



Michigan Supreme Court

State Court Administrative Office

Trial Court Services

Friend of the Court Bureau

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-5975

Steven D. Capps
Director

DATE: October 1, 2009

TO: Friends of the Court

cc: Circuit Court Judges
Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps

RE: Friend of the Court Staff Reporting of Suspected Child Abuse and Neglect
and
Information Sharing by Child Protective Services and Friends of the Court

[2008 Public Act \(PA\) 300](#), effective October 1, 2008, amended MCL 722.623, 722.627, and 722.628 of the Michigan Child Protection Law to require a person employed in a professional capacity in any office of the friend of the court (FOC) to report suspected child abuse and neglect. That Act also added several new requirements for communication between FOC offices and the Department of Human Services (DHS). Even more recently, [2008 PA 405](#), effective January 6, 2009, amended MCL 552.520 of the Friend of the Court Act to require FOCs to notify Child Protective Services (CPS) of any procedural developments in certain FOC cases. This memorandum summarizes the amendments, provides information to help FOC offices develop appropriate local policies and procedures, and provides a model policy.

If you have questions about this memorandum, please contact Timothy Cole at colet@courts.mi.gov or Elizabeth Stomski at stomskie@courts.mi.gov.

Summary of 2008 PA 300

FOC Office Professional Employees are Mandated Reporters

MCL 722.623 now requires any person employed in a “professional capacity” in any friend of the court office who has reasonable cause to suspect child abuse or neglect to report the abuse and neglect to Child Protective Services (CPS). See Section A of this memorandum for information about determining who qualifies as a person employed in a professional capacity in any friend of the court office. See Section C for the procedures for reporting child abuse and neglect.

CPS Must Notify FOCs of Investigations and Dispositions

The statutory amendments of MCL 722.628 (18)-(21) impose several new notice and information requirements on CPS.

CPS must determine if there is an open FOC case¹ regarding a child who is suspected of being abused or neglected. If there is an open FOC case and if the CPS investigation results in one or more of the following findings or actions, then CPS must notify the local FOC office:

- A CPS finding that indicates child abuse or neglect occurred, based on a preponderance of the evidence.
- An emergency removal of the child because of abuse or neglect.
- The court taking jurisdiction on a petition while the child continues to reside in his or her own home, but under the supervision of DHS.
- Removal of one or more children residing in the home while one or more children remain in the home.
- A CPS finding that any other circumstances jeopardized the child’s safety.

In addition to notifying the FOC of its investigation and the child’s placement, 2008 PA 300 provides that CPS may notify the FOC if a parent has made three unfounded child abuse reports in one year or five such reports over “several years” (MCL 722.628).²

¹ CPS intends to determine whether an open FOC case exists by asking the parent if the parent has an open FOC case. (MCL 552. 502 defines a FOC case as: “a domestic relations matter that an office establishes as a friend of the court case as required under section 5a.” MCL 552. 505a states: “Except as required by this section, an office of the friend of the court shall open and maintain a friend of the court case for a domestic relations matter. If there is an open friend of the court case for a domestic relations matter, the office of the friend of the court shall administer and enforce the obligations of the parties to the friend of the court case as provided in this act. If there is not an open friend of the court case for a domestic relations matter, the office of the friend of the court shall not administer or enforce an obligation of a party to the domestic relations matter.”). If either parent identifies an open FOC case, CPS will send the required notifications to the FOC office.

² CPS has indicated that it will *not* report parents who make unfounded child abuse complaints to the FOC. CPS believes that doing so would violate the confidentiality of the reporting person (MCL 722.625).

2008 PA 300 also amended MCL 722.627(2)(t) to remove restrictions that prohibited the court from accessing CPS information.

Summary of 2008 PA 405

If the FOC receives notice from CPS as required above, the FOC office must notify CPS of procedural developments in the FOC case until a final order is entered regarding the pending custody or parenting time dispute. See Section D for information on how to report this information.

