

Children's Law Center
University of South Carolina School of Law

Legal Guide for Foster Parents

Understanding the court process and your legal rights



Children's Law Center
School of Law

UNIVERSITY OF SOUTH CAROLINA

TABLE OF CONTENTS

I.	LEGAL RIGHTS OF FOSTER PARENTS.....	2
	Receipt of Information Prior to Placement	
	Disclosure of Information	
	Notification of Hearings	
	Attendance at Hearings	
	Petition for Termination of Parental Rights	
	Private Action for Adoption	
	Fair Hearing	
II.	OVERVIEW OF THE CHILD WELFARE COURT SYSTEM.....	3
	Emergency Protective Custody	
	Probable Cause Hearing	
	Merits Hearing	
	Permanency Planning Hearing	
	Review Hearing	
	Termination of Parental Rights Hearing	
	Trials and Agreements	
III.	ATTENDING COURT	7
IV.	FAIR HEARING PROCESS.....	8
V.	MANDATED REPORTING DUTY	9
VI.	OTHER LAWS AFFECTING FOSTER PARENTS	10
	Reasonable and Prudent Parent Standard	
	Required Contacts with DSS	
	Number of Children Allowed in Foster Home	
	Driver’s Licenses	
VII.	DEFINITIONS.....	11
VIII.	LEGAL REFERENCES.....	13

I. LEGAL RIGHTS OF FOSTER PARENTS

Foster care is a temporary living arrangement for children in the custody of the South Carolina Department of Social Services (DSS). DSS has legal custody of foster children with the child's biological parents retaining some rights. As a foster parent providing a temporary placement for a child in DSS custody, you have the following legal rights discussed below.

Receipt of Information Prior to Placement

You have the right to information about the case before placement of the child in your home. However, DSS has the discretion to limit the information it discloses to you. Foster parents are not entitled to review or copy the entire DSS case record.

Disclosure of Information

You have the right to all information that affects your ability to care for the child or that affects the health and safety of the foster child and your family. This includes information about the child's history, medical and mental health conditions, behavioral problems, educational needs, and the abuse and/or neglect the child has been subjected to. This information should be disclosed to you at the time of placement if it is known, and if it not known, by no later than the end of the first week of the child's placement in your home. As long as the foster child remains in your home, DSS has a continuing obligation to disclose the above information as the agency becomes aware of it.

Notification of Hearings

You have the right to be notified of hearings concerning your foster child. DSS is required to give you written notice of the time, date, and place of any probable cause hearing, merits hearing, permanency planning hearing, or termination of parental rights hearing, as well as any hearings concerning treatment or placement plans. The notice must also inform you of your right to attend the hearings and address the court concerning the child. Written notice may be given to you in person or through regular mail. This notice does not give you the status of a party to the action.

Attendance at Hearings

You have the right to attend hearings and address the court concerning your foster child. As a foster parent, you may attend hearings where you will have the opportunity to make a statement to the court about your foster child's needs and adjustment to foster care. This is different,

however, from full participation in a hearing. Full participation allows a party access to all court pleadings and motions, the right to call witnesses and cross-examine other parties' witnesses, and the ability to present other evidence.

If you wish to fully participate in your foster child's hearings, you will need to become a party to the action by filing a motion to intervene in the court case. The motion to intervene must be filed in family court and served on DSS, the defendants, the child's attorney, and the guardian ad litem. The family court will schedule a hearing to decide whether you should become a party to the action. If the court grants the motion to intervene, you become a party and may participate fully in all child protection hearings by presenting witnesses and other evidence. Becoming a party also subjects you to the contempt powers of the court for failure to comply with court orders. Although it is not required, it is recommended that you hire an attorney if you wish to petition the court for intervention.

Petition for TPR

You have the right to petition the family court for termination of the parental rights of the foster child's parents. South Carolina law allows any interested party, including foster parents, to bring an action to terminate parental rights. A judge may only terminate parental rights if there is clear and convincing evidence of at least one of the 12 grounds for termination of parental rights and that termination of parental rights is in the best interest of the child.

Private Action for Adoption

You have the right to file a private action for adoption of a foster child as long as you are a resident of South Carolina and DSS has not already placed the child for adoption.

