

1.1.C.3 Staff Reporting Abuse or Neglect

I Policy Index:



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Replaces Policy: 3A-21
Supersedes Policy Dated: 04/15/2019
Affected Units: All Units
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Scheduled Revision Date: November 2020
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Office of Primary Responsibility: DOC Administration

II Policy:

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

III Definitions:

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

- A. For the purposes of this policy, the term abused, or neglected child means a child under the age of eighteen:
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 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 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 dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own.

DOC Units:

For the purpose of this policy, all DOC institutions, Parole Services and Division of Juvenile Services.

Elder:

A person sixty-five years of age or older.

Emotional and Psychological Abuse:

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

- a. 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;
- b. Unreasonable confinement;
- c. Harm or damage or destruction of the property of an elder or adult with a disability, including harm to or destruction of pets; or
- d. 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.

Institutional Sexual Abuse:

1. Offender Sexual Abuse: Sexual abuse of an offender by another offender that occurs within an institution and includes any sexual act, if the offender does not consent, is coerced into such acts by overt or implied threats of violence or is unable to consent or refuse.
2. Staff Sexual Abuse: Sexual abuse of an offender by a staff member, contractor, or volunteer and includes any sexual act with or without the consent of the offender.

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.

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 has been abused or neglected as defined in § 26-8A-2 shall report that information in accordance with §§ 26-8A-6, 26-8A-7, and 26-8A-8.

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.

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.

Staff Member:

For the purposes of this policy, a staff member is any person employed by the Department of Corrections (DOC) and/or any employee or person-authorized to work within a correctional facility operated by the DOC (See ARSD [55:05:02:02](#)).

IV Procedures:

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

- A. Any staff member required to report the abuse and/or neglect of a child, pursuant to SDCL § [26-8A-3](#), who knows or has reasonable belief a child has been physically or emotionally injured, neglected or sexually abused, shall promptly provide an oral report to the Department of Social Services (DSS) (1-877-244-0864) between the hours of 8:00 a.m. and 5:00 p.m. 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.

- B. Any staff member required to report abuse and/or neglect of an elder or adult with a disability, pursuant to SDCL § 22-46-9, who knows or has reasonable belief an elder or disabled adult has been or is being abused or neglected, shall, within twenty-four hours, report the knowledge or suspicion orally or in writing to DSS, law enforcement or the state's attorney of the county where the elder or adult with a disability resides or is present.
1. If the report involves a DOC offender, the reporting staff member will promptly provide the respective Warden with a copy of the Abuse and Neglect Report.
- C. ***Division of Juvenile Services*** - Division of Juvenile Services staff who know or have reasonable belief any child has been physically or emotionally injured, neglected or sexually abused, will immediately complete an *Abuse and Neglect Report* (See [Attachment 1](#)). Staff shall promptly provide an oral report to the Department of Social Services (1-877-244-0864) between the hours of 8:00 a.m. and 5:00 p.m. CST Monday-Friday), or after hours directly make a report to law enforcement or the state's attorney in the county where the victim resides or is present (See SDCL § 26-8A-8). Staff will promptly notify the Director of Juvenile Services of the report.
1. If the incident involves a juvenile placed at a contract facility, Division of Juvenile Services staff will coordinate the reporting with facility staff to ensure proper reporting of the abuse/neglect incident and that multiple reports are not submitted for a single incident involving the same juvenile.
 2. If the incident involves a juvenile placed at a foster home, the staff member will complete the reporting process and notify their direct supervisor. The supervisor will ensure the Director of Juvenile Services is notified. The Division of Criminal Investigation will be notified, as deemed appropriate by the Director.
 3. All photographs, video or other images, x-rays, test results or copies of such which support the discovery of possible abuse and/or neglect, shall be treated as evidence and shall accompany the report provided to the Department of Social Services.
 4. If a staff member knows or has reasonable cause to suspect an elder or adult with a disability has been or is being abused or neglected, staff shall make an oral or written report within twenty-four hours of becoming aware of the abuse or neglect to the Department of Social Services, law enforcement, or the state's attorney in the county where the elder or adult with a disability resides or is present.
- D. DOC Institutions – Staff members assigned to a DOC institution, who know or have reasonable belief any child has been physically or emotionally injured, neglected or sexually abused, will promptly complete an Abuse and Neglect Report (See [Attachment 1](#)) and report the information directly to the DSS call center at 1-877-244-0864 (between the hours of 8:00 a.m. and 5:00 p.m. 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). 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 policies 1.3.E.5 [PREA 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 (See DOC policy 1.3.E.5 [PREA Compliance with Prison Rape Elimination Act Standards](#)).

