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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 18, 2001

The Honorable Scott F. Talley
Member, House of Representatives
P.O. Box 272
Spartanburg, South Carolina 29304

RE: Informal Opinion

Dear Representative Talley:

By your letter of October 3, 2001, you have requested an opinion of this Office concerning South Carolina Code of Laws Section 20-7-655, the Child Protective Services Appeals Process. Specifically, you ask, "who is entitled to the appeals process that is referenced in this statute."

According to the literal language of Section 20-7-655, the appeals process is available "for review of indicated reports not otherwise being brought before the family court for disposition." Thus, by the terms of the statute, the subject of the report, i.e., the alleged perpetrator, is afforded the due process of Section 20-7-655 when his case is not otherwise before the family court. The history of Section 20-7-655 and its practical application is somewhat complicated, however. The confusion about the availability of Section 20-7-655 is the likely reason for the conflicting advice given to your constituent.

The Department of Social Services has graciously provided the following information in an effort to help clarify the progression of Section 20-7-655:

> Section 20-7-655 was created in 1992. Before that, people's names went on the Central Registry as perpetrators at the end of a child protective services investigation, if the case was indicated. Based on certain statutes and regulations, and based on practice that grew up in certain employment and volunteer settings, people (with their consent) were screened against the Central Registry for licensing, volunteer organizations involving children, and employment involving children; some sort of due process was needed for review of the case decision.
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> When Section 20-7-655 was created, Sections 20-7-736 and 20-7-738 were

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> amended to say that whenever the court was considering a case for removal or CPS treatment, the court should also rule on whether to enter an "affirmative determination" that the person abused or neglected that child. Affirmative determinations would be subject to release when a Central Registry screening was done. For cases not going to court, the 20-7-655 process was available and if the person did not use 20-7-655 to challenge the decision, the indicated case decision automatically became an affirmative determination after the appeal period lapsed.
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> In 1997, there was a move to create a new form of Central Registry. County DSS indicated cases would not be placed on the new Central Registry. DSS was authorized to keep a record of the investigation and the fact that the outcome of the investigation was an "indicated" determination as part of normal recordkeeping, but the new Central Registry would be a perpetrators list. Names would be placed on the new Registry when a court ordered the name onto the Registry, except in 20-7-670 (institutional abuse) matters..... The 1997 changes should have also amended 20-7-655, to clarify that 20-7-655 would be available to review 20-7-670 cases only, but it was not.... Note also that the General Assembly did not clean up references to affirmative determinations that appeared in 20-7-490 and 20-7-650, even though affirmative determinations no longer would be entered by the family court.

In sum, Section 20-7-655 was created to afford some form of due process to those who wanted to challenged their placement on the old central registry of offenders. When the new central registry was created in 1997, the only offenders placed on the registry were those specifically ordered by a court, with the exception of those working in institutional settings. Thus, for the most part, only those already afforded due process are entered onto the registry. As of 1997, Section 20-7-655 as a practical matter should only impact those offenders in institutional settings who are placed on the registry without an opportunity to be heard in court.

However, because of the confusion since the establishment of the new registry, the Department of Social Services has issued a policy memorandum advising the county offices that the appeal process of Section 20-7-655 remains available in certain cases. Portions of that memorandum state the following:

> The Department of Social Services has determined that it is appropriate to provide a structured mechanism for individuals to appeal a decision by a DSS county office to indicate a child protective services case when DSS is not taking the case to Family Court. The appeals will follow the process established by S.C. Code of Laws Section 20-7-655. This process was used for county indicated cases until amendments to state law in 1997 stated that the only cases placed on the Central Registry upon classification of a case as "indicated" would be institutional abuse cases.

> The process starts with notice to the subject of the indicated case of the right to appeal and includes an interim review by the county director. If the decision is overturned by the interim review, the case record is amended to reflect this change and the individual shall be notified. If the indicated decision is upheld by the county director, the facts of the case will be heard by a three member child protective services appeals committee. The appellant may appeal to the family court if the appeals committee upholds the case decision.
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> This policy is being implemented while DSS pursues amendments to Section 20-7-655.

Given the uncertainty surrounding the availability of Section 20-7-655 to indicated cases in the last few years, conflicting information from different county sources is not surprising. Nonetheless, the Department of Social Services has taken steps to clarify the status of Section 7-20-655 in the midst of various statutory amendments. The agency is also seeking Legislative clarification of that provision. In the meantime, rest assured that county offices are being advised of the appropriate avenues available to those who wish to challenge the agency's determinations.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Susannah R Cole

Susannah Cole
Assistant Attorney General