

# Emergency Protective Custody: A Guide for Law Enforcement Officers

## **EPC Decision by Law Enforcement**

When a child is in a potentially dangerous situation, a law enforcement officer may need to make a quick decision about whether to take emergency protective custody (EPC) of the child. The most common EPC situation arises when a child is abused or neglected. Before removing the child, the officer must have probable cause to believe that, by reason of abuse or neglect, "the child's life, health, or physical safety is in substantial and imminent danger." S.C. Code § 63-7-620(A)(1). To determine "substantial and imminent danger," officers typically evaluate the child's statement, the type of abuse, the family's history of abuse, and the risk of further injury if the child is not taken into EPC. Ultimately, the officer must use professional judgment in making this assessment.

The officer may take EPC in this situation only when there is not enough time to request a court order. S.C. Code § 63-7-620(A)(1). Exactly what constitutes "time to apply for a court order" is not specified by law; most officers exercise their EPC authority if they have reason to believe the child will be harmed before a court order can be obtained. Law enforcement agencies should be aware of the family court schedule in their jurisdiction and know when the court is available to consider and grant ex parte orders.

## **Minimizing the Emotional Impact**

Children often do not want to leave their parents, even when those parents are abusive. A Department of Social Services (DSS) caseworker can provide much needed support and care for the child, but if a caseworker is not present, the officer must do everything possible to minimize the child's trauma. Allowing a child to take a favorite stuffed animal, blanket, or toy may help comfort the child some. The most important action often is to avoid prolonging the

situation; once the officer has made a decision to remove the child, it should be completed promptly.

## **Cooperation with DSS**

Cooperation between law enforcement and DSS is vital in all aspects of child protection, and particularly so during an EPC. At times, however, the law places responsibility for a decision with law enforcement, and a DSS worker may disagree with the officer's judgment. For example, the officer alone bears responsibility for determining whether to take a child into EPC. Likewise, an officer can insist that DSS maintain legal custody until the EPC hearing when the DSS caseworker wants to place a child with a relative the officer deems unsuitable. Officers should strive to maintain respect for the professional judgment of DSS caseworkers and supervisors while carrying out their responsibilities imposed by law.

Finally, if an officer determines removal is not warranted but suspects a child has been abused or neglected, the officer must report the suspected abuse to DSS and should still investigate potential crimes.

## **Preliminary investigation by DSS**

When a child is placed in EPC by law enforcement, DSS is granted physical custody for the first 24 hours. During those first 24 hours, DSS must conduct a preliminary investigation to determine whether grounds for assuming legal custody exist and whether reasonable means exist for avoiding removal or for placement of the child with a relative and means for minimizing the emotional impact on the child of separation from the child's home and family. S.C. Code § 63-7-640.

## **Assumption of Legal Custody by DSS**

If DSS determines after the preliminary investigation that there is probable cause to believe that by reason of abuse or neglect the

child's life, health, or physical safety is in imminent and substantial danger, DSS may assume legal custody of the child without the parent's consent. S.C. Code § 63-7-660

### Returning the Child to the Child's Parents; Alternative Procedures

If a law enforcement officer takes EPC of a child and DSS concludes after a preliminary investigation that the child should be returned to the child's parent, guardian, or custodian, DSS shall consult with the officer who took EPC unless DSS and the law enforcement agency have agreed to an alternative procedure. If the officer objects to the return of the child, DSS must assume legal custody until a probable cause hearing can be held. The alternative procedure agreed to by DSS and the law enforcement agency may provide that the child must be retained in custody if the officer cannot be contacted, conditions under which the child may be returned home if the officer cannot be contacted, other persons within the law

enforcement agency who are to be consulted instead of the officer, or other procedures. If no alternative procedure has been agreed to and DSS is unable to contact the officer after reasonable efforts to do so, DSS shall consult with the officer's designee or agency. S.C. Code § 63-7-670.

### Relevant Statutes; S.C. Code of Laws

§ 63-7-20. Definitions.

§ 63-7-20(1). "Abandonment of a child"

§ 63-7-20(5). "Child"

§ 63-7-20(6). "Child abuse or neglect" or "harm"

§ 63-7-20(17). "Mental injury"

§ 63-7-20(21). "Physical injury"

§ 63-7-610. Statewide jurisdiction.

§ 63-7-620. Emergency protective custody.

§ 63-7-630. Notification of DSS.

§ 63-7-670. Returning child to parents; alternative procedures.

## EPC Checklist for Law Enforcement

**Step 1:** Determine whether the statutory grounds for EPC exist.

*(See below for 3 situations where the statutory grounds do exist.)*

**Step 2:** Notify DSS of EPC and suspected abuse or neglect.

**Step 3:** Transport child to medical care, if needed. If medical care is not needed, transport child to place agreed upon by DSS and law enforcement.

**Step 4:** Take photographs of visible injuries.

**Step 5:** Complete an incident report.

**Step 6:** Decide whether to agree if DSS wishes to return child home or place with a relative.

**Step 7:** Prepare for testimony at the probable cause hearing. The officer should talk with the DSS caseworker or attorney to be sure he or she receives notice of the hearing.

