



This information packet is intended for clergy members who are required by South Carolina law to report suspected child abuse and neglect. It includes legal requirements, guidelines for making reports, an overview of how reports are processed, indicators of child maltreatment, and applicable definitions.

For more information, or to schedule a training session, contact the Children's Law Center at (803) 777-1646 or <http://childlaw.sc.edu>

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# Information for Clergy As Mandated Reporters

In 1977, South Carolina enacted the Child Protection Act which established a system for reporting and investigating child abuse and neglect. This law has since been amended, but the primary purpose has remained the same: to safeguard the welfare and safety of children. Mandated reporters play a key role in this effort to protect children by identifying possible maltreatment and reporting it to the agencies responsible for investigation and intervention. All fifty states, the District of Columbia, and the U.S. territories have mandatory reporting laws in some form.

## Legal Requirements for Reporting

### Mandated Reporters

South Carolina law requires certain persons to report suspected child abuse or neglect, when, in the person's professional capacity, the person has received information which leads to the reasonable belief that a child has been or may be abused or neglected. The following professionals are mandated reporters under South Carolina law: physicians, nurses, dentists, optometrists, medical examiners, coroners, employees of county medical examiner's or coroner's offices, or any other medical, emergency medical services, mental health, or allied health professionals, **members of the clergy including Christian Science Practitioners or religious healers**, school teachers, counselors, principals, assistant principals, social or public assistance workers, substance abuse treatment staff, childcare workers in childcare centers or foster care facilities, police or law enforcement officers, undertakers, funeral home directors, funeral home employees, persons responsible for processing film, computer technicians, and judges.

### Clergy Generally

The term *clergy* is a generic term used to describe the religious leaders of the various faiths around the world. Each religion, faith group, denomination, or church may identify who, within its ranks, is clergy. To determine if a person is considered a clergy member, and thus subject to the mandatory reporting laws, we must look to the particular religion, denomination, or faith group and its definition of clergy or formal leader. In addition to those considered clergy by their religion, South Carolina law specifically identifies regular or duly ordained ministers, Christian Science practitioners, religious healers, rabbis and priests as clergy.

## Reporting by Clergy Members

South Carolina law requires clergy members to report suspected child abuse or neglect when the information concerning the abuse or neglect is received from any person other than the person who committed the abuse or neglect. If the clergy member receives the information from the alleged perpetrator of the abuse or neglect, the communication may be protected by a legal exception, known as the **priest-penitent privilege**.

Not every communication made to a clergy member by a person who committed abuse or neglect is privileged. Four elements must be met for the privilege to apply<sup>1</sup>: **1) there must be a communication.** The communication may be in person, in writing, by telephone or in some instances, it may even be a non-verbal communication such as a gesture; **2) it must be made to a member of the clergy, including a Christian Science Practitioner or religious healer;** **3) the communication must be made in confidence.** A communication is privileged if the person informs the clergy member that there is the expectation that the priest-penitent privilege will apply and the information divulged will be held in confidence. When a clergy member engages in a pastoral communication and is unsure whether there is the expectation of privilege, the clergy member should ask whether the person wishes the communication to be protected by the privilege. The privilege will likely apply if the person who committed the abuse or neglect responds to the question affirmatively.

There are situations where it may be less clear whether the priest-penitent privilege applies. The specific facts of those situations must be analyzed to determine if the communication is protected by the privilege. Generally, if the communication occurs in the presence of other

people (for example, members of the congregation) or during a religious service, the priest-penitent privilege will likely not apply, because there is no expectation of confidentiality. On the other hand, a communication may take place at a location where the rules require other people to be present (for example, a prison where a guard must be present or mental health facility, where a nurse or other staff person must be present). In such situations, the privilege will likely apply.

**4) The clergy member must be acting in his or her professional capacity according to the usual course of practice or discipline of his or her church or religious body.** Members of the clergy are not always presiding in their houses of worship when they are sought for or provide spiritual advising or counseling, or when they are discharging other functions of their office. Many times conversations with clergy members occur in private homes, hospitals, funeral homes, courthouses, prisons, grocery stores, at social events, and other locations. Depending on the circumstances, the information divulged may or may not fall within the priest-penitent privilege. In such situations, the clergy member should stop the conversation and ask the person divulging sensitive information if the information is being divulged because the person is seeking spiritual advice or counseling and if the person expects that the information will be held in confidence.

