



SOUTH DAKOTA  DEPARTMENT OF CORRECTIONS POLICIES AND PROCEDURES		POLICY NUMBER 1.1.C.3	PAGE NUMBER 1 OF 5
		DISTRIBUTION:	Public
		SUBJECT:	Staff Reporting Abuse or Neglect
RELATED STANDARDS:	None	EFFECTIVE DATE:	June 01, 2023
		SUPERSESSSION:	11/07/2019
DESCRIPTION: Personnel	REVIEW MONTH: May	 KELLIE WASKO SECRETARY OF CORRECTIONS	

I. POLICY

It is the policy of the South Dakota Department of Corrections (DOC) staff to report any instance of abuse or suspected abuse (emotional, psychological, or physical), neglect, or exploitation of a child, an elder, or adult with a disability, in accordance with the requirements of this policy and state law.

II. PURPOSE

The purpose of this policy is to define reportable incidents, establish time frames, process, and procedures for reporting abuse and/or neglect.

III. DEFINITIONS

Abused or Neglected Child (SDCL § 26-8A-2):

Abused, or neglected child means a child under the age of eighteen (18) and:

1. Whose parent, guardian, or custodian has abandoned or subjected the child to mistreatment or abuse.
2. Who lacks proper parental care through the actions or omissions of the child's parent, 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 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, controlled drug or substance not lawfully prescribed by a practitioner, as authorized by SDCL 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.

Adult with a Disability:

A person eighteen (18) years of age or older who has a condition of intellectual disability, infirmities of aging, as manifested by organic brain damage, advanced age, or other physical dysfunction to the extent that the person is unable to protect himself or herself or provide for his or her own caretaking.

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Elder:

A person sixty-five (65) years of age or older.

Emotional and Psychological Abuse:

A caretaker’s willful, malicious, and repeated infliction of:

1. A sexual act or the simulation of a sexual act directed at and without the consent of the elder or adult with a disability that involved nudity or is obscene.
2. Unreasonable confinement.
3. Harm or damage or destruction of the property of an elder or adult with a disability, including harm to or destruction of pets; or
4. Ridiculing or demeaning conduct, derogatory remarks, verbal harassment, or threats to inflict physical or emotional and psychological abuse, directed at an elder or adult with a disability.

Exploitation of an Elder or Adult with a Disability:

The wrongful taking or exercising of control over property of an elder or adult with disability with intent to defraud the elder or adult with a disability.

Neglect:

Harm to the health or welfare of an elder or an adult with a disability, without reasonable medical justification, caused by a caretaker, which includes the failure to provide adequate food, clothing, shelter, or medical care.

Physical Abuse:

Physical harm, bodily injury, attempt to cause physical harm, or injury, or fear of imminent physical harm or bodily injury.

Reasonable Belief:

A belief that is objectively reasonable, based on all the facts and circumstances presented to the staff member at the time the belief is formed, or the decision reached, which would cause an ordinary and prudent person to act or think in a similar way under like circumstances.

Required Reporter:

Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, emergency medical technician, paramedic, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee or volunteer of a child advocacy organization or child welfare service provider, chemical dependency counselor, coroner, or any safety-sensitive position (any law enforcement officer authorized to carry firearms and any custody staff employed by any agency responsible for the rehabilitation or treatment of any adjudicated adult or juvenile (See SDCL § 3-6C-1)) who has reasonable cause to suspect that a child under the age of eighteen (18) has been abused or neglected as defined in § 26-8A-2 shall report that information in accordance with SDCL §§ 26-8A-6, 26-8A-7, and 26-8A-8.

SDCL § 22-46-2:

Any person who physically abuses or neglects an elder or adult with a disability in a manner which does not constitute aggravated assault is guilty of a Class 6 felony. Any person who emotionally or psychologically abuses an elder or adult with a disability is guilty of a Class 1 misdemeanor.

IV PROCEDURES

1. Reporting Abuse or Neglect within the Scope of Employment:

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- A. Pursuant to SDCL § 26-8A-3, all DOC staff who know or have a reasonable belief a **child** has been physically or emotionally injured, neglected or sexually abused are required to submit an oral report to the Department of Social Services (DSS) (1-877-244-0864) between the hours of 8:00 am and 5:00 pm CST, Monday-Friday, or after hours, to law enforcement or the state’s attorney in the county where the victim resides or is present (See SDCL § 26-8A-8).
1. If the report involves a DOC juvenile offender, the reporting staff member will promptly provide the director of Juvenile Services with a copy of the *Abuse and Neglect Report* (see attachment #1).
- B. If the incident involves a juvenile placed with a contractual provider, Division of Juvenile Services staff will coordinate the reporting with the provider to ensure proper reporting of the abuse/neglect incident and that multiple reports are not submitted for a single incident involving the same juvenile.
- C. Pursuant to SDCL § 22-46-9, all DOC staff who know or have a reasonable belief an **elder** or **disabled adult** has been or is being abused or neglected are required, within twenty-four (24) hours, to report the knowledge or suspicion orally or in writing to Department of Human Services (DHS), law enforcement, or the state’s attorney of the county where the elder or adult with a disability resides or is present. The DHS interactive online form to report suspected elder abuse is linked here:
https://southdakota.leapsportal.net/LEAPSINTAKE/PublicIntake_601.aspx
- D. If the incident involves an offender, the staff member will report the information to his/her supervisor.
1. Reports of offender sexual abuse and/or staff sexual abuse will be responded to according to DOC policy 1.3.E.5 *Compliance with Prison Rape Elimination Act Standards*.
 2. Staff members are required to promptly report any knowledge, suspicion, or information they may have regarding an incident of sexual abuse or sexual harassment that occurred or may have occurred in an adult institution involving an offender.
- E. For reports of alleged abuse or neglect that have occurred outside of South Dakota, the appropriate social service, child protection, or law enforcement agency for the state in which the alleged abuse or neglect took place will be contacted.