Best Practices: FOC Compliance with Mandated Reporting

The State Court Administrative Office (SCAO) suggests that FOCs develop an internal policy to comply with both 2008 PA 300 and 2008 PA 405. A model policy is provided with this memo. Please remember when developing the FOC policy that there are sanctions for violating MCL 722.623. See Section G for more information on sanctions. In order to avoid sanctions and limit liability, courts should be inclusive when designating persons employed in a professional capacity in any office of the friend of the court. The following information may be helpful in developing local policies.

A. A Person Employed in a Professional Capacity in Any Office of the Friend of the Court.

1. MCL 722.623 requires “a person employed in a professional capacity in any office of the Friend of the Court” to report child abuse or neglect. In order for FOC employees to know if they are mandated reporters, they must know whether they are considered “employed in a professional capacity.” The Child Protection Law does not define “employed in a professional capacity in any office of the Friend of the Court.”

In the absence of a statutory definition, courts may take one of the following approaches when determining who is employed in a “professional capacity:”

- Designate all FOC employees as mandated reporters.
- Designate all FOC employees who have contact with parties as mandated reporters.
- Designate employees in specific FOC positions as mandated reporters.
- Designate individuals whose job descriptions include the term “professional” as mandated reporters.
- Designate individuals whose positions in a collective bargaining agreement are classified as professional as mandated reporters.
- Designate any employee whose qualifications for his or her FOC position include postgraduate training that would allow the employee to discern physical or emotional abuse (e.g., masters or doctorate degree in psychology or sociology) as a mandated reporter.

- Designate FOC employees based on any other factor the court chooses to use to distinguish professional positions from nonprofessional positions as mandated reporters.

The fact a court has not designated a particular FOC employee as a mandated reporter does not mean that the employee is not required to report suspected abuse or neglect. A court may determine that the statute covers employees who are not officially designated by the court and therefore, they may be subject to the failure-to-report sanctions contained in MCL 722.633. See Section G for more information on sanctions.

2. Special circumstances: There may be special circumstances that make it more difficult to determine how the new laws should be applied.

- **Domestic Relations Referees:**

Referees present special concerns because some courts include domestic relations referees in the FOC budget and place them under the management of the FOC director, while other courts do not. It is unclear if the Michigan Legislature intended for all domestic relations referees to be mandated reporters of child abuse and neglect or only those physically located in a friend of the court office. It is SCAO's understanding that when the proposed legislation was being discussed, it was intended that all domestic relations referees be considered mandated reporters. Because of this, and because referees are provided for in the Friend of the Court Act, (MCL 552.508), it may be in the court's best interests to include all domestic relations referees when designating those employed in a "professional capacity."

- **FOC Mediators:**

MCL 552.513(3) provides:

Except as provided in subsection (2), a communication between a domestic relations mediator and a party to domestic relations mediation is confidential. The secrecy of the communication shall be preserved inviolate as a privileged communication. The communication shall not be admitted in evidence in any proceedings. The same protection shall be given to communications between the parties in the presence of the mediator.

However, MCL 722.631 overrides MCL 552.513(3) for purposes of reporting child abuse or neglect. It provides:

Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be

made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act.

B. Reasonable Cause to Suspect Child Abuse or Neglect

There is no statutory definition of what it means to find “reasonable cause to suspect child abuse or neglect.” Mandated reporters (other than those employed by CPS) are not required to determine whether child abuse or neglect has *actually* occurred. SCAO recommends that those individuals designated as mandated reporters report child abuse or neglect when their rational observations, professional training, experience, or any other factor that would cause them to suspect child abuse or neglect has occurred.³ Mandated reporters may also consult with their local DHS office employees about child abuse and neglect issues before making a report. A mandated reporter **DOES NOT** satisfy the legal obligation to file a report with CPS by simply having a conversation with a DHS employee; a report must be filed to meet the statutory requirement (MCL 722.623).