The priest-penitent privilege does not apply when a person who committed abuse or neglect divulges information at a time when the clergy member is not acting in his or her professional capacity.

A conversation between two friends, one of whom just happens to be a minister, is likely not privileged. An impromptu exchange at the grocery store may not be privileged. An exchange at a social gathering, when the clergy member is clearly not acting in his or her professional capacity, is not privileged. However, a conversation may begin as casual and evolve into one during which the person seeks spiritual advice or counsel.

<sup>1</sup> South Carolina Attorney General Opinion No. 04-30, February 9, 2004. [Rivers v. Rivers](#), 292 S.C. 21 (Ct. App. 1987). Hammar, Richard. What is the Clergy-Penitent Privilege? Churchlawtoday.com, 2005.

When a clergy member receives information from an alleged perpetrator of abuse or neglect, the following questions will be helpful in determining the duty to report. 1) Did the person indicate that he or she intended for the clergy-penitent privilege to apply? 2) Was the clergy member specifically sought for spiritual advice or counsel? 3) Where did the conversation take place? 4) Were other people present at the time of the conversation? 5) Was the information divulged during a scheduled counseling session? 6) What is the relationship between the person and the clergy member?

It is important to note that it is not a requirement for the person who committed abuse or neglect to be a member of the clergy's congregation or faith for the privilege to apply.

It is also important to understand that the mandate to report child abuse or neglect does not require the reporter to know for certain that a child has been abused or neglected. The duty to report is triggered when the mandatory reporter has the reasonable belief that a child has been or will be abused or neglected.

Lastly, as a mandated reporter, a clergy member has the legal obligation to report abuse or neglect even if the clergy member knows or has reason to believe that the abuse or neglect was disclosed to another person, whether or not that other person is also a mandated reporter.

### **Where to Report**

Whether a report of suspected child abuse or neglect is made to the Department of Social Services (DSS) or to the local law enforcement agency depends upon the relationship of the alleged perpetrator to the child victim. When the alleged perpetrator is the child's parent, guardian, or other person responsible for the child's welfare, the report should be made to DSS in the county where the child resides or can be found.

When the alleged perpetrator is not the child's parent, guardian, or other person responsible for the child's welfare, the report should be made to the local law enforcement office.

If the relationship or identity of the alleged perpetrator is unclear or unknown, the report should be made to DSS.

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

### **Failure to Report**

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

### **Confidentiality**

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

The only other circumstance under which DSS may release the identity of the reporter is by court order. If a report is made maliciously or in bad faith, the alleged perpetrator in an unsubstantiated case may file an action in family court requesting the release of the reporter's name. If, after reviewing the case, the court finds probable cause to believe the report was made maliciously or in bad faith, the

court may order DSS to release the name of the reporter. The alleged perpetrator who was the subject of the false report may then file suit against the person who made the false report and may be entitled to recover the appropriate relief.

The foregoing confidentiality provisions do not prohibit a mandated reporter from being subpoenaed to provide testimony at a court hearing regarding the alleged abuse or neglect if it is determined that the reporter's testimony is necessary to protect the child. Even then, the fact that the person testifying made the report of the suspected abuse or neglect cannot be disclosed to anyone.

### **Immunity from Liability**

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

### **False or Malicious Reports**

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

### **Photographs**

Mandatory reporters may take color photographs of injuries that are visible on a child who is the subject of a report of abuse or neglect. Clothing should not be removed in order to take photographs. Copies of all photographs and negatives must be provided to

DSS or law enforcement at the time of the report, or as soon as possible after the report.