2. Content of Abuse and Neglect Report:

- A. Staff will provide to the best of their knowledge and ability, the information requested on the Abuse and Neglect Report, in accordance with SDCL § 26-8A-10. The report shall be forwarded to law enforcement and DSS.

3. Supporting Documents:

- A. Law enforcement or DSS authority may authorize staff or another person to take photographs, videotapes, other images, X-rays, test results of the area(s) of trauma visible on the child, which shall be sent to the appropriate law enforcement agency or DSS. If so authorized, consent from the child’s parent, guardian or custodian is not required (SDCL § 26-8A-16).
- B. Neither consent nor authorization is required for staff to document such abuse if the victim is a DOC offender.
- C. All files, reports, investigative records, photographs, images, videotapes, X-rays, test results, and copies of such, documenting the abuse or neglect of a **child** shall be kept confidential and may only be released as provided in SDCL § 26-8A-13.
- D. In the case of alleged abuse of an **elder** or **adult with a disability**, all files, reports, investigative records, photographs, images, videotapes, X-rays, test results, and copies of such shall be sent to the state’s attorney in the county where the elder or adult with a disability resides or is present.

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4. Reporting Documentation:

- A. A copy of the record, files, or information relating to the abuse or neglect released by DSS, may be forwarded to the warden, director, or designee (See SDCL § 26-8A-13).
 - 1. Reports involving juvenile offenders will be maintained as directed by the director of Juvenile Services.
 - a. The director of Juvenile Services will compile a confidential report of all allegations of abuse and neglect of juveniles under the jurisdiction of the DOC placed at contract facilities and provide an annual report of any documented allegations or incidents of abuser to the Government Operations and Audit Committee.
 - 2. Reports submitted by DOC institutional staff involving an offender in custody, will be maintained by the warden or his/her designee.
- B. Copies of reports and/or related information documenting the abuse or neglect, or suspected abuse, or neglect of an offender will be kept in the offender's legal file.
- C. Staff are not required to report the abuse, neglect, or exploitation of an elder or adult with a disability if the staff member can verify another person has already properly reported the same abuse, neglect, or exploitation to the responsible authority.

5. Responsibilities of Staff:

- A. Any staff member participating in good faith in the making of a report or submitting records, photographs, or other evidence involving abuse or neglect of a protected person, pursuant to SDCL §§ 26-8A-3 to 26-8A-8, is immune from any liability, civil, or criminal that might otherwise be incurred or imposed (See SDCL §§ 26-8A-8 and 22-46-8).
- B. Any required reporter of abuse or neglect of a protected person, who intentionally or knowingly fails to make the required report, is guilty of a Class 1 misdemeanor (SDCL § 26-8A-3) and may be subject to disciplinary action, including and up to termination of employment (See SDCL §§ 22-46-9 and 26-8A-3).

V. RESPONSIBILITY

The director of Prisons, the director of Juvenile Services, and the director of Parole are responsible for the annual review of this policy.

VI. AUTHORITY

- A. SDCL §§ 3-6C-1, 22-42, 22-46-2, 22-46-7, 22-46-8, 22-46-9, 22-46-11, 26-8A-2, 26-8A-3, 26-8A-6, 26-8A-7, 26-8A-8, 26-8A-10, 26-8A-13, 26-8A-16, 34-20B

VII. HISTORY

May 2023
 September 2021
 November 2019
 March 2019
 November 2017
 April 2017
 November 2016
 December 2015
 April 2014
 November 2010

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ATTACHMENTS

1. Abuse and Neglect Report*
2. DOC Policy Implementation / Adjustments

Abuse and Neglect Report

Date Reported to the Department of Social Services or local law enforcement:

Time Reported:

Reported to (person's name and/or agency):

Method of Report (email, telephone, fax, other):

Today's Date: Time:

Name of Individual Abused or Neglected:

Address:

DOB: Place of Birth:

School (for child victim, if known & applicable):

Name of Child's Parent(s) or Guardian(s):

Address:

Telephone:

Name of Alleged Perpetrator:

Address:

Relationship to Victim:

Where and when abuse/neglect occurred and any other descriptive details of the suspected or proven incident:

Name of Supervisor Contacted:

Report Forwarded to Supervisor: Yes No

Date and Time Forwarded (if applicable):

Name of Person Preparing the Report:

Position:

Email Address:

Work Telephone:

Date:

Signature: