & DEMASTERS, P.A.

BY: s/ Kenneth P. Woodington

KENNETH P. WOODINGTON #6213

WILLIAM H. DAVIDSON, II #1558

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Email: kwoodington@dml-law.com

Email: wdavidson@dml-law.com

*Counsel for Defendants South Carolina Department
of Social Services, Susan Alford, and Jasmine
Flemister*

Columbia, South Carolina

August 10, 2020

ROA 000741

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

M.M, by and through her guardian	)	
ad litem Tami Mitchell, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 3:17-416-RMG
	)	
vs.	)	
	)	
Sylvia Mitchum, et al.,	)	ORDER
	)	
Defendants.	)	
	)	
	)	

This matter comes before the Court following a status conference with counsel on May 10, 2017, in which the Court raised concerns regarding potential conflicts of interest in the appointment of Tami Mitchell as the guardian ad litem (GAL) for six minor children who are plaintiffs in this action (referenced in the complaint as M.M., H.M., I.M., C.F., C.M., and O.M). As explained below, the Court finds that Tami Mitchell is not a proper GAL for the minor plaintiffs and dismisses without prejudice all claims Tami Mitchell has brought on behalf of the minor plaintiffs in her capacity as GAL.

Factual Background

The complaint in this matter is a jumble of twenty-one causes of action brought on behalf of eight different plaintiffs against thirty-one defendants associated with the South Carolina Department of Social Services (SCDSS). (Dkt. No. 1-1). The complaint contains 503 paragraphs and is ninety-nine pages long. Six of the plaintiffs are minors, and their claims are

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brought by Tami Mitchell, in her capacity as their GAL. Tami Mitchell and her husband, Corey Mitchell, also are plaintiffs and assert claims in their individual capacities.

This lawsuit arises out long running litigation in the Richland County Family Court between SCDSS and Tami and Corey Mitchell involving three of the minor children who are plaintiffs in this action. SCDSS brought family court actions against Tami and Corey Mitchell alleging abuse and neglect of M.M., H.M. and C.F. (Exhibits A, B, and C). Tami and Corey Mitchell obtained legal custody of four sibling cousins (M.M., H.M., I.M., and C.F., hereafter referred to collectively as “the custodial children”), and the custodial children resided for a time in the home with Tami and Corey Mitchell and their two minor natural children, C.M. and O.M (hereafter referred to as the “natural children”).

At some point, several of the custodial children allegedly began sexually abusing each other and the Mitchells’ natural children. Tami and Corey Mitchell insisted that SCDSS remove the oldest of the custodial children, M.M., from their home because of her sexually abusive conduct. SCDSS ultimately brought legal action against Tami and Corey Mitchell alleging abandonment of M.M. (Exhibit A). Subsequently, SCDSS brought actions against Tami and Corey Mitchell for neglect of H.M. and C.F. because they had been sexually abused by their siblings while in the Mitchell home. (Exhibits B, C). Tami and Corey Mitchell supported efforts of SCDSS to remove M.M. from their home but opposed efforts to remove the other children. (Exhibit A at ¶ 10; Exhibit B at ¶ 10; Exhibit C at ¶ 10). In the course of the family court proceedings, Tami and Corey Mitchell alleged that several of the custodial children had sexually abused their siblings and the Mitchells’ natural children. (Dkt. No. 1-1 at ¶¶ 159, 162, 170, 181, 182). Plaintiffs’ counsel in this suit represented Tami and Corey Mitchell in the family court

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proceedings.

The SCDSS family court proceedings against Tami and Corey Mitchell were consolidated into a single action. The Mitchells sought certain documents relevant to their defense from SCDSS and obtained court orders directing the production of those materials. When SCDSS repeatedly failed to produce the requested materials, the family court dismissed the Mitchells as parties to the SCDSS proceedings as a sanction under Rule 37 of the South Carolina Rules of Civil Procedure. (Exhibit D). The SCDSS proceedings continued without the Mitchells as parties, and three of the custodial children (M.M., H.M., and I.M.) were not returned to the custody of Tami and Corey Mitchell. (*Id.*). A fourth custodial child, C.F., was never removed from their custody and reportedly remains in the physical custody of Tami and Corey Mitchell.

Following the Mitchells' dismissal from the Richland County Family Court proceedings, this suit was filed in the Charleston County Court of Common Pleas and was removed by defendants to the United States District Court. The suit includes as plaintiffs the four custodial children, the two natural children of the Mitchells, and Tami and Corey Mitchell.

