

1979 WL 43113 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 16, 1979

***1 SUBJECT: Child Abuse, Transfer of Custody from Law Enforcement Agency to Protective Services Agency**

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted.

Vernon L. Boatwright
Chief of Police
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QUESTION:

Where a child is taken into Emergency Protective Custody pursuant to the Child Protection Act, at what point is the law enforcement agency divested of further responsibility for the immediate care and well-being of the child?

AUTHORITIES INVOLVED:

Child Protection Act of 1977, South Carolina Code of Laws (1976), Section 20-10-10, et seq.

[Cook v. Cobb](#), 271 S.C. 136, 245 S.E.2d 612 (1978)

[Cuttino v. Lenoir](#), 271 S.C. 451, 247 S.E.2d 817 (1978)

[Herring v. Credit Bureau of Columbia](#), 272 S.C. 368, 252 S.E.2d at 123 (1979)

[In Re Sampson](#), 65 Misc.2d 658, 673, 317 N.Y.S.2d 641, 657 (1970)

[Prince v. Massachusetts](#), 321 U.S. 158, 64 S.Ct. 438 (1943) 59 Am. Jur.2d Parent and Child, §§ 9 and 10.

DISCUSSION:

By your letter of September 21, 1979, you have requested an opinion of this Office clarifying responsibilities for a minor child removed from the home pursuant to the Emergency Protective Custody provisions of the Child Protection Act of 1977.

Under the Act, a law enforcement officer may take a child into protective custody without the consent of parents, guardians or others exercising control over the child if there is probable cause to believe there is imminent danger to the child's life or physical safety by reason of neglect or abuse, the parents or other persons exercising control are either unavailable or do not consent to removal, and there is not time to apply for a court order under the removal provisions of the Act. Section 20-10-80(A), CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Immediately after removal, the child is taken by the officer to a previously designated shelter facility, one which is not a facility for the detention of criminal or juvenile offenders, § 20-10-90(13), CODE (1976), as amended, and the officer then provides notification to the local child protective service agency (the County Department of Social Services in each county, § 20-10-120(D), CODE (1976), as amended), the Family Court, and the parents of the child of the action taken and the place of custody. § 20-10-90(C), CODE (1976), as amended. Upon such notification, the local child protective service agency commences investigatory procedures in the matter. If proper, the agency then initiates a removal proceeding on or before the next working day in the appropriate Family Court. § 20-10-90(D), CODE (1976), as amended. During the pendency of the removal proceeding, the minor child remains placed in a designated shelter facility until the proceeding is concluded. § 20-10-80(E), CODE (1976), as amended.

***2** The Emergency Protective Custody provisions are exceptional instances of an exercise of State authority in behalf of a minor child's safety and welfare. It should be borne in mind that the protection of endangered minors by proper intervention in the family unit is an express purpose of the Act, § 20-10-30, CODE (1976), as amended, and it is implicit in such action that the State may properly act, as parens patriae, in spite of those rights which may inhere in parental or other relationships in order to promote a minor child's best interests. See, [Prince v. Massachusetts](#), 321 U.S. 158, 64 S.Ct. 438 (1943); 59 Am. Jur. 2d Parent and Child, §§ 9 and 10. See also, [Cook v. Cobb](#), 271 S.C. 136, 245 S.E.2d 612 (1978); [In Re Sampson](#), 65 Misc. 2d 658, 673, 317 N.Y.S.2d 641, 657 (1970). It is further clear that under exigent circumstances, action of a temporary nature may be taken provided the opportunity for a full adversary proceeding on the merits of the controversy is properly and timely afforded. See, [Herring v. Credit Bureau of Columbia](#), 272 S.C. 368, 252 S.E.2d at 123; [Cuttino v. Lenoir](#), 271 S.C. 447, 247 S.E.2d at p. 817 (1978), Justice Ness dissenting.

It is equally clear that the local child protective service agency is charged with the primary and pivotal functions of providing, directing, and coordinating the appropriate and timely delivery of services to children found to be abused or neglected. However, such 'services' expressly do not include emergency protective custody. § 20-10-120(G), CODE (1976), as amended. As already indicated above, subsequent to proper notification by the law enforcement officer involved it is the County Department of Social Services which investigates the matter and initiates judicial proceedings if warranted. Further action by the law enforcement authorities is only marginal under the Act, either as witnesses in the subsequent removal proceedings, § 20-10-170, CODE (1976), as amended, or in separate criminal investigations initiated upon notification by the protective services agency of facts to warrant same. § 20-10-120(K), CODE (1976), as amended.

The involvement of the law enforcement officers in circumstances involving protective custody would appear to be primarily in the nature of a valid exercise of the State's authority as parens patriae, rather than as an exercise of the State's police power. Of course, the latter authority is evident in a very real sense, for under circumstances which might give rise to confrontations or violence without the appearance of lawful authority to act, the presence and conduct of the officer on the scene of the removal will hopefully exert a restraining influence which in turn may effectuate the Act's purpose of subsequent reconciliation of the family unit where possible. See, § 20-10-30, CODE (1976), as amended. However, the actions taken by officers under the protective custody provisions must be reported to the County Department of Social Services as soon as possible. § 20-10-50 CODE (1976), and 20-10-90(C), as amended. And as soon as such notification is provided to the county protective services agency, the burden is then upon that agency to investigate the allegations which have given rise to protective custody and initiate court proceedings where warranted. § 20-10-90(D), and § 20-10-170, CODE (1976), as amended.

***3** During the short period of time between the child's being taken into protective custody and proper notification to the county social services agency, the Family Court, and the parents, it would appear that the law enforcement officer is clearly responsible for the safety and welfare of the minor child. Notwithstanding the good faith of his actions, he has removed the child from those who are clearly charged by law with responsibility for the well-being of the child (parents, et al.) and until such time that proper notification is given to that agency charged by law with subsequent responsibility for the minor (county social services), it would seem obvious that the child's safety and care is a responsibility the officer

has assumed. The Child Protection Act does expressly recognize the responsibility to be imposed upon individuals acting under the Statute on behalf of public agencies. §§ 20-10-20(H) and 20-10-160, CODE (1976), as amended.

It should be noted that the 'gap' in time in which the child has been left with the designated shelter facility and prior to notification of the protective services agency (no more than a single working day) provides in analysis that there could be three 'agencies' deemed responsible for the child: the law enforcement agency, the shelter facility, and the county protective services agency. It would appear, however, that a reasonable interpretation of CODE Section 20-10-90 (and the Child Protection Act generally) envisions the county protective services agency and the law enforcement agency as those two agencies acting in a principal capacity under the circumstances of emergency removal, with the shelter facility intended to be seen in a collateral, interim capacity pending removal proceedings. It should be further noted that the law enforcement officer's contacts with shelter personnel, his observations in line therewith, will provide him first-hand with knowledge of the circumstances of removal and placement. The county social services agency will most probably at this time still be ignorant as to these circumstances. Therefore, it is the conclusion of this Office that for purposes of those procedures to be followed in line with duties and responsibilities allocated under the Child Protection Act, the law enforcement officer bears responsibility for the minor child until it is imposed upon the county department of social services by proper notification.

The notification provided by the officer acting in circumstances of emergency protective custody should be one which will clearly apprise interested parties and agencies of the action taken by law enforcement officials and at the same time provide a clearly defined point at which there is an understanding between the protective services agency and the law enforcement agency as to who will thereafter be deemed responsible for the minor child. It is therefore recommended that the 'notification' of Section 20-10-90(C) and (D) be accompanied by a formal notification document, filed with the Clerk of Court's Office, with certified copy served upon parents and protective services agency. Upon service of this document on the county department of social services, that agency will thereafter be deemed primarily responsible for the care, control and supervision of the child, as against any further responsibility of the law enforcement officer.

*4 Enclosed please find a suggested form for such a notification as I have described. It is accompanied by a suggested form affidavit to be completed by the appropriate officer and attached to the Notice.

CONCLUSION:

The Child Protection Act does not by its language or apparent intent anticipate protracted responsibility by law enforcement officers for children taken into emergency protective custody. However, during the period of time subsequent to emergency removal and prior to notification to the local protective services agency, it would appear that the law enforcement officer is deemed primarily responsible for the minor child. Upon proper notification to those charged by law with assuming responsibility for the child subsequent to emergency removal, the duties and responsibilities of the law enforcement officer under the Child Protection Act are ended.

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