For domestic relations referees, SCAO suggests the following:

1. If a referee has reasonable cause to suspect child abuse or neglect, the referee must report it. A referee has reasonable cause to suspect child abuse or neglect when the referee witnesses the child abuse or neglect, when child abuse or neglect is admitted, when a child or other witness reports acts of child abuse or neglect, or when the referee knows of other evidence of child abuse or neglect, whether or not it is sufficient to satisfy an evidentiary standard in the matter pending before the referee.
2. If a referee conducts a hearing in which allegations of child abuse or neglect are made, the referee is not obligated by the mandated reporter law to conduct further investigation to determine if child abuse or neglect occurred. Based on the allegations, the referee should determine if he or she has reasonable cause to believe abuse or neglect occurred.⁴

For information on definitions of child abuse and neglect, please see:

http://www.michigan.gov/documents/dhs/Pub-112_179456_7.pdf

For indicators of child abuse and neglect, please see:

http://www.michigan.gov/dhs/0,1607,7-124-5452_7119_7193-15254--,00.html

DHS maintains a web site for mandated reporters:

www.michigan.gov/mandatedreporter.

³ A recent Michigan Court of Appeals Case addressed the mandated reporter’s responsibility to report child abuse and neglect. (*Lee v Detroit Medical Center*, ___ Mich App ___ (2009); 2009 Mich App LEXIS 1531.)

⁴ SCAO contacted several states whose judges are mandated reporters of child abuse or neglect to inquire about judges’ reporting requirements and practices. SCAO learned that most judges in those states report if proof of the child abuse or neglect is substantiated during the hearing. When the child abuse or neglect cannot be substantiated, judges in those states often do not report. Some judges use what amounts to a “probable cause” standard.

C. How to Report Suspected Child Abuse or Neglect to Child Protective Services

Mandated reporters must *immediately* make an *oral* report (by telephone or in person) to the local county CPS office.⁵ CPS intake personnel will want the following information, if available:

- Name(s) and address of primary caretaker (parent and/or guardian).
- Names and identifying information for all household members, including the alleged victim and perpetrator.
- Birth date and race of all members of the household.
- Whether the alleged perpetrator lives with the child.
- Address where the alleged incident happened, if different than the home address.
- Summary of the child's disclosure and its context, if the child disclosed the incident.
- History of the child's behavior (any background information the mandated reporter knows related to the report that is being filed).
- Reasons why child abuse or neglect is suspected.

Within 72 hours after making the oral report, the mandated reporter must file a written report with CPS. The written report must include the following information:

- Name, birth date, social security number, sex, and race of the child, mother, and father.
- Child's address.
- Name of the alleged perpetrator of abuse or neglect and relationship to child.
- Person(s) the child was living with when the abuse or neglect occurred.
- Address, city, and zip code where the abuse or neglect occurred.
- Injury or conditions and reason for suspicion of abuse or neglect.
- Source of the complaint.
- Reporting person's name, organization, and address.

The written report must be mailed or otherwise transmitted to the local DHS office within 72 hours of submission of the oral report. Mandated reporters are encouraged to use the Department of Human Services Form 3200:

http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf.

The county DHS office directory may be accessed at

<http://www.michigan.gov/dhs/0,1607,7-124-5461---,00.html>.

Contact information for the counties includes CPS daytime and after-hours telephone numbers.

⁵ Mandated reporters of child abuse and neglect are considered "mandated" at all times, even when they are not working. Mandated reporters should report immediately to the DHS office in the county in which they believe the child resides. If the mandated reporter does not know where the child resides, the person should contact the local office. DHS will then attempt to locate the family and determine the appropriate office to handle the investigation. It is important that the mandated reporter completes the reports as required.

Mandated reporters can use the Mandated Reporter's Hotline (1-877-277-2585) if they think the county DHS office has not been adequately responsive to their concerns. These concerns will be investigated and a response will be provided.

Individuals employed in a professional capacity by a FOC office are not required by MCL 722.623(1) to provide a copy of the mandated report to the FOC director. However, SCAO recommends that a copy of the report be maintained. Please see Section H: Maintaining a Copy of the Written Report; Reporter Confidentiality.

D. FOC Reporting of Procedural Developments

2008 PA 405 requires that if the FOC receives notice from the CPS regarding a child abuse investigation, the FOC office must notify CPS of procedural developments in the FOC case until a final order regarding the pending custody or parenting time dispute order is entered.