### **Harm to Viable Fetus or Newborn**

A situation may arise where a clergy member has been provided information regarding a pregnant woman that leads the cleric to reasonably believe that an unborn child has been harmed or is in substantial risk of harm. A report should be made to DSS when there is reason to believe that a pregnant woman is abusing alcohol or an illegal substance, or is involved in behavior that may place the fetus or newborn at risk of physical or mental harm.

The SC Supreme Court has ruled that a viable unborn fetus is a "child" for purposes of child abuse and neglect laws. A viable fetus is one that has "...reached that period of prenatal maturity where it is capable of independent life apart from its mother."<sup>2</sup>

It is unlikely that the clergy member will know the exact gestational age of the fetus or whether the fetus is viable; therefore, it is recommended that a report be made any time there is reason to believe a pregnant woman's actions may be detrimental to the health of the fetus.

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

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

Daniel's Law designates certain facilities, called safe havens, where a parent of an infant or a person acting at the direction of a parent can voluntarily leave the infant without the fear of

<sup>2</sup> Whitner v. South Carolina, 492 S.E.2d 777 (S.C. 1997).

criminal prosecution. South Carolina law defines a safe haven as a hospital, hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or any **house of worship** during the hours when the facility is staffed.

Under Daniels Law, a safe haven must take temporary physical custody of an infant who is voluntarily left by a person who does not express the intent to return for the child and the circumstances give rise to a reasonable belief that the person does not intend to return for the infant.

The person leaving the infant is entitled to anonymity and is not required to disclose his or her identity; however, the staff member of the safe haven must ask the person leaving the child to provide information concerning the child's background, including the identity of any parent (other than the person leaving the infant) and a medical history. With the information provided, the safe haven must fill out the "Abandoned Infants Form for Safe Havens" (DSS Form 3082), which is available on the DSS website at <http://dss.sc.gov> or at the local DSS office. If the person leaving the infant does not wish to provide any information to the safe haven, the person must be given the DSS form and a stamped envelope to mail the form directly to DSS in case the person later decides to provide the information. The safe haven must also offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

Within six hours of receiving an infant, the safe haven must transport the child to a hospital or hospital outpatient facility. By the end of the next working day, the hospital or hospital outpatient facility will notify DSS, and DSS will immediately assume legal custody of the child.

Court hearings regarding an infant abandoned under Daniel's Law are expedited so that the infant, if not placed with family members, will be free to be adopted in a very short time frame.

Safe havens and their staffs are immune from civil and criminal liability for any action authorized by Daniel's Law as long as they comply with the provisions of the law.

## Investigating Reports: DSS

Within 24 hours of accepting a report of suspected abuse or neglect, DSS will begin an investigation and physically observe the child. Based on the information provided by the reporter, DSS will assess the risk of harm to the child and decide an appropriate response time that is within the 24 hours. The more serious the situation, the faster DSS will respond. For instance, if it is determined that the child is in imminent and substantial danger, DSS will begin the investigation within two hours of accepting the report. In addition to an investigation by DSS, any reports involving sexual abuse or other violations of criminal law will be referred by DSS to law enforcement for investigation.

DSS's initial goal is to keep families together. If it is determined during the investigation that the risk of harm to the child does not rise to a level that warrants removal of the child from the home, but the circumstances in the home do warrant some type of intervention, DSS and the family may enter into agreements called "safety plans" and "treatment plans", designed to keep the family together, assist the family with their needs, and remove any risks of harm. DSS will identify and offer appropriate services to aid the family and will monitor the family's progress. If the family cooperates and benefits from the services such that the risk of harm to the child is removed, DSS will close its case. If the family does not make the changes needed to keep the child safe, DSS may seek court intervention or removal of the child from the home.

If DSS seeks court intervention, the parents may be placed under a court order to comply with treatment services. If they fail to do so, the court can hold them in contempt and apply an appropriate sanction. If DSS seeks non-

emergency removal, DSS has likely offered the parents services in order to keep the family together, but the parents are noncompliant. Their noncompliance places the child in unreasonable risk of harm and the child cannot be protected without being removed from the home. The court may remove the child from the parents and grant custody to DSS, or grant custody or guardianship to a relative or other familiar person.

