

## CHAPTER 7.

### CHILD PROTECTION AND PERMANENCY

#### ARTICLE 1.

##### GENERAL PROVISIONS

###### **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.

### 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, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, police or law enforcement officer, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, or a judge 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), any person 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 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 63-7-330.** 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 63-7-360.** 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 63-7-380.** 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 63-7-430.** 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.