Fair Hearing

You have the right to a fair hearing if DSS takes certain "adverse actions" against you. The fair hearing process is explained on page eight.

II. OVERVIEW OF THE CHILD WELFARE COURT SYSTEM

A child who is in foster care typically enters this system by being taken into emergency protective custody. The number of child welfare hearings that follow varies, depending on the nature of the case and the length of time a child remains in foster care.

Emergency Protective Custody

DSS cannot make the decision to remove a child from the child's home. In South Carolina, only law enforcement officers and family court judges may take emergency protective custody of a child, and to do so, they must have probable cause to believe that the child's life, health, or physical safety is in imminent and substantial danger due to abuse or neglect.

After a law enforcement officer or family court judge takes emergency protective custody of a child, the child is placed in the care of DSS. A caseworker then places the child in a foster home or an appropriate shelter within a reasonable amount of time.

Probable Cause Hearing

Within 72 hours of a child being placed into emergency protective custody, there will be a probable cause hearing in family court. The judge will decide whether there was probable cause to take the child into emergency protective custody and whether, on the date of the hearing, there remains probable cause for DSS to retain custody of the child. During the probable cause hearing, DSS may present witnesses, and the parent may ask these witnesses questions. The parent is not allowed to present witnesses at the probable cause hearing; however, the parent may submit affidavits (sworn written statements) in support of his or her position.

This hearing is very early in the child protection process, but if the foster parent has learned any information about the abuse or neglect the child may have suffered and believes the child is in need of services, the foster parent may inform the judge at the probable cause hearing.

At the probable cause hearing, the judge does not have to decide whether the child was actually abused or neglected. The judge will issue a written order deciding the following:

- whether there was probable cause to take the child into emergency protective custody;
- whether there remains probable cause on

the date of the hearing to keep the child in protective custody; and

- whether continuation of the child in the parent's home would be contrary to the child's welfare.

If the judge determines that there was and remains probable cause to take emergency protective custody, the judge will appoint a guardian ad litem (GAL) to represent the child's interests at all subsequent hearings. An attorney will also be appointed to represent the child's GAL at all subsequent hearings. The judge will also appoint an attorney for any parent who wants representation but cannot afford to hire an attorney. The judge will schedule a merits hearing to be heard within 35 days.

Merits Hearings

Within 35 days of DSS filing its removal complaint, there must be a hearing on the merits of the removal. A merits hearing is a proceeding in which a judge hears all the facts and determines whether there is sufficient evidence to conclude that a child has been abused or neglected. DSS, the child's parent, and the guardian ad litem may present witnesses and other evidence at a merits hearing.

Prior to the merits hearing, the child's parents, the child's attorney, and the guardian ad litem will be served with a summons and complaint. The summons notifies these parties that a child protection case has been initiated and that the parties have the right to respond. The complaint describes the nature of the alleged abuse or neglect and states the relief requested by DSS. In addition, the parties will receive notice of the date, time, and place of the merits hearing.

Because a foster parent generally is not considered a party to the action, DSS is not required to serve a foster parent with the summons and complaint. However, the law requires that DSS give a foster parent written notice of the date, time, and place of the merits hearing. As in the probable cause hearing, the

notice must inform the foster parent of the right to attend the merits hearing and address the court concerning the child.

At the merits hearing, if the judge determines a child has been abused or neglected and cannot be protected from harm if returned to the home, the judge may keep the child in DSS custody. DSS will present a placement plan at the merits hearing or within 10 days after the hearing. The placement plan must be in writing and should be prepared with the participation of the parents, the child (if age appropriate), and any other agency that may be required to provide services.

The placement plan is a written document that describes the type of abuse or neglect that caused the child to be placed in DSS custody and states what a parent must do to correct the problems that caused the child to be placed in DSS custody. The placement plan also describes the services that are to be provided to the parent, child, and foster parent. The judge will make the placement plan a part of the merits hearing court order. The parent must be given a copy of the placement plan. The foster parent must be given a copy of any portion of the placement plan directed at the foster parent or foster child.