If, during the investigation, or at any time during DSS's services to a family, it is determined that the situation in the home is such that the child's life, health or physical safety is in substantial and imminent danger and cannot be protected in the home, the child will be placed into emergency protective custody either by law enforcement or by a family court judge. (See discussion below.) When this occurs, the child will be placed in a foster home, with relatives, or with a family friend while the parents participate in court ordered treatment services. The services are family specific and designed to assist the family in remedying the causes of abuse or neglect and to timely reunify the family.

DSS will complete its investigation into the allegations within 45 days of accepting the report and will either "indicate" or "unfound" the report. If evidence proves more likely than not (also known as preponderance of the evidence) that abuse or neglect occurred the report will be "indicated". If the evidence fails to prove more likely than not that abuse or neglect occurred, DSS will "unfound" the report.

If requested at the time the report is made, DSS will notify the reporter of the outcome of its investigation.

## **Family Court Hearings**

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

**Intervention.** DSS files a complaint asking the court to oversee the treatment services that have been offered to the family. Court oversight is usually sought when the family is not using the services that have been offered. An intervention hearing will be held within 35 days of filing the complaint. If the court determines that the child has been harmed or is at risk of being harmed, the court will order the parents to complete treatment services. The child remains in the home during this process.

**Probable Cause Hearing/Emergency Protective Custody Hearing.** Most children in the custody of DSS entered foster care by being placed into emergency protective custody ("EPC") by law enforcement or by the family court. A child may be placed into emergency protective custody when a law enforcement officer or family court judge has reason to believe the child's life, health or physical safety is in substantial and imminent danger.

Within 72 hours of a child being placed into emergency protective custody, there will be a hearing to determine whether the decision to place the child into emergency protective custody was proper and whether there is reason for DSS to retain custody of the child or whether it is safe to return the child home.

**Removal/Merits Hearing.** Within 35 days of filing a complaint for removal of a child from the child's home, there will be a removal/merits hearing. Evidence is presented by the parties and, based on the evidence, the court will determine whether the child has been abused or neglected. The court will also determine whether the child must remain in the custody of DSS while the parents complete treatment; or whether it is safe to retain the child in the home (if the child has not been removed prior to hearing); or to return the child home. The determination by the court is referred to as a "finding". The treatment services offered to the family by DSS will likely be ordered by the court at the removal/merits hearing.

**Permanency Planning.** Permanency Planning hearings are required for every child who remains out of the home following the merits/removal hearing. A permanency planning hearing must be held no later than one year from the date the child was first placed in foster care, and at least once every 12 months thereafter until a permanent plan is finalized and the case is closed by the court. The purpose of this hearing is to determine a permanent plan that is in the child's best interest and to timely gain permanency for the child. At the permanency planning hearing, the court, with evidence and input from DSS, the parents, the foster Care Review Board, the guardian ad litem, the foster parents, and any other interested parties, will determine: whether it is safe to return the child to the parents; place the child in the custody or guardianship of a relative or non-relative; retain the child in foster care; or terminate the parents' parental rights and place the child for adoption.

**Termination of Parental Rights.** As previously stated, DSS's initial goal is almost always to reunify children with their biological parents. However, reunification is not always in the child's best interest. Children deserve loving permanent families and, when the home of the biological parents cannot be made safe for them to return, an alternative is to terminate parental rights so that the child can gain permanency through adoption.

South Carolina law recognizes eleven grounds for termination of parental rights. In order for the family court to terminate parental rights, the court must find, by clear and convincing evidence, that at least one of the eleven grounds exists and that termination of parental rights is in the child's best interest.

Termination of parental rights forever severs the legal relationship between the parent and the child. The decision to terminate parental rights is one of the most difficult decisions a family court judge has to make. The evidence

presented to the court must convince the judge that there is at least one legal ground to terminate the parental rights and that termination is in the child's best interest.

