

1981 WL 157949 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 2, 1981

*1 Honorable Ryan C. Shealy
Senator
State of South Carolina
Gressette Senate Office Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Shealy:

Your letter of August 25, 1981, to Attorney General McLeod requesting an interpretation of the Child Protection Act, Section 20-10-20(C)(1), has been forwarded to me for reply. Specifically you inquire as to whether or not under this Section a physical injury solely as a result of an accident is considered physical abuse. The pertinent portion of this Section utilizes harm or threatened harm to a child's physical or mental health or welfare due to the acts or omissions of a parent or guardian as the standard for determining whether or not a particular case involves abuse or neglect.

In this context, harm to a child's health or welfare can occur when the parent, guardian or other person responsible for his welfare, 'inflicts or allows to be inflicted upon the child physical or mental injury . . .'. Therefore in order for a child to be deemed abused or neglected in situations other than actual inflictions of injury, the person responsible for the child's welfare would have to have allowed the injury to occur. In this regard, the word 'allow' denotes the conscious permitting of an event to occur, as by conscionable negligence, which renders an injury as resulting from other than an 'act of God' or an 'accident'. Black's Law Dictionary, Rev. 4th Ed. at page 101; [Guthrie v. Boose](#), (Ga.) 213 S.E. 924 (1975); [Belue v. City of Greenville](#), 226 S.C. 192, 84 S.E. 2d 631 (1954).

It is therefore the opinion of this office that Section 20-10-20(C)(1) would not deem as child abuse or neglect a physical or mental injury occurring solely as a result of an accident. Of course, it is a factual determination in each case as to whether or not an injury was sufficiently the result of an act of God or 'the violence of nature', rather than the culpable negligence of the person responsible for the child's welfare.

If you wish to discuss this matter further, or if I can be of service to you in any way, please do not hesitate to contact me.

Respectfully,

Brian P. Gibbes
Senior Assistant Attorney General
Criminal Division

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