There will be another hearing after the merits hearing. The court will review the child's status in foster care and will review the parent's progress and compliance with the placement plan. This hearing is known as a permanency planning hearing.

Permanency Planning Hearing

The purpose of the permanency planning hearing is to ensure that a child who has been placed in DSS custody receives a safe and permanent home as soon as possible. The initial permanency planning hearing must be held within 12 months of a child entering foster care, although it may occur earlier.

DSS initiates the permanency planning hearing by filing and serving a motion for permanency planning on all parties to the action at least 10 days before the hearing. DSS must also attach a supplemental report to its permanency planning motion, which describes:

- the services offered to the parents;
- the extent of compliance with the services offered;

- recommendations of the local foster care review board;
- whether foster care is to continue;
- whether the child's current foster care placement is safe and appropriate;
- whether DSS has made reasonable efforts to assist the parent; and
- what efforts DSS has made in finalizing adoption, if appropriate.

The permanency planning motion and supplemental report are served on the parties to the action. Because foster parents are not parties to the action, they are not entitled to receive a copy of the department's permanency planning motion and supplemental report. However, DSS must give notice of the date, time, and place of the permanency planning hearing to the foster parent.

At each permanency planning hearing, the judge will review the child's status in foster care and will review the parents' progress and compliance with the placement plan. The judge will also review whether the reasonable and prudent parenting standard is being used and whether the child has opportunities to participate in age and developmentally appropriate activities. The foster parent may attend the permanency planning hearing and the judge may allow the foster parent to inform the court about the child's adjustment to the foster home, the child's needs, and whether the child's needs are being met.

At the initial permanency planning hearing, the judge will consider all evidence, DSS's supplemental report, and whether the parent has substantially complied with the placement plan ordered at the merits hearing. The judge will then order one of the following permanent plans for the child:

- Return home. If the judge determines the child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal and return home to the parent would not cause an unreasonable risk of harm to the child, the child must be returned to the parent on the date of the permanency planning hearing. DSS may also be ordered to monitor the family and continue to provide services for up to 12 months after the child's return home.

When determining whether the child should

be returned, the judge must consider all evidence including DSS's supplemental report, which addresses whether the parent has substantially complied with the terms and conditions of the placement plan. If removal of the child from the family was due to drug use by one or both parents, then a drug test must be administered to the parent or both parents, as appropriate, and the results must be considered with all other evidence.

- Extension placement plan for returning the child to the parent. If the judge determines that all the terms of the placement plan have not been met but it is appropriate to return the child to the parent, the judge may give the parent a one-time extension for up to six months to allow the parent to complete the placement plan or comply with a modified plan.

At the next permanency planning hearing following such an extension, if the parent has completed most of the services ordered in the placement plan and it is in the child's best interest, the child must be returned home. If the parent has failed to complete most of the services ordered in the placement plan and it is not in the child's best interest to return home, the judge cannot give the parent additional time to cooperate with the placement plan. Instead, the court will change the plan from reunification to a permanent plan of relative custody/guardianship, termination of parental rights and adoption, or, if there are compelling reasons and it is in the best interest of the child, "another planned permanent living arrangement" (APPLA). This means that a parent has 18 months from the time a child is placed in DSS custody to solve the problems of abuse or neglect which caused the child to be placed in foster care.

- Relative (or non-relative) custody / guardianship. If it is not in the child's best interest to return to the parent, and the judge has also decided that termination of parental rights and adoption are not in the child's best interest, the judge may grant custody and/or guardianship of the child to a relative (or non-relative). A home study must be provided to the judge for consideration before custody or guardianship is granted. The court may

authorize a period of visitation or trial placement prior to receiving a home study, and the judge may order DSS to provide supervision and services for up to 12 months after the child is placed.

- Termination of parental rights (TPR) and adoption. The judge may order a permanent plan of TPR for reasons such as failure of a parent to substantially comply with the placement plan, failure to visit the child, or failure to support the child. Before ordering the permanent plan, the judge must determine that TPR and adoption are in the best interest of the child. If the judge orders DSS to pursue this plan for the child, DSS must file a separate legal action for TPR within 60 days.
- Another planned permanent living arrangement (APPLA). This can only be the permanent plan for a child when other plans are not viable permanent plans and the child is at least 16 years old. The judge must find compelling reasons for approving the plan of APPLA and find that APPLA is and continues to be in the child's best interest. This is the only plan that requires the judge to specifically ask the child about their placement wishes as to the permanent plan.

