

Child Abuse, Child Neglect:

What Out of Home Caregivers Should Know if They Are Investigated

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with editing and assistance from the Children's Law Office
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South Carolina Appleseed Legal Justice Center is a non-profit organization dedicated to advocacy for low income people in South Carolina to effect systemic change by acting in and through the courts, legislature, administrative agencies, community, and the media, and helping others do the same through education, training, and co-counseling.

Children’s Law Office of the University of South Carolina School of Law is a statewide resource center for attorneys and other professionals involved in judicial proceedings related to child protection and juvenile justice.

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Please note: This booklet is for information only. If you need legal advice about a child abuse or neglect investigation or charge, contact an attorney to represent you.

This booklet explains the rights of foster parents, group home staff and day care workers when an allegation of abuse or neglect is made against them. It also contains an overview of the manner in which child abuse and neglect reports are processed by DSS. When being investigated it is important to understand what your rights are and what information and help you should get, so that you can make informed decisions.

LEGAL ADVICE AND REPRESENTATION

Should I get a lawyer?

Yes, you should get a lawyer as soon as you are aware of the investigation. A lawyer will help you understand what is happening and protect your rights.

Where can I find a lawyer?

If you want to hire a lawyer and you do not know one, call the South Carolina Bar's Lawyer Referral Service at (803) 799-7100 or 1-800-868-2284.

What will a lawyer do for me?

A lawyer will help you through the investigation and hearings and explain your rights. You will not appear "guilty" or make anyone angry by getting help for yourself. You should talk with your attorney and seek his/her advice on how to proceed.

Remember that anything you say to the South Carolina Department of Social Services or Law Enforcement can be used in the proceedings or investigation of your case.

INTRODUCTION TO OUT OF HOME ABUSE AND NEGLECT CASES

Currently all fifty (50) states have laws requiring the reporting and investigation of cases of suspected child abuse and/or neglect. In South Carolina the Department of Social Services (DSS) is responsible for investigating reports of suspected child abuse and/or neglect. The Department of Social Services also licenses many **out of home care facilities** such as **foster homes, group and residential homes and institutions and child day care facilities**; therefore the responsibility for investigating these facilities is assigned to a special unit within DSS called the Out of Home Abuse and Neglect (OHAN) unit of DSS. OHAN will follow the same procedures when investigating foster homes as for investigation of group and residential homes and child day care facilities. The following information applies to all of these investigations.

Under state law, DSS can visit these homes or facilities to investigate reports of abuse; they can request and receive information that is important to the investigation; have other

agencies and State officials cooperate with them and the court; and, if necessary, file a petition with family court for a warrant to allow an investigation to be completed. If family court issues a warrant, DSS can then interview the child, inspect the facility and obtain records that are needed for the investigation.

The South Carolina Law Enforcement Division (SLED) is allowed to receive and investigate reports of institutional abuse and neglect that may have occurred in any institution or foster home operated by the Department of Juvenile Justice (DJJ) and any institution or childcare facility operated by DSS.

INITIAL REPORT AND INVESTIGATION

Who can report suspected cases of child abuse and neglect?

Any person who believes that a child has been abused or neglected can make a report to the Department of Social Services. Some people are mandated reporters and *must* make a report if they suspect abuse or neglect. This group includes professionals such as teachers, doctors, nurses, counselors, clergy and foster care providers.

What constitutes abuse or neglect?

Abuse can be physical, like hitting a child too hard or allowing someone else to hit a child too hard. Abuse can also refer to injuries that a child receives from excessive corporal punishment. DSS policy for foster parents and group home policy for staff does not allow the use of corporal punishment so this issue may also be a licensing matter. Abuse is not just physical it can be mental, like saying mean things to a child all the time or emotional, like criticizing or insulting a child. Having sexual contact with a child, allowing sexual contact to occur with a child or engaging in acts that place a child at substantial risk of having sexual acts performed against the child or failing to protect a child from having sexual acts performed against them is also considered abuse. In addition, abandoning a child or allowing or encouraging a child to commit delinquent acts is considered abuse as well. Failing to provide a child with adequate food, clothing, shelter, education, medical care, or supervision that is appropriate to the child's age and development, though financially able to do so or offered the means to do so is neglect when the failure to provide for the child has caused or presents a substantial risk of causing physical or mental injury.

How does an investigation start?

Anyone who suspects child abuse or neglect in an out of home setting can contact the State Office OHAN intake office or the toll free Children's Helpline telephone number or a DSS county office. If DSS determines that an investigation should be conducted, DSS must start the investigation within 24 hours of receipt of the report.