## **Processing Reports: Law Enforcement**

Law enforcement is the agency that will investigate allegations of abuse and neglect when the alleged perpetrator is someone other than a parent, guardian, or other person responsible for the child's welfare. However, regardless of the alleged perpetrator's relationship to the child, law enforcement will conduct a criminal investigation into the allegations when there is reason to believe that a criminal statute has been violated. In many cases law enforcement and DSS will conduct simultaneous investigations and will coordinate their efforts when possible; however, the two investigations are separate and distinct. The purpose of DSS's investigation is to ensure the safety and welfare of children. The purpose of law enforcement's investigation is to determine whether a crime has been committed and if so, to aid in prosecuting the perpetrator. When law enforcement has probable cause to believe that an individual has committed a crime, the alleged perpetrator will be arrested. A bond hearing will be held and the alleged perpetrator may be detained or released pending final disposition of the charge.

After the bond hearing, a preliminary hearing will be held to determine whether law enforcement had probable cause to arrest the alleged perpetrator. The grand jury will then review the case to decide whether the evidence is sufficient to formally charge (indict) the alleged perpetrator. If the alleged perpetrator is indicted, the next step is usually a hearing to determine if the alleged perpetrator is innocent or guilty of committing a crime. The alleged perpetrator can choose to plead guilty or have a jury trial. If the alleged perpetrator pleads guilty or is found guilty by a jury, he or she may be sentenced to incarceration or placed on

probation. For certain sex offenses, the judge can order the perpetrator to register as a sex offender. The judge may also order DSS to place the perpetrator's name on the Central Registry of Child Abuse and Neglect.

## **Testifying**

A mandated reporter may be subpoenaed to testify in the family court and/or the criminal hearing regarding the alleged abuse or neglect. South Carolina Code Annotated Section 19-11-90 provides that:

“[I]n any legal or quasi-legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred”.

If subpoenaed, the clergy member must testify unless he or she successfully asserts the priest-penitent privilege, already discussed. Likewise, if the alleged perpetrator waives the privilege, the clergy member must testify.

## **Recognizing Child Abuse or Neglect**

The first step in helping abused or neglected children is learning to recognize possible signs of maltreatment. The law does not specify injuries or circumstances that require a report. Rather, mandated reporters must be familiar with indicators and exercise judgment in deciding whether a report is appropriate. Indicators of child maltreatment can be obvious, but are sometimes subtle and difficult to recognize. The presence of indicators does not necessarily mean abuse or neglect has occurred or is occurring;

however, when indicators appear repeatedly or in combination, professionals should take a closer look at the situation and consider the need to report. Although child maltreatment can be divided into various types (physical abuse, sexual abuse, mental injury/abuse, neglect), these various types often occur in combination. The following material is based on a fact sheet published by the National Clearinghouse on Child Abuse and Neglect, *Recognizing Child Abuse and Neglect: Signs and Symptoms* (2003).

### **General Indicators of Maltreatment**

#### **Child:**

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

#### **Parent:**

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

### **Signs of Physical Abuse**

#### **Child:**

- Has unexplained burns, bites, bruises, broken bones, or black eyes



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

Parent:

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

**Signs of Neglect**

Child:

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

Parent:

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

**Signs of Sexual Abuse**

Child:

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

Parent:

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

Child:

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

Parent:

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

## Guidelines for Mandated Reporters

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

### Responding to a Child

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

### Documentation

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

- Be aware that your records concerning the report may be subject to subpoena.

### Making a Report

- Make the report as soon as possible after receiving the information which causes you to suspect abuse or neglect. Mandatory reporters cannot "cause" a report to be made by delegating this responsibility to someone else. You must personally make the report.
- You do not need to have conclusive proof. The law requires you to report when you have "reason to believe" a child is being or may be abused or neglected.
- Do not attempt to investigate or excessively question the child. Specially trained DSS caseworkers and law enforcement officers will investigate the allegations.
- Collect as much of the following information as possible to convey to the investigating agency: child's name, age, date of birth, and address; child's present location; names and ages of siblings, parents' names and addresses.
- Explain why you are concerned about the child.
- At the time of the report, or as soon as possible thereafter, provide copies of all photographs, negatives, and medical reports to the appropriate investigating agency.
- Although reports can be made anonymously, it is often helpful to provide your name and address in the event that further information is needed.
- At the time the report is made, you can request to be notified of the outcome of the investigation.
- After you have made a report, if you learn new information or if you learn additional information, report it to DSS or law enforcement.