At a minimum, the family court must have a permanency planning hearing for each child in foster care once a year. A foster parent may make a motion to intervene in the case or may hire an attorney to make the motion. If the motion to intervene is granted, the foster parent becomes a party and may make a motion for review of the child's case at any time.

Review Hearing

Review hearings are not required, but they are common in many counties. Any party may request the family court to review a case at any time when issues related to the child or the child's family need the court's attention. These hearings may be called judicial reviews, status hearings, or court ordered reviews. A notice and motion for review of a case must be served on all parties to the action at least 10 days before the review hearing. The motion must explain the reason why the case should be reviewed and should explain what the requesting party would like for the

court to do at the review hearing. In addition, the foster parent must be given written notice of the date, time, and place of the review hearing, and the foster parent may ask to address the court concerning the needs of the child.

At the review hearing, a foster parent who has been made a party to the action may present evidence and call witnesses. A foster parent may ask the court to review the child's status in foster care, the progress being made toward securing a stable and permanent home for the child, and to review the parent's level of compliance with the placement plan. At the conclusion of the review hearing, the court will issue an order based upon a determination of what is in the best interest of the child.

Termination of Parental Rights (TPR) Hearing
DSS or any interested party, including a foster parent, may file seeking TPR. The summons and petition for TPR must be filed with the family court and served on the parents, the child (or the child's guardian ad litem if the child is under 14), and DSS. A TPR hearing will be held within 120 days of the filing of the petition. A foster parent is not required to hire an attorney to file a TPR action; however, retaining an attorney ensures that the case will be handled competently. A TPR hearing may serve as a permanency planning hearing.

Under South Carolina law, there are 12 reasons upon which a judge may base a decision to terminate parental rights. The judge must find that at least one of those reasons exists and that TPR is in the best interest of the child. The reasons for termination of parental rights are:

- severity or repetition of abuse or neglect, and the home cannot be made safe in 12 months;
- parent has not remedied the conditions of the child's removal and the child has been out of the home for six months following the issuance of a court-ordered placement plan or by agreement between DSS and the parent;
- willful failure to visit for six months;
- willful failure to support for six months;
- presumptive legal father is not the biological father, and termination of parental rights best serves the welfare of the child;
- the parent has a diagnosable condition unlikely to change in a reasonable period of time and, because of that condition, is unlikely

to provide minimally acceptable care for the child (except that a parent's rights cannot be terminated solely on the basis of a disability);

- abandonment;
- child in foster care for 15 of the most recent 22 months;
- a child, as a result of physical abuse, has died or been admitted to the hospital and the parent has been convicted of an offense against the person;
- child's parent is convicted of the murder of the child's other parent;
- conception of a child as a result of criminal sexual conduct of a biological parent; or
- child's parent has been convicted of the murder, voluntary manslaughter, or homicide by child abuse, of another child of the parent.

When considering the best interest of the child the judge weighs many factors like stability, safety, permanency, bonding and attachment, the child's needs, and whether an adoptive resource has been identified.

TPR ends the legal relationship between the biological parent and child. However, the child has the right to inherit from a biological parent until an adoption is finalized. Additional permanency planning hearings must be held annually until the child is adopted.

Adoption establishes a legal parent-child relationship between the child and the child's adoptive parents. A child who is adopted has all of the rights and benefits of a child born naturally to a family. Once an adoption is finalized, there are no additional permanency planning hearings.

Trials and Agreements

All of the child protection hearings described in the preceding sections will be resolved by a trial or by the agreement of the parties. A trial is an evidentiary type of proceeding. The parties are allowed to present evidence by direct examination and cross-examination of witnesses and by submitting documents or other demonstrative evidence. A foster parent would only be allowed to participate in a trial if called as a witness or if the foster parent has made a motion to intervene in the case and has been made a party to the action. Family court trials are not decided by a jury. The family court judge listens to the evidence and decides the outcome

of the case. The judge may issue an order on the date of the trial or may take more time to consider the evidence and issue an order in the days or weeks following the trial.

