

1983 WL 182017 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1983

***1 Re: Child Protection Act and the duties of the Department of Social Services to investigate reports of suggested child abuse or neglect in all juvenile delinquency detention institutions, jails or facilities.**

Honorable Harry W. Davis, Jr.
Commissioner
South Carolina Department of Youth Services
Post Office Box 7367
Columbia, South Carolina 29202

Dear Mr. Davis:

You have asked the following questions concerning the Child Protection Act, [Section 20-7-480, et seq., CODE OF LAWS \(1976\)](#):

1. Pursuant to the Child Protection Act, [Section 20-7-480, et seq.](#), does the South Carolina Department of Social Services have the duty to investigate allegations or reports of child abuse or neglect in institutions and jails housing juveniles?
2. Do the provisions of the Child Protection Act permit the Department of Social Services to establish investigative policies which differentiate the juvenile facilities of the Department of Youth Services from the juvenile facilities operated by other State and local governments providing that DSS does investigate allegations of child abuse within DYS facilities but that it does not investigate allegations of child abuse within juvenile facilities operated by other State and local governments?
3. Can the Department of Social Services delegate its duties and responsibilities to investigate allegations of child abuse in non-DSS operated children's facilities to the State Law Enforcement Division?
4. What causes of action are available, either civilly or criminally, where the Department of Social Services or its employees violate the provisions of [Section 20-7-690](#) regarding the confidentiality of reports of allegations of child abuse or neglect?

Your first question concerns whether the South Carolina Department of Social Services has the statutory duty to investigate allegations or reports of child abuse or neglect in institutions and jails housing juveniles. In the Child Protection Act, [Section 20-7-490\(H\), CODE OF LAWS \(1976\)](#), 'institutional child abuse and neglect' is defined as a situation 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.' The initial question is whether institutions housing juveniles such as the Department of Youth Services institutions and local or county jail or detention facilities are a 'public or private residential home, institution, or agency' as defined by the Act. [Section 20-7-470\(E\)](#) in its pertinent part states that 'a person responsible for a child's welfare' includes the 'employee of a public or private residential home, institution, or agency, or other person legally responsible for the child's welfare in a residential setting.' The purpose of the Child Protection Act includes '... establishing 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 20-7-480, CODE OF LAWS \(1976\)](#).

***2** It cannot be questioned that juvenile institutions of the Department of Youth Services and local and county juvenile detention facilities and jails fall within the parameters of this Act as a 'public residential institution or agency.' Children that are housed in these facilities pursuant to criminal charges pending or adjudicated and the governing state, county, or municipal

agency responsible for maintaining the facility is 'responsible for the welfare' of the child while under their charge. [Section 20-7-490\(E\), CODE OF LAWS \(1976\)](#).

Inasmuch as it is clear that all juvenile detention jails and institutions fall under the purview of the Child Protection Act, the next question is when a proper report is made concerning child abuse or neglect. According to [Section 20-7-510\(C\), CODE OF LAWS \(1976\)](#), reports of child abuse or neglect may be made to the county department of social services, or in the alternative, to a law enforcement agency in the county where the child resides or is found and where such a report is made to the law enforcement agency, it shall notify the county department of social services of its response to the report at the earliest possible time. It is the statutorily mandated duty of the local child protective service agency established by the county department of social services to commence an appropriate and thorough investigation within twenty-four (24) hours to determine whether a report of suspected child abuse or neglect is 'indicated' or 'unfounded.' This is a mandatory duty of the agency and the Department of Social Services, through the local child protective agency, must investigate all reports of suspected child abuse made pursuant to [Section 20-7-510, CODE OF LAWS \(1976\)](#), including those reports concerning state, county, and municipal juvenile detention facilities or institutions. There exists no exception under South Carolina law that provides for the Department of Social Services to delegate its initial child abuse or neglect investigation responsibilities to the State Law Enforcement Division when the target of the investigation is a juvenile detention facility. The State Law Enforcement Division (hereafter SLED) is only empowered to complete this initial child abuse or neglect investigation when an institution is operated by the Department of Social Services. [Section 20-7-670, CODE OF LAWS \(1976\)](#). There is no state juvenile delinquency institution or county or local juvenile detention center operated by the Department of Social Services, so that only the Department of Social Services must complete an initial child abuse investigation.¹

The remaining question is what causes of action are available, either civilly or criminally,

Assistant Attorney General Department of Social Services or its employees violate the confidentiality of reports of suspected child abuse? Under the Child Protection Act, all reports of suspected child abuse shall be confidential. [Section 20-7-670, CODE OF LAWS \(1976\)](#) sets out the criminal sanction as follows:

***3** Any person who disseminates or permits the unauthorized dissemination of such information shall be fined not more than five hundred dollars or imprisoned for not more than six months or both.

Any possible civil causes of action would, of course, depend upon the facts surrounding the particular breach of confidentiality and its effect, such as an action for a writ of mandamus or injunction in which the agency could be ordered to follow the confidentiality statute as set out in [Section 20-7-690, CODE OF LAWS \(1976\)](#).

If you have any questions on this matter, please advise me.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

Footnotes

- ¹ The Department of Social Services is required to cooperate with law enforcement agencies to establish procedures to facilitate the referral of child protection cases to the child protection service agency pursuant to [Section 20-7-650\(K\), CODE OF LAWS \(1976\)](#). This section does not however affect the statutory responsibility of the Department, not law enforcement, to investigate every report of suspected child abuse or neglect. Where the facts developed from an investigation indicating abuse or neglect also indicate a violation of criminal law, the Department then is required to notify the appropriate law enforcement agency of those facts for police investigation. [Section 20-7-650\(K\), CODE OF LAWS \(1976\)](#).

1983 WL 182017 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.