### **Contact with Parents**

- In general, it is best not to contact the child's parents about your suspicions before making the report. Informing parents before the appropriate intervention can be made may lead to retribution against the child or destruction of evidence.

- Never accuse a parent of abuse or neglect.

### **Follow-Up**

- Your continued help may be necessary. Be willing to meet with multidisciplinary teams and/or testify in court if requested.

## **Definitions**

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### **Abandonment**

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

### **Bad Faith**

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

### **Central Registry of Child Abuse and Neglect**

A statewide data system that identifies perpetrators of child abuse and neglect. The Central Registry of Child Abuse and Neglect is not a public record. Information concerning an individual in the Central Registry can be disclosed only when screening of an individual's background is required by statute or regulations for employment, licensing, or other purposes.

### **Child**

A person under the age of eighteen.

### **Child Abuse or Neglect or Harm**

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 and 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;

**Note:** *Under South Carolina law, such sexual offenses may involve fondling, intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, and child exploitation (child pornography).*

- (c) fails to supply the child with adequate food, clothing, shelter, or education. . . 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 absence from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate.
- (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 a part of the person's household is at substantial risk of one of those forms of abuse or neglect.

**Clear and Convincing Evidence**

Proof that leaves a firm belief or conviction as to the allegations sought to be established. It is proof that should leave no reasonable doubt in the mind of the judge concerning the matters in issue.

**Good Faith**

Honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation.

**Indicated Report**

Report of child abuse or neglect supported by facts which warrant a "finding" by a preponderance of evidence that abuse or neglect has occurred.

**Mental Injury**

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

### **Person Responsible for a Child’s Welfare**

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

### **Physical Injury**

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

### **Preponderance of Evidence**

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

### **Unfounded Report**

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

## **References**

### **South Carolina Codes**

<b>§ 19-11-90</b>	<b>Priest-Penitent Privilege</b>
<b>§ 16-3-651</b>	<b>Criminal sexual Conduct: definitions</b>
<b>§ 23-3-430</b>	<b>Sex offender registry</b>
<b>§ 63-7-10</b>	<b>Purpose</b>
<b>§ 63-7-20</b>	<b>Definitions</b>
<b>§ 63-7-40</b>	<b>Safe Haven for abandoned babies (“Daniel’s Law”)</b>
<b>§ 63-7-310</b>	<b>Persons required to report (Mandated reporters)</b>
<b>§ 63-7-330</b>	<b>Confidentiality of information</b>
<b>§ 63-7-380</b>	<b>Photos and x-rays without parental consent</b>
<b>§ 63-7-390</b>	<b>reporter immunity from liability</b>
<b>§ 63-7-410</b>	<b>Failure to report; penalties</b>
<b>§ 63-7-420</b>	<b>Abrogation of privileged communication; exceptions</b>
<b>§ 63-7-430</b>	<b>Civil action for bad faith reporting</b>
<b>§ 63-7-440</b>	<b>Knowingly making false report</b>
<b>§ 63-7-610</b>	<b>Authority of officers in all counties ad municipalities</b>
<b>§ 63-7-620</b>	<b>Emergency protective custody</b>
<b>§ 63-7-710</b>	<b>Probable cause hearing</b>
<b>§ 63-7-920</b>	<b>Investigation and case determination</b>
<b>§ 63-7-980</b>	<b>Cooperation between DSS and law enforcement</b>
<b>§ 63-7-1650</b>	<b>Services without removal</b>
<b>§ 63-7-1660</b>	<b>Services with removal</b>
<b>§ 63-7-1670</b>	<b>Treatment plans</b>
<b>§ 63-7-1700</b>	<b>Permanency planning</b>
<b>§ 63-7-1710</b>	<b>Standards for terminating parental rights</b>
<b>§ 63-7-1940</b>	<b>Court order for placement in Central Registry</b>

# NOTES

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