There are also times when the parties in a child protection case settle the case without presenting witnesses and other evidence in the courtroom. The parties may discuss the case outside the courtroom and negotiate settlement of the case. When this happens, the parties announce to the judge that they have an agreement. Typically, the agreement is read in court, in the presence of the judge. The judge listens to the agreement and reviews the

guardian ad litem's report, the foster care review board's report, and the report written by the DSS caseworker. A foster parent may also address the court concerning the needs of the child at this time. The judge will then question the parties to make sure they understand the agreement and are voluntarily entering into the agreement. If the judge finds that the parties have knowingly, freely, and voluntarily entered into the agreement and that the agreement is in the best interest of the child, the judge is likely to approve the agreement. Once the judge approves the agreement, it becomes a written court order that has the same force and effect of an order issued as a result of a trial.

III. ATTENDING COURT

Unless you have been served with a subpoena or court order to appear, your attendance at court is entirely voluntary. For those planning to attend court, here are some helpful tips:

Dress appropriately (avoid shorts, short dresses or skirts, and flip-flops and remove hat and sunglasses before entering the courtroom), arrive early (plan for parking and security checkpoints which could cause delay), and take a copy of the hearing notice to court which will help court personnel direct you to the appropriate courtroom.

When you arrive at court, check in with the DSS caseworker or attorney and let them know whether you wish to address the judge or be recognized at the hearing. Once you have notified appropriate staff of your presence, wait outside the courtroom until the case is called.

When you enter the courtroom, follow these general rules:

- Turn off our cellphones and other electronic devices.
- Stand anytime the judge enters or leaves the courtroom.
- Unless you are seated on the witness stand, always stand up when the judge is asking you questions or you are addressing the judge.
- Always address the judge as "Your Honor" or Judge (last name).
- Do not chew gum.
- Do not display emotion or react to anything said during the hearing.

Once the case is called, you should enter the

courtroom and ask the sheriff's deputy or bailiff where you should be seated. The DSS attorney usually introduces foster parents at the beginning of the hearing along with the other persons present. If this does not occur, you should raise your hand and wait for recognition from the judge. Upon being recognized by the judge, you should stand, introduce yourself, and tell the judge that you are the child's foster parent. You should also inform the judge whether you are there only to observe or if you wish to be heard at the appropriate time. If you wish to address the court, you will be called upon at an appropriate time during the hearing. You may be asked to take the witness stand prior to addressing the court. During the hearing a court reporter will record everything that is said, so only one person may speak at a time.

You may, however, attend the hearing simply to observe. If you do not wish to speak to the judge, you should make the DSS attorney aware of this prior to the start of the hearing. Also, if you are concerned about revealing your name and identity in court, you may wish to simply observe the hearing, rather than address the court.

At a hearing, the judge will typically recognize the foster parents and ask them if there is anything they would like to tell the court concerning the foster child. When responding to this question,

be brief and stick to facts concerning the child's adjustment in foster care and the child's educational, medical, and behavioral needs.

Always wait to be addressed by the judge before speaking. When you do speak in court, the judge will usually ask you to state your full name for the court record. Remember to speak loudly and clearly for purposes of the court transcript. The court reporter cannot record non-verbal

responses such as head nods, so always reply with words rather than body movements.

Please note that you may only speak to the judge about the case in the courtroom and only when the case is scheduled for a hearing. It is never appropriate to communicate with a judge, orally or in writing, about a specific case outside the courtroom or outside the presence of the parties.

IV. FAIR HEARING PROCESS

The 14th Amendment of the United States Constitution guarantees "due process of law" to all citizens. Because of this constitutional protection, federal and state laws require DSS to have a fair hearing process that allows foster parents to challenge any "adverse action" the state may take against them. Specifically, this process allows individuals such as foster parents to contest an adverse action taken by DSS and to have his or her objections to the adverse action heard by an impartial hearing officer or a committee.

