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SPRINGFIELD

October 6, 1977

FILE NO. S-1298

FAMILY LAW:
Concerning State Compliance
With Federal Regulations
Under the "Child Abuse and
Neglect Prevention and
Treatment Program"

Margaret M. Kennedy
Director
Department of Children and Family Services
State Administrative Offices
One North Old State Capital Plaza
Springfield, Illinois 62706

Dear Director Kennedy:

I have your letter in which you request an opinion regarding this State's compliance with Federal regulations governing programs to assist States in preventing and treating child abuse and neglect. These regulations have been promulgated by the Department of Health, Education, and Welfare under the authority of the Child Abuse Prevention and Treatment Act. 42 U.S.C. 5102 and 5103.

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Your first question is:

As used in the Abused and Neglected Child Reporting Act, is the term "reasonable cause to believe" equivalent to the term "suspect"?

This question involves a Federal regulation (45 C.F.R. 1340.3-3(d)(2)) which requires a reporting of "known or suspected" instances of child abuse and neglect to a properly constituted authority. Compliance by the State of Illinois with the Federal regulation is found in section 4 of the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1975, ch. 23, par. 2054 et seq.), which reads as follows:

"Any physician, hospital, surgeon, dentist, osteopath, chiropractor, podiatrist, Christian Science practitioner, coroner, school teacher, school administrator, truant officer, social worker, social services administrator, registered nurse, licensed practical nurse, director or staff assistant of a nursery school or a child day care center, law enforcement officer, or field personnel of the Illinois Department of Public Aid having reasonable cause to believe any child with whom they have direct contact has been subjected to abuse or neglect shall immediately report or cause a report to be made to the Department. In addition to the above persons required to report suspected child abuse and neglect, any other person may make a report if such person has reasonable cause to suspect a child has been abused or neglected.

* * *

(Emphasis added.)

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In the above provision the term "having reasonable cause to believe any child * * * has been subjected to abuse or neglect" is referred to in the last sentence as "suspected child abuse and neglect". The section also speaks of "suspected child abuse". Sections 6 and 9 of the Act (Ill. Rev. Stat. 1975, ch. 23, par. 2056 and 2059) also refer to the condition of a child who is the subject of a report as "suspected child abuse or neglect". It is my opinion that the term "reasonable cause to believe" as used in the Abused and Neglected Child Reporting Act is equivalent to the term "suspect" as used in the Federal regulation. Both terms would cover the same set of circumstances leading a person to report an instance of child abuse or neglect.

This opinion that the reporting requirements of the Illinois Act are in substantial compliance with the requirements of the Federal regulation is further supported by a provision in the Federal regulations which states that the enactment of identical laws and procedures in the States is not necessary in order to qualify for Federal assistance. (45 C.F.R. 1340.3-3(a).) The Illinois statute fulfills the Federal Child Abuse Prevention and Treatment Act's purpose

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of insuring that the State provides for the detection through third party reporting of children in danger, including mandatory and permissive reporting of suspected child abuse and neglect.

Your second question is:

Does the legal responsibility of a State's Attorney include protection of the rights, interests, welfare and well-being of an abused and neglected child in a child protective judicial proceeding?

This question involves this State's compliance with the following Federal regulation, codified at 45 C.F.R.

1340.3-3(d) (7) :

" * * *

(7) The State must provide that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem shall be appointed to represent the child in such proceedings. The requirement of this clause may be satisfied by a State law or by a legal opinion of the State's Attorney General holding that such appointments can be made, and by a statement from the Governor that such appointments are made, in all cases. Such guardian ad litem need not be an attorney; however, such representative may be an attorney charged with the presentation in a judicial proceeding of the evidence alleged to amount to the abuse and neglect, so long as his legal responsibility includes representing the rights, interests, welfare, and well-being of the child; where such appointments are made, the legal opinion of the

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State Attorney General must specify that such attorney has said legal responsibility.

* * *

Though you frame the issue in terms of the State's Attorney's role in protecting the rights of the child, the present scheme of Illinois law insures compliance with the Federal regulation regardless of the legal responsibility of the State's Attorney in this regard. All cases involving abused or neglected children will arise under the Juvenile Court Act. Under section 4-5(1)(c) of the Juvenile Court Act (Ill. Rev. Stat. 1975, ch. 37, par. 704-5(1)(c)) the court must appoint a guardian ad litem for the minor if the petition for which the minor is before the court resulted from a report made pursuant to the Abused and Neglected Child Reporting Act. In cases involving abuse and neglect, which have not been reported under the Reporting Act, the minor is guaranteed legal representation under the terms of Public Act 80-813 which amended section 1-20(1) of the Juvenile Court Act (Ill. Rev. Stat. 1975, ch. 37, par. 701-20(1)) to add a provision which reads as follows:

* * *

No hearing on any petition filed under this Act may be commenced unless the minor

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who is the subject of the proceeding is
represented by counsel.

* * *

This amendment was approved by the Governor September 20, 1977, and became effective October 1, 1977. It is my opinion that this new State law fulfills the requirement of the Federal regulation that legal counsel will be appointed to protect the rights, interest, welfare and well-being of the child in every child protective judicial proceeding.

Very truly yours,

A T T O R N E Y G E N E R A L