What happens when allegations are made against an employee of an institution or child care facility?

Within 24 hours of receiving the abuse report, DSS must start the investigation. During the investigation, DSS can visit the facility to see where the reported abuse and/or neglect took place. They can privately interview the child or children that were involved in the report or any other children if they think that it is necessary.

DSS may also interview employees, administrative staff and any other individuals who may have been involved in or have knowledge of the incident. They may also review any policy or procedure, documents or records related to the operation of the facility or to the reported abuse or neglect.

During an investigation of institutional abuse or neglect, DSS may request the institution to take steps to insure the safety of children residing in or being cared for by the institution. The appropriate officials, agencies, departments, and political subdivisions of the State must also assist and cooperate with the court and with the Department of Social Services. At any time during the investigation, DSS may also file with the family court an affidavit and a petition to request that a warrant be issued. 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 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.

What happens when allegations are made against a foster parent?

When a report of suspected abuse or neglect is received against a foster parent, DSS notifies the subject of the report that an allegation of child maltreatment is being investigated. The notice provides information about the allegations, the Child Protective Services process, and the rights of those involved in the investigation. The name of the reporter of the allegation is not given.

If the report suggests that the child is in an urgent situation, the DSS worker must attempt to make face to face contact with the alleged child victim within two hours of the receipt of the report in order to assess the risk and make sure that the child is safe. Exceptions to the standard requiring face to face contact within this time frame applies when a certified county Child Protective Services (CPS) worker or licensing worker is first to see the child or when the child is temporarily unavailable and a safety plan is created with an executive administrator of the facility who is not the alleged offender. In all cases, the DSS worker must initiate an investigation within 24 hours of receiving the report by attempting to make face to face contact with the child, privately interview the child, view the setting and talk to witnesses and others.

Investigations of foster homes are conducted by OHAN Investigators. If DSS decides that the child's health or safety is threatened by the child's continued presence in a foster home, after being made aware of the OHAN investigation, the county DSS office responsible for the child and the county DSS attorney will act to remove the child and make a change in placement or to take other actions that are necessary to ensure the safety of the child. When there is an allegation or information from the investigation reveals that the foster parents' biological or adopted children may have been harmed or are at risk of harm OHAN will make a referral to the county DSS office for appropriate action.

How is notification of appropriate agencies and individuals carried out?

During an abuse or neglect investigation DSS will notify the subject(s) of the investigation. In foster homes, they will also contact the county DSS child welfare supervisor or designee in the county responsible for the child. In group homes, children's homes and institutions they will contact the facility's chief executive officer or designated administrator; and, in child care facilities, the owner or operator.

In the case of a foster parent being investigated, DSS will notify the county agency that has custodial responsibility for the alleged victim by phone that an investigation has been commenced. The OHAN worker will then notify the parents of the alleged victim by phone or in person that an investigation has been started. OHAN will then follow up with a letter to the parents by the end of the next business day after receiving the abuse report.

DSS will also let the DSS Foster Home Licensing or Regulatory Unit know that a foster parent is being investigated and the licensing unit will then also investigate any alleged violations of licensing regulations and take any appropriate regulatory action such as: suspend the foster parent license, revoke the license or deny renewal of the license.

In the case of residential facilities or child care facilities, the OHAN investigator must make sure that the parents of the children that reside at the residential facility or that attend the child care facility are notified that an investigation has been started. OHAN will contact the parents by phone or in person and send a follow-up letter by the end of the next work day.

In all cases the follow up letter issued by DSS shall explain the nature of the allegations, the name and phone number of the worker assigned to the case, the protective measures that have been taken to ensure the safety of the child or children, all legal actions and due process rights that exist in this particular case, and the advice that a letter will follow explaining the result of the investigation upon completion.

DSS will also call law enforcement if the investigation indicates a criminal violation such as: sexual abuse/assault; child exploitation (drug or alcohol abuse or contributing to the

delinquency of a minor); severe injuries requiring medical attention; or, any other allegations that meet DSS's or law enforcement's criteria. Law enforcement can investigate on any DSS case, including those involving foster parents, child care workers and group home employees and criminal charges can be filed against the person found responsible.

What should I do when DSS or someone assisting DSS in the investigation calls me?

When a DSS employee or someone assisting DSS in the investigation calls you at the start of an investigation, you may wonder how to act. Always remember that DSS's main job is to protect the child. You should cooperate with the investigation if you can, and present any facts you feel help explain what may have happened to the child. If law enforcement is also investigating, you should talk to a lawyer immediately. A lawyer will advise you whether or not you should provide written or oral statements to DSS or law enforcement

What if DSS or some other investigating agency asks me to sign a statement about the child's abuse or neglect?

