

Terms

Temporary Custody Hearings. At this hearing the court considers evidence of the need for continued temporary custody. The court shall determine whether continued temporary custody outside the home is necessary to protect the child.

Adjudicatory Hearing. At this hearing the court determines whether the allegations of the petition alleging that a child is abused and/or neglected are supported by clear and convincing evidence.

SDCL 26-7A-34 requires a **Dispositional Hearing** to be conducted "to inform the court fully of the exact status of the child and to ascertain the history, environment and past and present physical, mental and moral conditions of the child and of the child's parents, guardian or custodian." The dispositional phase is the phase in which the court makes the determination in regard to the placement and care of the child both in the short-term and ultimately, on a permanent basis.

Review Hearing. Review hearings are necessary to determine appropriateness of the placement, extent of compliance with the case plan and the extent of progress towards the permanency goals. Review hearings are governed by both federal and state statute.

SDCL 26-8A-24 and 26-8A-26 specifies the timeline review hearings of the children in foster care must occur.

Permanency Planning. Permanency planning is a process of defining a set of goal directed activities designed to help a child either stay with or return to their own families in safety or by finding a safe alternative permanent home.

Permanency planning also has a goal of providing the child continuity of relationships with nurturing parents or caretakers and the opportunity to establish a lifetime of family relationships. Part of the permanency planning process is **concurrent planning**, which is the development of alternative plans in the event the original permanent plan is not obtained.



What is Mandatory Reporting?

A mandatory reporter is an individual or agency required by state law to report any instance in which child abuse and/or neglect is suspected. Mandatory reporters must report to either a state's attorney office, the SDDSS, or law enforcement. SDCL 26-8A-3 states mandatory reporters are:

Physician
Dentist
Optometrist
Podiatrist
Doctor of Osteopathy
Chiropractor
Mental Health Professional or Counselor
Psychologist
Religious Healing Practitioner
Social Worker
Hospital Intern or Resident
Parole or Court Services Officer
Law Enforcement Officer
Teacher, School Counselor, School Official, School Nurse
Licensed or Registered child Welfare Provider
Employee or Volunteer of a Domestic Violence Shelter
Chemical Dependency Counselor
Coroner
Any safety-sensitive position as defined in SDCL 23-3-64(2).

Any person may report known or suspected conditions that may reasonably lead to child abuse and/or neglect. Any person listed above who does not report a case of child abuse and/or neglect commits a Class 1 misdemeanor.

Disclaimer: This publication is only intended as a summary of federal and state laws; it is not intended to convey legal advice.

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*South Dakota
Unified
Judicial
System*



*A Guide
To
Child Abuse &
Neglect
Cases*

Answers to Your Questions About Child Abuse & Neglect

Victims of child abuse and/or neglect come before the court for protection from further harm and for timely decision-making for their future. Courts must make critical decisions and oversee the South Dakota Department of Social Services' efforts to reunite and maintain families or to provide alternate permanent care for the child(ren).

Child abuse and/or neglect (A&N) cases are civil cases where the child(ren) are adjudicated abused and/or neglected. At times, a child abuse and/or neglect case becomes a criminal case when a felony charge is initiated by a prosecutor; historically this occurs less than 7% of the time.

An abused and/or neglected child (SDCL 26-8A-2) is defined as a child:

- (1) *Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;*
- (2) *Who lacks proper parental care through the actions or omissions of the child's parents, guardian, or custodian;*
- (3) *Whose environment is injurious to the child's welfare;*
- (4) *Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well being;*
- (5) *Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;*
- (6) *Who is threatened with substantial harm;*
- (7) *Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;*
- (8) *Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;*
- (9) *Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or*
- (10) *Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.*

Who might play a role in a child abuse and/or neglect case?

All parties, including the parents and children, are entitled to a lawyer at all stages of an abuse and/or neglect case. In addition, a Court Appointed Special Advocate (CASA) volunteer may be assigned by the judge presiding over the case. The following provides a brief description of each party and his or her role in the case.

Parent's Lawyer. An A&N case may lead to the termination of parental rights, so it is important for parents to have a lawyer. The court process is complicated; a lawyer will advocate for parental rights at every stage of A&N proceedings. This can include helping obtain access to resources needed to resolve the case. If a parent cannot afford a lawyer, the court will appoint an attorney to represent the parent (SDCL 26-7A-31).

State's Attorney. The state's attorney represents the South Dakota Department of Social Services (SDDSS) and is responsible for initiating the A&N case. The state's attorney works with the Family Services Specialist in the case to make recommendations to the court regarding the child(ren)'s best interests.

Family Services Specialist. The Family Services Specialist (FSS) works for the SDDSS and will work with the parents/caregivers to support their efforts to preserve the family connections. The FSS will also connect parents/caregivers with the needed resources allowing them the opportunity to increase their ability to provide a safe, nurturing environment for their child(ren). The FSS attends all court proceedings involving the A&N case; updates the court on progress or road blocks in re-connecting the child(ren) with parents/caregivers, along with making recommendations for additional services and placement of the child(ren).

Child's Attorney. SDCL 26-8A-18 states "the court shall appoint an attorney for any child alleged to be abused and/or neglected in any judicial proceeding. The attorney for the child shall represent the child's best interest and may not be the attorney for any other party involved in the judicial proceedings." The child(ren)'s attorney is responsible for communicating with the child(ren), and all of the professionals working with the child(ren), investigating the allegations of abuse and/or neglect, and making recommendations to the court regarding the child(ren)'s best interest.

Court-Appointed Special Advocates (CASA). CASAs are trained community volunteers who are appointed by a judge to gather as much information as possible about the child(ren) and to provide the judge with recommendations so that the judge can make informed decisions about the child(ren). The CASA volunteer's primary role is to advocate for the best interests and safety of the child(ren). The CASA volunteer is not required to be an attorney.

What is the court process in child abuse and/or neglect cases?

A child abuse and/or neglect case begins with the filing of a petition by the state's attorney. Parents who are listed in the A&N petition are referred to as "respondents." Parents are required to appear in court, and at that time, they may deny the allegations against them. They may also admit to the allegations in the petition and move forward to the treatment phase of the case.

State and federal laws require the court and the SDDSS follow specific time frames for holding court hearings. At each stage, the court can order that the child be returned home, with or without supervision by the SDDSS, or be placed in or continue in foster care.

How is child abuse and/or neglect reported?

Anyone who has reasonable cause to suspect that a person under age 18 has been abused and/or neglected may make a report. The report is made to the SDDSS, law enforcement or a state's attorney. The SDDSS and law enforcement agencies are required by law to investigate reports of child abuse and/or neglect. Any person who knows or suspects that a child has been physically or emotionally injured, neglected or sexually abused should report it immediately.