As a foster parent, you have the right to appeal the following types of "adverse actions" taken by DSS:

- the denial of a foster home license;
- the denial of an application for the renewal of your foster home license;
- the revocation of your foster home license; and
- in certain situations, the removal of a foster child from your home.

If DSS intends to remove a foster child from your home, the agency is required to give you written notice of the removal. This written notice should be given 10 days in advance of the removal, unless there are emergency circumstances warranting immediate removal. If the foster child has been in your home for 120 days or longer, the child can continue to live in your home pending the fair hearing process unless DSS has good cause to believe the child's health or safety is threatened in the home.

However, there is no right to appeal the removal of a foster child from your home if:

- the foster parent has requested the removal;
- the family court has authorized the removal or approved a plan providing for the removal; or
- the foster home's license has been revoked or denied for renewal in a final decision made by DSS and the time for requesting an appeal has passed.

All appeals of "adverse actions" are handled by the DSS Office of Administrative Hearings (OAH). To appeal an adverse action, you must submit a written request for hearing to your DSS caseworker or to OAH within 30 days of receiving notice of the adverse action.

Once OAH receives your written request, a pre-hearing conference will be held within 14 days, unless you waive the right to a conference in order to proceed directly with the hearing. You may represent yourself throughout the fair hearing process or you may have a "representative." The representative does not have to be a lawyer. Prior to the hearing, you have the right to review the evidence in the DSS case file. You can request to review the case either on the day of the hearing or at an earlier time.

A full administrative hearing is required within 30 to 90 days of OAH receiving your written hearing request. This hearing will be conducted by a three-person hearing committee consisting of a hearing officer and two other members appointed by the DSS director or designee.

At the hearing, you or your representative will be able to make opening and closing statements, present witnesses and other evidence, and cross-examine any witnesses that DSS calls to testify. You will also be able to testify in your own defense.

Within 30 days of the hearing, a final decision will be mailed to the foster parent through certified mail. The final decision of OAH is subject

to judicial review through the South Carolina Administrative Law Court.

V. MANDATED REPORTING DUTY

Everyone in South Carolina is encouraged to report suspected child abuse and neglect. Certain people, however, are identified in the law as “mandated reporters” of suspected child abuse and neglect. Foster parents are included in the list of mandated reporters.

As a foster parent, it is important to understand your role and responsibility as a mandated reporter. There are criminal and civil penalties when mandated reporters fail to report suspected child abuse and neglect. In South Carolina, failure to report is a misdemeanor punishable by up to a \$500 fine or up to six months in jail, or both. Civil penalties may include foster home license revocation, lawsuits, professional discipline, and employment repercussions.

The law requires foster parents to make a report whenever they receive information in their capacity as a foster parent which gives them reason to believe that a child has been or may be abused or neglected as defined by South Carolina law.

When considering whether you are required to make a report, first consider the question of professional capacity. In South Carolina, people working in certain occupations are designated as mandated reporters due to the exposure they have to children. Most of the occupations have clearly defined working hours. Foster parenting, however, is different in that it is not a nine to five occupation. So when should you consider yourself to be in your “professional capacity” as a foster parent? If you are presently licensed as a foster parent and have a foster child placed in your home, you should consider yourself to be acting 24/7 in your professional capacity for purposes of the reporting requirement.

Next, when considering whether you are required to report, ask yourself whether you have “reason to believe.” You do not have to know for certain that a child has been abused or neglected. Your role is not to investigate and determine whether abuse or neglect has occurred. That is the job of DSS and/or law enforcement. As a mandated reporter, your role is only to report suspected

child abuse or neglect.

Lastly, it is helpful to know what is considered child abuse and neglect under South Carolina law. Our state recognizes the following types of child abuse and neglect:

- physical neglect;
- physical abuse, including excessive corporal punishment;
- sexual abuse;
- mental injury;
- abandonment;
- contributing to the delinquency of a minor;
- trafficking in persons including sex trafficking;
- substantial risk of physical neglect;
- substantial risk of physical abuse;
- substantial risk of mental injury; and
- substantial risk of sexual abuse.