2008 PA 405 does not define "procedural developments." If the FOC has received a notice from CPS, SCAO recommends that the FOC office forward to CPS any custody or parenting time notices sent in the FOC case, motions that are filed to establish or modify custody or parenting time, or any orders that are issued in the case.⁶

E. FOC Providing Information to the Court and Attorneys of Record

If the FOC receives notice (as required by MCL 722.628) from CPS regarding a child involved in an open FOC case, the FOC office should inform the court (the domestic relations referee and/or family division judge assigned to the court case) and the attorneys of record about the CPS notification.

F. Redirecting Child Support

If the child's placement is changed as a result of juvenile court disposition or CPS investigation, and there is a current child support order in place, the FOC may consider redirecting the child support to the new caregiver. (See [SCAO Administrative Memorandum 2005-04](#)). A review by the FOC under MCL 552.517 could result in the court ordering *both parents* to pay child support and provide health care coverage. (See [SCAO Administrative Memorandum 2006-03](#)).

⁶ FOC offices should forward custody and parenting time notices, motions, and court orders to the DHS office in the county where the child resides. If the mandated reporter does not know where the child resides, the reporter should contact the DHS office in the reporter's county. DHS will then attempt to locate the family and determine the appropriate office to receive notice of procedural developments. SCAO recommends that FOC offices make note in the MiCSES system of the documents (e.g., copies of motions, court orders) sent to CPS, and the date the documents were transmitted.

G. Penalties for a Mandated Reporter’s Failure to Report Child Abuse or Neglect; Immunity from Making a Report

It is important to establish clear policies indicating which employees are “employed in a professional capacity in any office of the friend of the court,” and, therefore, mandated reporters, because there are penalties for failing to report. Mandated reporters who fail to file a required report of suspected abuse or neglect may be subject to both civil and criminal liability. In a civil action, the mandated reporter may be held liable for all damages that any person suffers due to the failure to file a report. In a criminal action, a mandated reporter may be found guilty of a misdemeanor punishable by imprisonment for up to 93 days and a fine of \$500. A mandated reporter **DOES NOT** satisfy the legal obligation to file a report with CPS by notifying only his or her own supervisor or some other administrator within the same agency (MCL 722.623). A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other statutory requirement is immune from civil or criminal liability (MCL 722.625).

H. Maintaining a Copy of the Written Report; Reporter Confidentiality

SCAO recommends that FOC offices maintain a group file of all written mandated reports related to FOC cases and CPS investigation results. The file containing mandated reports and CPS investigation results is confidential, and only the FOC director or the director’s designee should have access to the file. Group files are generally defined as records the court is required to keep but which are not part of a case file.⁷ The mandated reports and CPS investigation notification are noncase records, which means they are not records filed in the friend of the court case file and, therefore, are not subject to inspection by anyone outside of the friend of the court office. Mandated reporters may request a copy of their mandated report or CPS investigation notification from the FOC director or designee. For more information about group files, please see SCAO’s [Case File Management Standards](#) and SCAO’s [Record Retention Schedule](#), Item Number 16.010.

⁷ SCAO’s Case File Management Standards, Component 18.

SCAO's Record Retention Schedule recommends that noncase records be retained for a minimum of six years. This record retention would surpass the statute of limitations for civil and criminal misdemeanor litigation.

With limited exceptions, the identity of a reporting person is confidential under the law. CPS may disclose the reporter's identity with the consent of that person or by judicial process (MCL 722.625). The reporter's identity also may be disclosed to those listed in Section 5 of the Child Protection Law (MCL 722.625).

I. CPS Reporting Investigation Results to Mandated Reporters

After a mandated reporter submits a written report of suspected child abuse or neglect, CPS must inform the mandated reporter in writing about CPS's investigation results of the case,⁸ including:

- What determination CPS made after its investigation and the rationale for any decision made.
- Whether legal action was commenced and, if so, the nature of that action.
- Notification that the information being conveyed is confidential.

J. FOC Offices Maintaining Statutory Enforcement Responsibilities

Newly-added MCL 722.628(18) and (19) require CPS to notify the affected FOC office when there is an open FOC case and CPS has conducted an investigation in which a preponderance of evidence indicates that child abuse or neglect has occurred or certain dispositions have been ordered by the court.

SCAO recommends that if the FOC is aware of CPS involvement because of child abuse or neglect and the parent accused of child abuse or neglect submits a custody or parenting time complaint, the FOC office should continue to enforce the current custody and parenting time order, but should select an enforcement remedy that will not endanger the child or the parents. SCAO Administrative Memorandum 2002-11 cautions that, "Selection of an enforcement remedy should also be influenced by the safety concerns that arise when one party has committed a crime against a child or the other party, or has violated another court order (such as a personal protection order) in exercising or asserting custody or parenting time rights." With the exception of applying make up parenting time, FOCs may want to consider an enforcement remedy provided for in MCL 552.641.⁹

⁸ Referees who report possible child abuse or neglect may be asked to conduct judicial hearings involving families they reported for child abuse and neglect. When CPS provides the results of the investigation, it is recommended that referees not view the disposition or CPS's investigation results, as this would result in the referee receiving ex parte information about a case. It is recommended that CPS's investigation results be placed in the FOC confidential noncase group file and not be viewed by the referee.

⁹ CPS could have provided counseling or other services instead of filing a petition to remove the child. If CPS takes action short of a petition to remove the child, then CPS is indicating that with services in place, child abuse and neglect should not occur and the child is safe with that parent.

K. Coordinating FOC and CPS Services

SCAO encourages FOC offices to meet with local CPS staff to discuss the new requirements for mandated reporters, information sharing, local practices, staff responsibilities, local resources, and related issues. For information on coordinating FOC and CPS services, please see “*Recommendations for Coordination between Friends of the Court and Department of Human Services Children’s Protective Services.*”¹⁰

¹⁰ http://www.michigan.gov/documents/dhs/DHS-CPS-FOC-Recommendations_230561_7.pdf

Model Policy Mandated Reporting of Child Abuse and Neglect

A. Designating Mandated Reporters of Child Abuse and Neglect

Pursuant to MCL 722.623, persons employed in a professional capacity in any office of the friend of the court are mandated reporters of child abuse or neglect. The following employees are designated as mandated reporters of child abuse and neglect: **[List Position and Titles]**)

B. Oral Report of Child Abuse and Neglect

All mandated reporters of child abuse and neglect who have reasonable cause to suspect child abuse and neglect shall immediately make an oral report by telephone or in person to the Department of Human Services. The Department of Human Services will ask for the following information:

- Name(s) and address of primary caretaker (parent and/or guardian).
- Names and identifying information for all household members, including the alleged victim and perpetrator.
- Birth date and race of all members of the household.
- Whether the alleged perpetrator lives with the child.
- Address where the alleged incident happened, if different than the home address.
- Summary of the child's disclosure and its context, if the child disclosed the incident.
- History of the child's behavior (any background information the mandated reporter has which is related to the report that is being filed).
- Reasons why child abuse or neglect is suspected.

C. Written Report of Child Abuse and Neglect

All mandated reporters who have reasonable cause to suspect child abuse and neglect must file a written report with the Department of Human Services within 72 hours after making the oral report. The written report must include the following information:

- Name of child.
- Description of abuse or neglect.
- Names and addresses of child's parents and/or guardians.
- Persons with whom the child resides.
- Child's age.
- Other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

The written report must be mailed or otherwise transmitted to the Department of Human Services within the allotted 72 hours. Friend of the court mandated reporters are encouraged to use the Department of Human Services Form 3200:

http://www.michigan.gov/documents/dhs/DHS-3200_224934_7.pdf.

D. Maintaining Copies of the Mandated Reports and Department of Human Service Reports.

Copies of the mandated reporter's child abuse or neglect written reports and the Department of Human Services Child Abuse and Neglect Investigation Results should be provided to the friend of the court director or _____ and shall be maintained in a confidential group file located in _____. Only the friend of the court director or _____ shall have access to these records. These records shall be maintained for a period of six years.

E. Providing Procedural Developments

If the friend of the court receives notice of a Department of Human Services Child Protective Services investigation or CPS disposition, and there is an open friend of the court case within the friend of the court office, the FOC office will forward all custody and parenting time notices, motions, and final orders related to that open friend of the court case to the Department of Human Services.