You should be aware that what you sign might be used later to say you admitted abuse or neglect. For example, it might be used in a criminal case or in a proceeding to take the child away, or in a proceeding to place you on the Central Registry of Child Abuse and Neglect. Talk to a lawyer before you sign anything. Ask for a copy of anything that you do sign.

Can I request that DSS consider additional information prior to the case decision?

Yes, DSS will notify you that the agency is ready to indicate the report involving you and that you have an opportunity to provide any information that you think is important to the investigation. You may want to consult an attorney during this process. The information you provide will be reviewed and considered by a child welfare program manager who is not directly involved in the investigation. This preliminary administrative review will be conducted before the end of the investigative period of 45, but no more than, 60 days.

The outcome may be that the reviewer determines that the report should be unfounded, or additional investigation is needed, or the report should be indicated. You will be notified of the outcome of the Preliminary Administrative Review as well as information about the next steps in the process.

What happens after DSS finishes the investigation?

DSS has forty-five (45) days to complete an investigation once they receive an abuse or neglect report. If necessary, an additional 15 days can be granted to complete the investigation if there is good cause. Once DSS makes a decision about the investigation, notification is sent to the subject of the report, in writing, within five days. The letter will include a determination fact sheet and a notice of the individual's right to appeal the decision.

What are the possible outcomes of an out of home abuse or neglect investigation?

When DSS investigates an abuse or neglect report they can classify their report in one of three categories: suspected, unfounded, or indicated.

“**Suspected**” means that DSS has received a report alleging abuse or neglect and is currently investigating the allegations. All initial reports must be considered suspected pending investigation. A report can remain in the suspected category up to sixty (60) days, and then it must be classified as either unfounded or indicated.

“**Unfounded**” means that DSS did not have any evidence or enough evidence to prove abuse or neglect, they could not complete the investigation or they received information from mandated reporters which was not investigated by the department. Information in reports classified as unfounded must be kept for at least five years. The unfounded reports/files are not subject to the Freedom of Information Act (FOIA) disclosure.

DSS is responsible for sending a letter to the parties involved in the investigation: foster parents, child care workers or group home staff which lets them know that the report was unfounded. The letter can be sent either by regular or certified mail.

“**Indicated**” means that DSS has enough evidence to support a finding of abuse or neglect. Information in reports classified as indicated must be kept for at least seven years from the date services are terminated. The indicated reports/files are not subject to the Freedom of Information Act (FOIA) disclosure. State law specifies who can access information in an indicated case record.

DSS must notify the parties involved in the investigation: foster parents, child care workers or group home staff to let them know that the report was indicated and that they have the right to appeal this decision. The letter must be sent by certified mail which serves as documentation of when the notice is received.

What is the Central Registry of Child Abuse and Neglect?

When an investigation involving an out of home situation results in a determination that, by a preponderance of evidence, the alleged perpetrator has neglected, harmed or threatened a child with harm, the report of suspected child abuse or neglect is indicated and the name of the perpetrator is immediately entered into the Central Registry of Child Abuse and Neglect. The department must notify the individual in writing by certified mail that his/her name has been entered in the registry, of his/her right to request an appeal of the decision to enter his/her name in the registry, and of the possible ramifications regarding future employment and licensing if he/she allows his/her name to remain in the registry.

How do I appeal a DSS decision regarding an out of home investigation?

The person that has been determined to have abused or neglected a child has the right to appeal the decision. The request for an appeal has to be filed in writing within 30 days of receipt of the DSS's decision.

If the department determines that a report of suspected child abuse or neglect is indicated the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child within 5 days of making the determination. The written notice must inform the person of the following: the case decision; the right to appeal the decision; 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; the possible effect having his/her name on the Central Registry of Child Abuse and Neglect will have on the person's employment and licensing; and that if he/she wishes to appeal, he/she must provide written notice of their intent to appeal to the DSS office at the address noted on the letter within 30 days of receipt of the notice. If a notice of appeal is not received by DSS in 30 days, the person loses the right to appeal, and the case decision stands.

If the notice of the case decision is sent by regular mail or a return receipt is not requested, the letter is then presumed to have been received by the party on the fifth day following mailing (posting). The date of the postmark of the intent to appeal or the date the intent to appeal is received by DSS at the Office of Administrative Hearings (OAH) shall be used, whichever is earlier.

Once OAH receives the request for an appeal or a fair hearing, a hearing will be scheduled and all parties will be sent notice of the hearing at least 30 days prior to the scheduled hearing date.