The complaint in this action alleges essentially three distinct sets of claims on behalf of various plaintiffs. The first set of claims, found in counts 1-10, are brought on behalf of the four custodial children and assert state tort and federal constitutional claims against various SCDSS employees for incidents which allegedly occurred before the custodial children resided in the Mitchell household and for incidents which occurred while residing in the Mitchell household. (Dkt. No. 1-1 at ¶¶ 280- 388). A second set of state tort and federal constitutional claims, found in counts 11-15, are brought on behalf of the natural children of the Mitchells and allege that the allegedly unlawful conduct of SCDSS employees resulted in the sexual assault and injury of the

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natural children by several of the custodial children. (*Id.* at ¶¶ 389- 443). A third set of claims, found at counts 16-21, assert state tort and federal constitutional claims by Tami and Corey Mitchell against various SCDSS employees for abuse of process as a result of SCDSS bringing the family court actions against them. (*Id.* at ¶¶ 445-503).

The claims brought on behalf of the six minor children, made up of the four custodial children and the two natural children, were brought by Tami Mitchell in her capacity as the GAL for all of the children. She did not disclose in her state court petition for appointment as GAL that she had accused several of the custodial children of sexual assault of her natural children in other legal proceedings or that SCDSS had accused her of abuse and neglect of children she now sought to represent as their GAL in a suit against SCDSS and various SCDSS employees. Instead, she simply stated that she was a “fit and proper person” to serve as the GAL of the six minor children in this action. (Dkt. No. 5-2). A state court judge granted Ms. Mitchell’s appointment as the GAL, and this suit was filed that same day. (Dkt. No. 5-3).

Legal Standard

A minor person is legally incompetent to sue, and any suit on the child’s behalf must be brought by a duly qualified representative. Fed. R. Civ. P. 17(c). The Court, in its discretion, can appoint a GAL or “issue another appropriate order” if the child does not have a proper representative. *Id.* A GAL for a minor child must have no adverse interest to the child, and the minor’s “best interest” must remain the “paramount concern” of the GAL. *Shainwald v. Shainwald*, 395 S.E.2d 441, 458 (S.C. App. 1990); *Estate of Ricardo Escobedo v. City of Redwood City*, 2006 W.L. 571354 at *7 (N.D. Cal. 2006). The appointment of the GAL “is more than a mere formalism,” and Rule 17(c) requires the United States District Court, using its sound

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discretion, “to take whatever measures it deems proper to protect the incompetent person during litigation.” *United States v. 30.64 Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986); *Hulsedt v. City of Scottsdale*, 2011 W.L. 772387 at *2 (D. Az. 2011); *Hogan v. Fresno County Sheriff’s Deputy Michael Robinson*, 2005 W.L. 2064113 at *7 (E.D. Cal. 2005). A parent who has personal interests in the outcome of litigation which may conflict with the interests of his or her minor child is not a proper person to serve as a GAL. *Z.A. v. St. Helena Unified School District*, 2010 W.L. 370333 (N.D. Cal. 2010).

Tami Mitchell’s Appointment As GAL for the Custodial Children

Ms. Mitchell’s appointment as the GAL for the four custodial children is fraught with multiple individual and collective conflicts of interest. In separate proceedings and in this action, Ms. Mitchell has alleged that three of the custodial children sexually abused each other and her own natural children. (Dkt. No. 1-1 at ¶¶ 159, 162, 170, 181, 182). She was sued by SCDSS for abuse and neglect of several of the custodial children, and she was dismissed as a party to the action as a sanction under Rule 37 without a determination of liability on the merits. (Exhibit D). She has described all four children as “sexually reactive” and the placement of these children in her home as “inappropriate.” (*Id.* at ¶ 278). Three of the four children no longer reside with her family following actions taken by SCDSS.

Ms. Mitchell’s actions seizing control of the claims of the custodial children under these dubious circumstances and commingling in one lawsuit the claims of the custodial children, her natural children, and her own personal claims raise a strong inference that the interests of each individual custodial child is not her paramount concern. Indeed, it appears to the Court that this litigation is largely driven by Mr. and Ms. Mitchell’s personal grievances with SCDSS and

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SCDSS staff, and that this odd collection of claims has been combined in an effort to buttress the Mitchells' personal claims and grievances.

Under the present circumstances, where various custodial children are alleged to have sexually assaulted each other, it would appear that a single GAL for all four children is inappropriate as each probably requires his or her own GAL. Further, it is inconceivable that Ms. Mitchell could serve as the GAL for minors she has alleged sexually assaulted her own children.

The Court finds that the appointment of Ms. Mitchell as the GAL for the custodial children was obtained through material omissions of critical facts in the state court petition for appointment that would have almost certainly disqualified her to serve as the representative for these minors in this lawsuit. Further, this Court has the inherent authority to remove her as the GAL where multiple conflicts of interest have come to the attention of the Court. The Court finds under these circumstances that Ms. Tami Mitchell is unqualified to serve as the GAL for the custodial children and hereby removes her as the GAL for the custodial children.

The Court has the authority to appoint another person or persons to serve as the GAL for the custodial children or to "issue another appropriate order." Under the present circumstances, the Court is concerned that Ms. Mitchell's decision to bring a suit in this matter on behalf of the custodial children against SCDSS and SCDSS staff was infected by Ms. Mitchell's personal interests and conflicts. Therefore, the Court finds that the appropriate action is to dismiss the claims of the custodial children in this action without prejudice.

The Court is informed that the custodial children have a GAL and GAL counsel appointed in connection with the ongoing family court proceedings. Ms. Mitchell and Plaintiffs' counsel are directed to provide the GAL and GAL counsel appointed for the family court

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proceedings a copy of this order. The GAL and GAL counsel appointed by the family court can then assess this situation and make an independent decision about whether such litigation is in the best interest of each of the custodial children. If the GAL appointed by the family court for each of the custodial children determines that a law suit is in the best interest of the child he or she represents, the GAL may then retain counsel to represent the custodial child in such litigation.¹

Tami Mitchell's Appointment As GAL for her Natural Children

Ms. Mitchell elected to bring a suit jointly asserting the claims of the custodial children and her natural children notwithstanding the fact that she alleged that several of the custodial children sexually victimized her natural children. Ms. Mitchell's actions strongly indicated to the Court that this odd joining of claims was an effort to buttress her own individual claims and grievances against SCDSS and SCDSS staff. Ms. Mitchell's personal interests in advancing her own individual claims against defendants makes her under these circumstances an inappropriate GAL for her natural children in this lawsuit.

Further, a likely defense by SCDSS to the personal injury claims asserted by the natural children is that the sexual victimization of the natural children by the custodial children was a consequence of inadequate adult supervision by the custodial parents, Mr. and Ms. Mitchell. The Court offers no opinion on whether such an anticipated defense would have any merit, but should such a defense be asserted the natural children could be prejudiced by Ms. Mitchell's dual role as

¹ Since Plaintiffs' counsel in this action represented Corey and Tami Mitchell in the Richland County family court proceedings and have made additional allegations of sexual misconduct against each of the custodial children in this litigation, such counsel would have disqualifying conflicts of interest under Rule 1.7 of the Rules of Professional Conduct, S.C. Appellate Court Rules 407.

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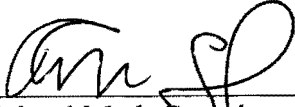
the GAL and the allegedly negligent parent.

The Court finds that Ms. Mitchell has inappropriate and disqualifying conflicts of interest in serving as the GAL of her natural children. The Court declares her GAL appointment void. Since the decision to bring a suit on behalf of the natural children was made by a GAL with disqualifying conflicts of interest, the Court believes that the appropriate action is to dismiss the claims of the natural children without prejudice. Any future petition to appoint a new GAL for each of the natural children shall include a copy of this order so that the appointing court can fully explore any potential conflicts of interest of the person seeking appointment as the GAL.

Conclusion

Based on the foregoing, the Court removes Ms. Tami Mitchell as the GAL for M.M., H.M., I.M., C.F., C.M. and O.M. and voids her appointment. Further, the Court dismisses Counts 1-15 without prejudice.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court

May 14, 2017
Charleston, South Carolina

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EXHIBIT

A

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ROA 000750

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Department
of Social Services,

Plaintiff,
vs.

Redacted

Defendant(s),

IN THE INTEREST OF:

Redacted

South Carolina Department of Social Services (SCDSS), pursuant to S.C. Code

Ann. § 63-7-740, alleges as follows:

1. The child is less than eighteen (18) years of age and resides in RICHLAND County at the following address: **Redacted** apin, SC 29036.

2. The name, address, and relationship of the defendant to the child is as follows:

Name

Address

Relationship

Redacted

Corey Mitchell

Tami Mitchell

Redacted

Redacted

Redacted

Legal Custodian

Legal Custodian

IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT

15DR401548
COMPLAINT for EX PARTE REMOVAL

[§63-7-740]

RICHLAND COUNTY
FILED
2015 APR 23 PM 3:50
JEANETTE E. HOBBS, CLERK
FAMILY COURT

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