Reports of suspected abuse and neglect should be made to DSS if you suspect the abuse or neglect was committed by a parent, guardian, or other person responsible for the child’s welfare. Foster parents, day care workers, and group home employees are all considered people responsible for a child’s welfare. If you suspect that abuse or neglect was committed by a person other than the parent, guardian, or other person responsible for the child’s welfare, the report should be made directly to law enforcement. For example, a report of one child sexually assaulting another child should be made directly to law enforcement. Note, however, that if the child you suspect to have been abused or neglected is a foster child, you should also separately report this to DSS as the agency has legal custody of the foster child.

All reports of suspected abuse or neglect are confidential. As long as you are making a report in good faith, you are immune from any civil or criminal liability even if DSS or law enforcement later find no evidence of abuse or neglect.

VI. OTHER LAWS AFFECTING FOSTER PARENTS

Reasonable and Prudent Parent Standard

In 2016, South Carolina passed a new law intended to give more normalcy to children in foster care by allowing foster parents to make more decisions without prior DSS approval. Specifically, this law states that foster children are entitled to participate in age and developmentally appropriate activities, including but not limited to, the following:

- sports;
- field trips;
- extracurricular activities;
- social activities;
- after school programs or functions;
- vacations with foster parents for up to two weeks;
- overnight activities away from the foster parent for up to one week;
- employment activities; and
- in state and out-of-state travel (excluding overseas travel).

The law now directs foster parents to use the “reasonable and prudent parent standard” when deciding whether to allow their foster children to participate in the above activities. The reasonable and prudent parenting standard is defined as “careful and sensible parental decisions that maintain the health, safety, and best interest of the child while at the same time encouraging the growth and development of the child, that a caregiver, such as a foster parent must use when determining whether to allow a child in foster care to participate in developmentally appropriate activities.” Foster parents do not need prior permission from DSS when deciding whether foster children can participate in any of the above activities. Note, however, that the child’s activities should never interfere with the provisions of a court order, pending matters before the court, an existing court order, or the child’s scheduled appointments for evaluations or treatment.

Specifically, foster parents no longer need DSS permission for a foster child to travel in state or out-of-state. However, the foster parent must simply notify DSS where the child will be if the child is going out of state by email, text, letter, phone call, or in-person conversation with the DSS caseworker. For overseas travel, however,

you need to obtain prior permission from DSS.

Required Contacts with DSS

When a child is in foster care, the DSS caseworker or another member of the DSS casework team must, at least once per month, make a personal, face-to-face contact with the foster child. This monthly contact does not necessarily have to take place in your home.

The law also requires that a DSS caseworker make contact with you every month, either by phone or in person. At least once every two months, the caseworker or another team member must have a face-to-face visit with you in your home. If other adults live in your home, a caseworker must also have a face-to-face visit with them at least once every quarter. Please make sure you allow time in your family’s schedule for the visits as these contacts are mandatory as required by law.

Number of Children Allowed in a Foster Home

Under state law, only five foster children are allowed per foster home. Additionally, the total number of children living in your home cannot exceed eight, including your own children and any other children also residing in the home.

Exceptions can only be made for the following circumstances:

- to keep siblings together;
- to keep a child in his/her own community;
- to return a child to a foster home where he/she was previously placed;
- to comply with a court order; or
- if it is in the best interests of the children as determined by the court.

No more than two of the five children may be classified as therapeutic foster care placements unless one of the above exceptions applies. If one of the above exceptions applies, no more than three of the five foster children may be classified as therapeutic foster care placements.

Driver’s Licenses

For foster children seeking a driver’s license, the application for the license may be signed by the child’s mother or father, unless the parents’ rights have been terminated, or by the child’s foster parent, upon written approval by DSS.

VII. DEFINITIONS

The following definitions are provided by S.C. Code Ann. § 63-7-20.

Abandonment

A parent or guardian willfully deserts a child or willfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.

Age or Developmentally Appropriate Activities

a) Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group.

b) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child; activities that include, but are not limited to, the following:

- (i) sports;
- (ii) field trips;
- (iii) extracurricular activities;
- (iv) social activities;
- (v) after school programs or functions;
- (vi) vacations with caregiver lasting up to two weeks;
- (vii) overnight activities away from caregiver lasting up to one week;
- (viii) employment opportunities; and
- (ix) in state or out of state travel, excluding overseas travel;

c) Activities that do not conflict with any pending matters before the court, an existing court order, or the child's scheduled appointments for evaluations or treatment.