3. If a staff member knows or has reasonable belief an elder or adult with a disability has been or is being abused or neglected, the staff member shall complete an oral or written report within twenty-four hours of becoming aware of the abuse or neglect and provide the report to the Department of Social Services, law enforcement, or the state's attorney in the county where the elder or adult with a disability resides or is present.
- E. Parole Services – Parole Services staff who know or have reasonable belief any child has been physically or emotionally injured, neglected or sexually abused, will immediately complete an Abuse and Neglect Report (See [Attachment 1](#)). Staff members shall promptly provide an oral report to the Department of Social Services (1-877-244-0864) between the hours of 8:00 a.m. and 5:00 p.m. 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](#)). Staff will notify his/her supervisor of the report.
 1. If a staff member knows or has reasonable belief an elder or adult with a disability has been or is being abused or neglected, staff shall complete an oral or written report within twenty-four hours of becoming aware of the abuse or neglect and provide the report to the Department of Social Services, law enforcement, or the state's attorney in the county where the elder or adult with a disability resides or is present.
- F. 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* (See [Attachment 1](#)), in accordance with SDCL § [26-8A-10](#). The report shall be forwarded to law enforcement, Department of Social Services and Tribe (when applicable).
- B. Law enforcement or Department of Social Services (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 Department of Social Services. If so authorized, consent from the child's parent, guardian or custodian is not required (SDCL § [26-8A-16](#)). 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. All photographs, video or other images taken by DOC staff and all x-rays and test results or copies thereof as a result of a response to the discovery of a possible abuse and/or neglect incident, shall be sent to the DSS and designated law enforcement, or in the case of alleged abuse of an elder or adult with a disability, to the state's attorney in the county where the elder or adult with a disability resides or is present.

3. 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 a semi-annual report of any documented allegations or incidents of abuser to the Government Operations and Audit Committee.
 2. Reports submitted by parole services staff involving an offender on supervision who is the victim of abuse, or who has victimized another, will be maintained by the Director of Parole Services or his/her designee.
 3. 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 institutional file.
- C. Staff is 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.

4. Responsibilities of Staff:

- A. Staff will fully cooperate with any investigation into an alleged incident of abuse or neglect. Staff that witness the disclosure of evidence of the abuse or neglect of a child must be available to answer questions when the initial report is made (SDCL § 26-8A-8).
- B. All required reporters who have reasonable belief a child, elderly adult or disabled adult has been abused or neglected, shall report the incident directly to DSS, law enforcement or the state's attorney where victim of the abuse resides or is present (See SDCL §§ 26-8A-8 and 22-46-7).
- C. All DOC staff, including those that are not required reporters, as set forth within statute, who have reasonable belief a child, elderly adult or disabled adult has been abused or neglected, have an affirmative duty to report the information to DSS, law enforcement or the local state's attorney where the victim of the abuse resides or is present (See SDCL § 22-46-11).
- D. 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).
- E. 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 § 16-8A-3) and may be subject to disciplinary action, including and up to termination of employment (See SDCL §§ 22-46-9 and 26-8A-3).

5. Acknowledgment of Review:

- A. Each staff member will review this policy at least annually, or as changes are made effective through approval by the Secretary of Corrections.

V Related Directives:

SDCL §§ Chapter 22-46 and Chapter 26-8A.

ARSD [55:05:02:02](#)

DOC policies 1.3.E.5 – [PREA Compliance with Prison Rape Elimination Act Standards](#)

VI Revision Log:

March 2002: **Clarified** child abuse throughout policy. **Added** section on Acknowledgement of Review.

December 2003: **Divided** policy into four subsections. **Rearranged** the order of Safety Sensitive Positions and **added** Youth Treatment Director, Wellness Instructor and Teacher to the definition.

January 2005: **Changed** the policy name. **Revised** the policy statement. **Deleted** the definition of Safety Sensitive Positions due to the change in ARSD 55:05:02:02. **Added** definitions for Abused or Neglected Child and Staff Member. **Updated** the references throughout the policy of who has to report abuse and neglect. **Changed** section titles to reflect the revised policy name. **Deleted** specific duties for individuals under contract who perform duties in the presence of juveniles.

January 2006: **Revised** the procedures for parole agents to report an abused or neglected child. **Changed** CEO to the specific facility/agency supervisor as applicable. **Added** specific instructions on reporting an abused or neglected child in the Deadwood, Sturgis, Belle Fourche, Hot Springs and Custer areas. **Revised** the definition of Abused or Neglected Child.

December 2006: **Added** an option for parole staff to report abuse or neglect to law enforcement. **Added** a reference to SDCL § 26-8A-8. **Revised** the policy statement and the definition of staff member. **Clarified** that this policy must be reviewed at least annually by staff members.

December 2007: **Added** a reference to DOC policy 1.4.B.12. **Noted** that offender self-disclosure on a PREA assessment is not reportable unless the offender is currently a minor.

May 2008: **Revised** policy format in accordance with DOC policy 1.1.A.2 Policy and Operational Memorandum Management. **Added** definition of abused or neglected child in accordance with SDCL § 26-11A-24. **Revised** subsection (B of Who/When to Report an Abused Neglected Child) to read as "STAR Academy" vs. "DOC program" and removed "where the program is located" since this section specifically speaks of STAR Academy. **Deleted** Deadwood, Sturgis, Belle Fourche and Hot Springs and the local phone # of 347-2559 if reporting a local incident of an abused or neglected child in the Sturgis area. **Revised** section of reporting an abused or neglected child in the Custer area after hours to include contacting local law enforcement to access the on-call DSS designee. **Added** a Note that if DSS finds evidence of abuse or neglect, DSS will notify the State's Attorney and/or local law enforcement. **Deleted** "If the alleged abuse is reported to have happened within a juvenile correctional program," and rephrased sentence to include "the alleged abuse or neglect" within the STAR Academy section. **Added** section C, D and F on the protocols of reporting abuse or neglect for Juvenile Community Corrections, DOC Foster Homes and DOC Administration. **Replaced** "local" with "where the incident occurred" throughout policy as appropriate. **Changed** "notify" to "follow up in writing to the" in subsection (E of Who/When to Report an Abused or Neglected Child section) as it relates to Parole Agents protocols for reporting. **Changed** "by notifying the Secretary of DOC" to "in writing to their immediate supervisor" in subsection (F of Who/When to Report an Abused or Neglected Child section) as it pertains to DOC Administration protocols for reporting. **Added** "For the purpose of this policy" and "or the alleged abuse and neglect is reported to have occurred at STAR Academy, a DOC foster home or a DSS licensed facility, in which case refer to reporting procedures of suspected abuse and neglect for STAR Academy or a DOC Foster Home." within subsection G as it pertains to PREA. **Added** sections H pertaining to making a report to DSS regardless if the victim claims the report was previously made to DSS. **Added** section I as it pertains to a report made by an adult regarding when she/he was a victim that no report is required, unless there is potential for on-going abuse or neglect of a child. **Added** "Reporting

Documentation” section. **Added** SDCL 26-11A-24 (1) or (5) to the Definitions section and Related Directives section. **Revised** formatting, numbering and letting of contents throughout policy.

January 2009: **Revised** definition of Staff Person. **Revised** entire Reporting an Abused or Neglected Child within the Scope of Employment section into ss (A – H) to clarify procedures to report A/N. **Revised** Content of the Written Report section. **Added** law enforcement to ss (A), **added** ss (A1 – A6), **added** additional information to be maintained as indicated above in ss (B1), **clarified** DOC youth within ss (B2), **deleted** JCM outcome in ss (C) of Reporting Documentation. **Revised** wording and **added** statute in ss (B of Other Responsibilities of DOC Staff). **Replaced** minor with child throughout policy. **Revised** other grammar and wording throughout policy. **Added** flowcharts.

November 2009: **Added** new ss (A, A1-A3, A3a-A3f, Note and A4), **revised** language of reporting procedures within ss (E), **added** new ss (E1 and Note), **added** law enforcement to ss (E2) and **revised** sequence of following letters all within Reporting an Abused or Neglected Child within the Scope of Employment. **Revised** title of DOC policy 1.4.B.12 and **added** reference to DOC policy 1.4.B.15. **Deleted** double reference to SDCL 26-11A-24 from section V. **Added** reference to attachments and **added** hyperlinks. **Deleted** reference of JCM in Attachment 3. **Revised** language in Attachment 6 to reflect that stated in policy. **Revised** language regarding reports of abuse or neglect that occurred out of state but reported to a DOC staff and **deleted** reference that DSS will notify state’s attorney or law enforcement if evidence is found within Attachment 9. **Revised** numbering of Attachments.

November 2010: **Revised** formatting of Section I. **Deleted** “when applicable” and “or” regarding a copy of the written report being submitted to the JCM within (Attachment 2).

April 2014: Numerous changes to the policy and accompanying attachments.

December 2015: **Added** definition of “Neglect”, “Emotional and Psychological Abuse”, “Physical Abuse” Changed “local DSS office” to DSS call center throughout the policy. **Deleted** “Persons Required to Report Abuse and/or Neglect” and **Deleted** “Person assigned to a DOC institution who is” and **Deleted** “elder or disabled adult” and **Added** “or the state’s attorney in the county where the victim resides or is present” in Section 1 A. **Added** new B. to Section 1. **Added** “Director” to Section 1 A. 3. & 4. **Deleted** C in Section 1 (STAR Academy) **Added** “or the state’s attorney in the county where the victim resides or is present (See SDCL § 26-8A-8)” and **Deleted** “The report will be forwarded directly to local law enforcement or the DSS office located in the region where the incident occurred” in Section 1 D. **Added** 3. to Section 1 D. **Deleted** 1. in Section 1 D. **Deleted** E. in Section 1. **Deleted** G. in Section 1. **Added** “Staff will provide to the best of their knowledge, the information requested on” and **Added** “in accordance with SDCL 26-8A-10” and **Deleted** “will include as much information and detail about the alleged instance of abuse and neglect as possible” in Section 2. **Deleted** “Staff generating the report and staff that become aware of the report will keep the information and contents of the report confidential and limit its dissemination to those who individuals who must know. Staff may not disclose any such file, record, information or photos to unauthorized parties” and **Replaced** with “All files, reports, investigative records or other information involving the abuse or neglect of a child shall be kept confidential and may only be released as provided in SDCL § 26-8A-13” in Section 2 B. **Added** C. to Section 2. **Deleted** “law enforcement, DSS, the Tribe (if applicable), JCM (if applicable) and other pertinent information (verification of report received from DSS, Incident Reports, photographs, medical records, etc.) related to the incident will be retained by the reporting unit” and **Replaced** with “record, files or information relating to the child abuse or neglect released by DSS” and **Added** “the Warden, Director or Superintendent of their designee (See 26-8A-13)” in Section 3 A. **Added** B. to Section 3. **Added** C. to Section 3. **Added** Staff that witness the disclosure of evidence of the abuse or neglect of a child must be available to answer questions when the initial report is made (SDCL 26-8A-8)” in Section 4 A. **Deleted** “and sign the Receipt and Acknowledgement – DOC Policies form, in accordance with DOC policy 1.1.D.1 *Staff Training Requirements*, acknowledging they are fully aware of, have reviewed, understand and agree to abide by this policy” in Section 5 A. **Deleted** Attachment 1 and 2.

November 2016: **Deleted** B. from definition of “Abused or Neglected child”.

April 2017: **Added** a. to Section 3 A. 1.

November 2017: Deleted “abused or neglected and **Replaced** with “physically or emotionally injured, neglected or sexually abused” throughout the policy. **Added** B. to Section 2.
March 2019: Deleted “immediately report” and **Replaced** with “promptly report” throughout the policy. Language and wording revisions.
November 2019: Added definition of “Reasonable Belief” and “Required Reporter”. Minor language revisions.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

11/07/2019


Date

Attachment 1: Abuse and Neglect Report

The ***Abuse and Neglect Report*** form is located at:

<P:\TEMPLATE\DOC\DOC-ALL\Abuse and Neglect Report form.dot>, or

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\Abuse and Neglect Report form.doc>

 <p style="text-align: center;">DEPARTMENT OF CORRECTIONS</p> <h3 style="text-align: center;">Abuse and Neglect Report</h3> <p>Date Reported to Social Services, Tribe or local law enforcement:</p> <p>Time Reported:</p> <p>Reported to (Staff Person's Name and/or Agency):</p> <p>Method of Report (email, telephone, fax, other):</p> <p>Today's Date:</p> <p>Time:</p> <p>Name of Individual Abused or Neglected:</p> <p>Address:</p> <p>DOB:</p> <p>School (if known & applicable):</p> <p>Name of Child's Parent(s) or Guardian(s):</p> <p>Address:</p> <p>Telephone:</p> <p>Name of Alleged Perpetrator:</p> <p>Address:</p> <p>Relationship to Victim:</p>	<p>Page 2</p> <p>Where and when abuse/neglect occurred and any other descriptive details of the suspected or proven incident:</p> <p>Name of Person Preparing the Report:</p> <p>Position:</p> <p>Email Address:</p> <p>Work Telephone:</p> <p>Date:</p> <p>Signature:</p>
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