

# The State of South Carolina



## Office of the Attorney General

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June 22, 1990

Nelda Smyrl, Assistant Solicitor  
Fifth Judicial Circuit  
1701 Main Street  
Columbia, South Carolina 29201

Dear Ms. Smyrl:

You have requested an opinion from our Office on the two following questions relating to child abuse and neglect matters:

1. In conducting a criminal investigation in which a child is either a victim or a witness and in which one or both parents are suspects, do law enforcement officers have the authority to speak with the child at school without prior notification to the parents and/or consent of the parents? Must school authorities inform the parents and/or obtain parental consent before allowing the officer to interview the child?
2. When a child's custodial parent is arrested, may the arresting officer release the child to a non-custodial parent or other relative, with the permission of the arrested parent, or must the child be taken into emergency protective custody?

With regard to your first question, this State has declared that its policy regarding abused and neglected children is to effect prevention and protection by establishing a system of reporting, investigation, intervention and provision of services in order to safeguard endangered children and preserve family life. South Carolina Code Ann. §§ 20-7-20; 20-7-480; 20-7-650(A). It is the policy

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of the State to

... encourage community involvement in the provision of children's services including, as an integral part, local government, public and private voluntary groups, public and private nonprofit groups and private-for-profit groups in order to encourage and provide innovative strategies for children's services. To maximize resources in providing services to children in need, all agencies providing services to children shall develop methods to coordinate their services and resources. For children with multiple needs, the furtherance of the policy requires all children's services agencies to recognize that their jurisdiction in meeting these children's needs is not mutually exclusive.

South Carolina Code Ann. § 20-7-20(C). It is also the policy of the State to "assist and encourage families to utilize all available resources" and to implement its purpose the State demands "cooperative efforts of state, county and municipal legislative, judicial and executive branches, as well as other public and private resources." South Carolina Code Ann. § 20-7-20(D) and (E).

According to South Carolina Code Ann. § 20-7-510, any school teacher, counselor, police or law enforcement officer, among others, must report suspected instances of child abuse or neglect to the local child protective service agency or appropriate law enforcement agency. The state and local departments of social services are charged with the duty of publicizing reporting methods to the public and encouraging those in need of assistance to seek help. South Carolina Code Ann. § 20-7-660. The individuals who report or participate in judicial proceedings resulting from the report and who act in good faith are immune from liability, South Carolina Code Ann. § 20-7-540, and are deemed guilty of a misdemeanor if required to report and knowingly fail to do so. South Carolina Code Ann. § 20-7-560. Upon receipt of a report, the local child protective service agency is charged with initiating an investigation into possible child abuse or neglect circumstances within twenty-four hours. South Carolina Code Ann. § 20-7-650(C). Pursuant to South Carolina Code Ann. § 20-7-650(L)

(t)he local child protective service agency shall actively seek the cooperation and involvement of all local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.

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Also pursuant to South Carolina Code Ann. § 20-7-1450

(i)t is made the duty of every county, town, or municipal official or department to render such assistance and cooperation within his or its jurisdictional power to further the objects of this chapter.

With regard to law enforcement agencies, a law enforcement officer is authorized to take a child into custody where the child's "surroundings are such as to endanger his welfare." South Carolina Code Ann. § 20-7-600(a). Pursuant to South Carolina Code Ann. § 20-7-610, and under certain conditions, an "officer may take a child into protective custody without the consent of parents, guardians or others exercising temporary or permanent control over the child." The local child protective service agency is also required to

... cooperate with law enforcement agencies and the circuit solicitor within the area it serves and establish such procedures as it deems necessary to facilitate the referral of child protection cases to the child protective services agency. Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the agency shall notify the appropriate law enforcement agency of those facts for police investigation.

South Carolina Code Ann. § 20-7-650(K). I have been unable to locate a statute which would require parental notification prior to conducting an interview with a child at school.

This Office has been previously asked to respond to similar questions but regarding protective service workers and opined that the State's paramount interest in assuring the child's best interest would allow a social worker, school teacher, or counselor conducting or assisting an investigation to question a child at school without parental consent. See South Carolina Atty. Gen. Ops. dated June 6, 1977 and October 18, 1979. For the reasons set forth and authorities relied upon in those opinions and the authorities provided herein, it is the opinion of this Office that a law enforcement officer conducting a criminal investigation of child abuse or neglect in which a child is either a victim or witness and in which one or both parents are suspects may interview the child at school without notification to the parent. Opinions from other states have reached the same conclusion regarding protective service workers and

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law enforcement officers. WIAG OAG March 8, 1990; MS-AG January 31, 1990; AZ I88-06Z June 9, 1988; TN 87-101 June 9, 1987; KY AG OAG 87-33; KY AG OAG 85-134; ND AG No. 84-37. Notice to a parent or parents who are suspected of child abuse or neglect could lead to the possibility of further abuse or intimidation of the child, rehearsal, removal of the child from the jurisdiction, or further obstruction of the child's protection and could promote further harm to the child, contrary to the intent and policy of this State in child abuse and neglect matters. The relevant statutes indicate the necessity for swift action and cooperation among entities in order to effectuate the State's policy of protecting from harm possible child victims of abuse or neglect. Surely where school personnel are required to report instances of abuse and neglect and where entities are required to cooperate, it is also the intent that school officials cooperate in the investigation of abuse and neglect matters in such a manner as to deter further harm rather than obstruct protection. Nevertheless, as I have not been provided with reasons advanced by school authorities in requiring parental notification, it is possible that there may be some justification in a parental notification or consent policy. An attempt to discern the various reasons would require an investigation into facts which is not a function of an opinion of the Office.

You also ask whether an arresting officer may release a child to a non-custodial parent or other relative, with the permission of an arrested parent, or must the child be taken into emergency protective custody. On May 29, 1990, Governor Campbell approved an amendment to South Carolina Code Ann. § 20-7-610 (See R585, S1511). The amendment, which became effective upon approval, provides that

(B) Where a child's parent, parents, or guardian has been arrested or the child has become lost accidentally and as a result the child's welfare is threatened due to loss of adult protection and supervision, the child may be taken into protective custody pursuant to this section if:

(1) In the circumstance of arrest, the parent, parents, or guardian does not consent in writing within twenty-four hours to another person assuming physical custody of the child;

(2) In the circumstance of a lost child, a search by law enforcement has not located the parent, parents, or guardian within twenty-four hours.

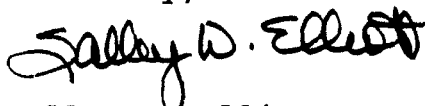
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No placement with a parent, an immediate family member, a guardian, or a relative is required under this subsection where the law enforcement officer believes in good faith that the placement would expose the child to harm as defined in Section 20-7-490(C) or if the individual cannot or will not take placement of the child within twenty-four hours.

The amendment also provides that law enforcement may "take protective custody of the child as a dependent child or as a suspected abused and neglected child" if, after being given shelter by the local department of social services for up to twenty-four hours awaiting placement, no alternative placement is determined. The amendment to South Carolina Code Ann. § 20-7-610 should be responsive to your inquiry.

Please feel free to contact me if you have any questions or if you care to discuss this opinion further.

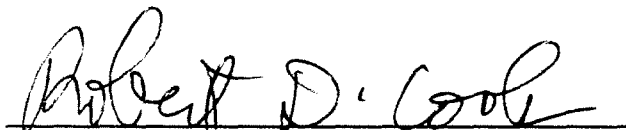
Sincerely,



Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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