Caregiver

A foster parent, kinship foster parent, or employee of a group home who is designated to make decisions regarding age or developmentally appropriate activities or experiences on behalf of the child in the custody of DSS.

Child

A person under the age of eighteen. Note: (In *Whitner v. State*, 492 S.E. 2d 777 (S.C. 1997), the

South Carolina Supreme Court held that a viable fetus is included under the definition of a child.)

Child Abuse or Neglect

"Child abuse or neglect", or "harm" occurs when a) the parent, guardian, or other person responsible for the child's welfare:

i) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

- (A) is administered by a parent or person in loco parentis;
- (B) is perpetrated for the sole purpose of restraining or correcting the child;
- (C) is reasonable in manner and moderate in degree;
- (D) has not brought about permanent or lasting damage to the child; and
- (E) is not reckless or grossly negligent behavior by the parents.

ii) commits or allows to be committed against the child a sexual offense as defined by the laws of this State, or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this state would be committed against the child;

iii) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

iv) abandons the child;

v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval;

vi) commits or allows to be committed against the child female genital mutilation as defined in Section 16-3-2210 or engages in acts or omissions that present a substantial risk that the crime of female genital mutilation would be committed against the child; or

vii) has committed abuse or neglect as described in subitems (i) through (vi) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect; or

b) a child is a victim of trafficking in persons as defined in Section 16-3-2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian, or other person responsible for the child's welfare. Identifying a child as a victim of trafficking in persons does not create a presumption that the parent, guardian, or other individual responsible for the child's welfare abused, neglected, or harmed the child.

Emergency Protective Custody

The right to physical custody of a child for a temporary period of no more than 24 hours to protect the child from imminent danger.

Mental Injury

Injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported

by the opinion of a mental health professional or medical professional.

Party in Interest

Includes the child, the child's attorney and GAL, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.

Person Responsible for a Child's Welfare

This includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by S.C. Code § 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian.

Physical Injury

Death or permanent or temporary disfigurement or impairment of any bodily organ or function.

Preponderance of Evidence

Evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

Probable Cause

Facts and circumstances based upon accurate and reliable information, including hearsay that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

Reasonable and Prudent Parent Standard

The standard of care characterized by careful and sensible parental decisions that maintain

VIII. LEGAL REFERENCES

South Carolina Code of Laws

§ 63-7-20	Definitions
§ 63-7-25	Children in out-of-home care; age or developmentally appropriate activities
§ 63-7-310	Persons required to report (mandated reporters)
§ 63-7-330	Confidentiality of information
§ 63-7-390	Reporter immunity from liability
§ 63-7-410	Failure to report; penalties
§ 63-7-620	Emergency protective custody
§ 63-7-710	Probable cause hearing
§ 63-7-1630	Notice of hearings
§ 63-7-1660	Services with removal
§ 63-7-1680	Approval or amendment of plan
§ 63-7-1700	Permanency planning
§ 63-7-1990	Confidentiality and release of records and information
§ 63-7-2310	Protecting and nurturing children in foster care
§ 63-7-2370	Disclosure of information to foster parents
§ 63-7-2530	Filing procedures (for termination of parental rights)
§ 63-7-2400	Number of foster children who may be placed in a foster home
§ 63-7-2570	Grounds (for termination of parental rights)
§ 56-1-100	Application by unemancipated minor (driver's license)

South Carolina Code of Regulations

§ 114-100	Definitions
§ 114-110	Purpose
§ 114-130	General Fair Hearing Procedures
§ 114-140	Foster Care

South Carolina Supreme Court Cases

Greenville County Dept. of Social Services vs. Bowes, 437 S.E.2d 107 (S.C. 1993).
South Carolina Dept. of Social Services vs. Boulware, 809 S.E.2d 223 (S.C. 2018).



Children's Law Center
School of Law

UNIVERSITY OF SOUTH CAROLINA