Within 14 days of receiving the intent to appeal, an administrative interim review of the case determination is conducted. The interim administrative review of investigations of foster homes, group and residential homes and institutions and child day care facilities will be completed by the OHAN director or designee. The director or designee reviews the evidence and determines if there is a preponderance of evidence that the abuse and/or neglect occurred, or whether the decision will be reversed and the case unfounded. If the decision of the interim review is to uphold the indicated finding, the matter will proceed to the fair hearing. The reviewer may not be involved in the initial decision

Prior to the hearing, either party may request a pre-hearing conference.

If OAH upholds the indicated finding after the fair hearing, the person the finding is against may then file a petition in the family court requesting a judicial review of DSS's finding. The appeal must be made by filing a petition for review in family court within thirty days after receipt of the final decision of OAH.

On judicial review, the family court judge will review the transcript from the fair hearing, the case file and the evidence. The court will then enter a judgment that either affirms OAH's decision by finding there is a preponderance of evidence that the appellant abused or neglect the child or reverses the decision.

GENERAL INFORMATION ABOUT THE INVESTIGATION AND CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT

What should I do if I receive a notice that I am being investigated by DSS?

It is very important for you to talk to your attorney. Your attorney should help you get ready for the investigation, hearings, and the possibility of being placed on the Central Registry of Child Abuse and Neglect.

What will an attorney do for me?

An attorney can tell you how to proceed and help you appeal being placed on the Central Registry of Child Abuse and Neglect should that occur. You and your attorney can also talk about ways you can defend yourself during an investigation, Fair Hearing or an appeal.

How can I help my lawyer?

You should tell your lawyer everything you know about the situation so there are no surprises. What you tell your lawyer is confidential; the lawyer will not tell anyone else without your permission. When the lawyer has made an appointment with you, try to be on time and to work with them.

What should I do if someone has made false allegations against me about abuse and neglect?

Tell your lawyer about this. Your lawyer will advise you how to proceed in this situation. Make sure to tell your lawyer about people who can refute the false allegations.

IS THERE ANYTHING ELSE I SHOULD BE DOING DURING THE INVESTIGATION?

These are other suggested behaviors and actions to take. Speak with your lawyer and get his advice prior to taking any additional action. Make sure your lawyer says it is okay to do these things:

- Maintain a professional attitude.
- Stay focused on understanding and following the procedures in place to resolve the maltreatment report.
- Maintain or start a log of every conversation or activity related to the investigation, including the person calling and the agency they work for.
- Ask for a copy of all documents such as, the complaint or report of abuse and the safety plan established for the child.
- Read documents carefully and ask questions about anything you do not understand.
- Keep track of timelines for the investigation.
- Provide information and documentation to the agency about the event that caused the report to be made, if your lawyer advises you that you should/can make a statement.
- Reach out to local foster care support groups and associations and ask for support and assistance.
- Request that the child welfare agency provide at least one contact person in the agency to provide basic information about the investigation process.
- Maintain the family routine; do not isolate yourself from friends and family.

HOW CAN I PROTECT MYSELF FROM ALLEGATIONS?

You can never fully protect yourself from allegations of abuse and neglect. However the National Foster Parent Association has the tips below for minimizing the risk of an allegation of abuse and neglect:

- Participate in training for foster and adoptive parents on caring for children who have been abused or neglected.

- Find out as much information as possible before deciding whether to take a placement, including the child's abuse history both at home and in out-of-home placements. Do not accept a referral for a child who you do not feel you can adequately parent.
- Ask whether a child has a history of making allegations of abuse against caregivers. Such a history does not mean the child is untruthful, but it could indicate a need for more involved treatment and more cautions being put in place in your home.
- Advocate and work to ensure that all of the child's needs are identified and met.
- Understand and follow all laws and regulations related to foster care and adoption.
- Have consistent family rules and expectations for the entire family.
- Provide a **high** level of supervision for a child who demonstrates inappropriateness or has a prior history of sexualized behaviors.
- Keep a daily log and record any unusual events, behaviors, comments, reactions before or after interaction with family members; school issues; medical, dental, or therapy appointments; and all discussions with other professionals about the child's progress and needs (including social workers, attorneys, mental health professionals, etc.).
- You should document your notes in a spiral notebook with the date on each entry, and keep it locked in a cabinet (for confidentiality reasons). Keeping a spiral notebook shows that you haven't changed any entries, whereas notes on a computer are not as credible since information could have been changed, added, or deleted.
- Foster parents should promptly report any unusual incident or injury to the child's agency or to the tribal worker for children eligible under the Indian Child Welfare Act.
- Maintain good working relationships with everyone involved in the child's life.