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The State of South Carolina



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September 10, 1992

The Honorable James G. Mattos
Member, House of Representatives
4 Yarmouth Court
Greenville, South Carolina 29611

Dear Representative Mattos:

You ask whether the Department of Social Services, pursuant to S.C. Code Section 20-7-650, must seek a "finding" of an indicated case from family court after the Department indicates a case, notifies family court of its conclusion and a hearing is scheduled concerning the matter.

Section 20-7-650 provides that, within twenty-four hours of receiving a report of suspected abuse or neglect of a child, the local Department must initiate an investigation and within sixty days make a finding whether the report is "unfounded" or is "indicated". The statute defines an indicated finding as a finding "that abuse or neglect is more likely than not to have occurred ...". S.C. Code Ann. § 20-7-650(D). Where the local Department concludes that a report is indicated, S.C. Code Ann. § 20-7-650(H) requires that the local Department petition the family court within one week after it initiates services to the child. A hearing is then held by the family court within forty days of the filing of the petition. S.C. Code Ann. § 20-7-650(H). At the hearing the family court will determine whether:

- (1) the agency had reasonable cause to initiate the services offered;
- (2) the services being offered are reasonable in light of the agency's justification for intervention.

Id. "Service" does not include emergency protective custody as the procedure associated with that action is provided in S.C. Code Ann. § 20-7-736 et seq.

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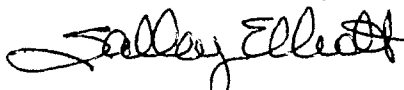
It appears that in a hearing held pursuant to Section 20-7-650(H) where the Department has concluded that a report is indicated, where physical, mental, or sexual abuse is involved, and where the Department is offering protective services only, the court must determine whether:

- (1) the agency had reasonable cause to initiate the services offered;
- (2) the services being offered are reasonable in light of the agency's justification for intervention.

The Department "has the burden of proof by a preponderance of the evidence, except where the agency has alleged mental illness, in which case the evidence is clear and convincing". Id. The proof necessary for such a showing will depend upon the facts involved in each particular case. Of course, it is possible that in certain instances the Department's cause to initiate the service may involve the finding that child physical, mental, or sexual abuse is "indicated".

With kind regards, I am,

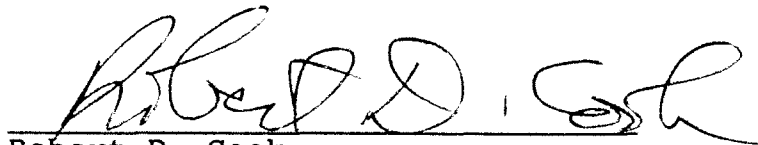
Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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