#### Situation One

1. The officer has probable cause to believe:
  - The child has been abused or neglected;
  - Because of the abuse or neglect, the child's life, health, or physical safety is in *substantial AND imminent* danger.
2. There is no time to apply for a court order.

#### Situation Two

1. The parent(s) has/have been arrested;
2. The child's welfare is threatened due to loss of adult protection and supervision; and
3. The parents have not given written consent for another person to take physical custody. (Even if the parent gives written consent, the officer may take EPC of the child if the requested person is not suitable).

#### Situation Three

1. The child is lost accidentally;
2. The child's welfare is threatened due to loss of adult protection and supervision; and
3. A search by law enforcement has not located the parent(s) or guardian.

## **Emergency Protective Custody Statutes; S.C. Code of Laws**

*(Statutes are current as of October 2024; emphasis has been added)*

### **§ 63-7-20. Definitions.**

(1) "**Abandonment of a child**" means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child..

(5) "**Child**" means a person under the age of eighteen.

(6) "**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 § 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 subsubitems (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.

(11) "**Department**" means the Department of Social Services.

(12) (a) "**Emergency protective custody**" means the right to physical custody of a child for a temporary period of no more than twenty-four hours to protect the child from imminent danger. (b) Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

(17) "**Mental injury**" means an 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.

(19) "**Person responsible for a child's welfare**" includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 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.

(20) "**Physical custody**" means the lawful, actual possession and control of a child.

(21) "**Physical injury**" means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

(23) "**Probable cause**" means 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.

**§ 63-7-610. Statewide jurisdiction.**

(A) A law enforcement officer investigating a case of suspected child abuse or neglect or responding to a request for assistance by the department as it investigates a case of suspected child abuse or neglect has authority to take emergency protective custody of the child pursuant to this subarticle in all counties and municipalities.

(B) Immediately upon taking emergency protective custody, the law enforcement officer shall notify the local office of the department responsible to the county in which the activity under investigation occurred.

(C) The department shall designate by policy and procedure the local department office responsible for procedures required by this subarticle when a child resides in a county other than the one in which the activity under investigation occurred. The probable cause hearing required by § 63-7-710 may be held in the county of the child's residence or the county of the law enforcement officer's jurisdiction.

**§ 63-7-620. Emergency protective custody.**

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child's parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to § 63-7-1660.

When a child is taken into emergency protective custody following an incident of excessive corporal punishment, and the only injury to the child is external lesions or minor bruises, other children in the home shall not be taken into emergency protective custody solely on account of the injury of one child through excessive corporal punishment. However, the officer may take emergency protective custody of other children in the home if a threat of harm to them is further indicated by factors including, but not limited to, a prior history of domestic violence or other abuse in the home, alcohol or drug abuse if known or evident at the time of the initial contact, or other circumstances indicative of danger to the children;

(2) the 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; and

(a) in the circumstances of arrest, the parent, parents, or guardian does not consent in writing to another person assuming physical custody of the child;

(b) in the circumstances of a lost child, a search by law enforcement has not located the parent, parents, or guardian.

(B)(1) If the child is in need of emergency medical care at the time the child is taken into emergency protective custody, the officer shall transport the child to an appropriate health care facility. Emergency medical care may be provided to the child without consent, as provided in Section 63-5-350. The parent or guardian is responsible for the cost of emergency medical care that is provided to

the child. However, the parent or guardian is not responsible for the cost of medical examinations performed at the request of law enforcement or the department solely for the purpose of assessing whether the child has been abused or neglected unless it is determined that the child has been harmed as defined in this chapter.

(2) If the child is not in need of emergency medical care, the officer or the department shall transport the child to a place agreed upon by the department and law enforcement, and the department within two hours shall assume physical control of the child and shall place the child in a licensed foster home or shelter within a reasonable period of time. In no case may the child be placed in a jail or other secure facility or a facility for the detention of criminal or juvenile offenders. While the child is in its custody, the department shall provide for the needs of the child and assure that a child of school age who is physically able to do so continues attending school.

**§ 63-7-630. Notification of DSS.**

When an officer takes a child into emergency protective custody under this subarticle, the officer immediately shall notify the department. The department shall notify the parent, guardian, or other person exercising temporary or permanent control over the child as early as reasonably possible of the location of the child unless there are compelling reasons for believing that disclosure of this information would be contrary to the best interests of the child.

**§ 63-7-670. Returning child to parents; alternative procedures.**

If emergency protective custody of the child was taken by a law enforcement officer pursuant to this subarticle, and the department concludes after the preliminary investigation that the child should be returned to the child's parent, guardian, or custodian, the department shall consult with the law enforcement officer who took emergency protective custody unless the department and the law enforcement agency have agreed to an alternative procedure. If the officer objects to the return of the child, the department must assume legal custody of the child until a probable cause hearing can be held. The alternative procedure agreed to by the department and the law enforcement agency may provide that the child must be retained in custody if the officer cannot be contacted, conditions under which the child may be returned home if the officer cannot be contacted, other persons within the law enforcement agency who are to be consulted instead of the officer, or other procedures. If no alternative procedure has been agreed to and the department is unable to contact the law enforcement officer after reasonable efforts to do so, the department shall consult with the officer's designee or the officer's agency.