

Read more at www.lynchowens.com/blog

Tips for Surviving a 51A DCF Investigation for Child Neglect or Abuse

By Nicole K. Levy | September 03, 2019

Family Law | Department of Children and Families

DCF attorney Nicole K. Levy explores strategies for parents and caregivers who are under investigation by DCF for child neglect or abuse.



In 2016, I wrote a 3000-word blog entitled, *The Crucial First Steps of a DCF "51A Investigation" for Child Abuse or Neglect in MA*. Since then, my DCF blogs have covered how DCF defines parental unfitness, surviving a DCF family assessment, the DCF fair hearing process, and responding to DCF findings of substantiated concern.

Today, I'm going back to basics: the 51A/B DCF investigation. Instead of a 3000-word *magnum opus* on 51A/B DCF investigations, like my 2016 blog, my purpose today is to create a series of easy-to-read tips on surviving a 51A/B DCF investigation for neglect or abuse. Like all of our blogs, it's important to note that these tips are merely informational, and do not represent hard and fast rules. If you are seeking advice in response to a

51A/B DCF investigation in your life, don't rely on the internet. You should contact a [Massachusetts DCF attorney](#) right away.

What is a 51A/B DCF Investigation for Neglect or Abuse?

In Massachusetts, any person can [contact the Department of Children and Families](#) (formerly the Department of Social Services) for make a so-called "51A report" if the individual suspects that a child has been neglected or abused by a parent or caregiver. Many individuals who report suspected neglect or abuse are [mandated reporters](#), such as teachers, doctors or professionals who with children. Mandated reporters are required by law to report any suspected incident of neglect or abuse to DCF. However, reports to DCF can be made by anyone - a stranger, a grandparent, a child, or even the other parent.

If DCF has been contacted about the potential abuse or neglect of a child in your care, a DCF investigator (generally a trained social worker) will quickly contact you. In emergency

situations, DCF may seek to take custody of the children in question. In most situations, however, DCF calls parents and caregivers on the phone (or even through the mail) and notifies the individual that DCF is investigating.

After receiving a 51A report, DCF must quickly determine whether the allegation should be “screened out” or “screen in” an investigation for child abuse or neglect should proceed. If a parent or caregiver hears from DCF about allegations of neglect or abuse, chances are the case has already been “screened in”, and the family will be subject to an investigation.

How Do the Early Stages of a 51A/B Investigation Work?

The identity of individuals who make 51A reports of neglect or abuse are generally kept anonymous by DCF. (You may be able to guess who made the report, but DCF generally will not confirm the reporter’s identity.) When 51A reports are received, DCF performs an intake process. During the call, a DCF intake professional screen the call to determine if the report is sufficiently credible to warrant a DCF investigation. If the intake professional determines that abuse or neglect may have occurred, DCF then opens what is commonly known as a 51B investigation. (Terminology tip: DCF rules surrounding the initial report are dictated by [G.L.c. § 51A](#). The intake process, emergency actions and broader investigation fall under [G.L.c. § 51B](#). Hence, the “51A report” and “51B investigation”.)

In most instances, DCF determines whether it will “screen in” or “screen out” an investigation immediately after receiving call. However, [110 CMR 4.21](#) provides DCF with some flexibility to screen out calls if “the reporter has no reasonably current information to convey” (i.e. allegations are too old), the caller has a “demonstrated history of unreliability” (i.e. allegations appear untruthful), or the same allegations have previously been “investigated and found to be without merit”. In some situations, DCF may contact a parent or caregiver before screening out a report pursuant to [110 CMR 4.21](#). In most instances, however, a call or letter from DCF means that the parent or caregiver’s case has been “screened in”, and the investigation is already underway. In extreme or emergency situations, DCF may take emergency custody of children if the Department determines that conditions pose an “immediate danger to the life, health, or physical safety” of a child.

What Happens Next: The Home Visit, Child Interviews, and Collateral Contacts

During an initial investigation, the DCF investigator is required to meet the child in person and perform at least one in-person visit at the child’s home, although the visit may be waived if the alleged abuse or neglect occurred outside the home (such as at a day care provider). If parents refuse to provide access to the child, the DCF investigator has a variety of options. However, [110 CMR 4.27](#) makes clear that preventing DCF from seeing the child will not prevent the Department from entering a supported finding of neglect or abuse or taking custody of the child if the Department determines that an emergency exists.

In addition to meeting with the child and making a home visit, the DCF investigator will seek an interview with the parent or caregiver who is accused of abuse or neglect. In most instances, DCF will seek interviews with other parents or stepparents and other children and family members who live in the home. Depending on the age of the children and nature

of the allegations, DCF commonly makes contact with teachers, therapists, doctors, police and service providers for the children. The investigator may review the children's medical or educational records, as well as other documents he or she may request from a variety of sources.

Under [110 CMR 4.31](#), DCF is supposed to complete the investigation in 15 days. In practice, investigations can sometimes take much longer than this. Factors affecting the duration of the investigation are often beyond a parent or caregiver's control, and can be the product of internal DCF issues such as staffing levels and supervisor discretion. A longer investigation poses certain risks, but also presents parents and caregivers with opportunities to satisfy DCF's concerns about child-related issues and avoid a supported finding of neglect or abuse.

Know Your Rights and Options when DCF Calls

Most parents and caregivers are so scared or nervous when they receive a call from DCF that individuals don't always consider about what they can do to protect themselves. All too often, people do not know their rights, or even worse, rely on DCF to tell them their rights. This is unwise. DCF investigators are trained to gain the trust of the individuals under investigation. And unlike a criminal investigation, DCF investigators are not required to advise individuals of their *Miranda* rights.

Most parents and caregivers elect to speak with a DCF investigator, and in many scenarios, direct communication with DCF is the wisest course. Perhaps unsurprisingly, individuals who elect from the beginning not to cooperate with DCF or refuse to engage in any communications with the investigator, tend to trigger longer, more complex investigations and/or assessments, which is often counterproductive.

Consider Having an Attorney Present During Home Visits and Interviews

Once a 51A/B investigation has been opened, it is important to know that DCF will probably want to meet you in person and enter your home. It is also important to know that individuals under investigation have the right to have an attorney present. In many instances, having an attorney present during DCF interactions offers important protections. Dealing with DCF is a tricky matter and can lead you and your family down a slippery slope. If the allegations include a potential crime, any statements parents or caregivers make to DCF could be used against them in a criminal proceeding. Even when criminal exposure is not a concern, an attorney can help ensure that parents and caregivers provide appropriate responses, avoid needless oversharing, and avoid (often unintentional) behavior that DCF may regard as suspicious or concerning.

Like anyone conducting an investigation, DCF investigators may tell individuals words to the effect of: "You don't need an attorney if you didn't do anything wrong." The unspoken implication in such conversations is that only "guilty" people hire attorneys. In my experience, however, a seasoned DCF attorney can quickly convince investigators that his or her role is precautionary, and that the attorney can actually help DCF conduct an orderly, efficient investigation.

How Does DCF Decide if a Report of Neglect or Abuse Should be “Supported”?

Under [110 CMR 4.32](#), DCF identifies a number of factors that investigators and supervisors consider when making a determination of neglect or abuse:

Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g., professionals, credible family members); and the social worker and supervisor's clinical base of knowledge.

Much like police work, DCF search for corroborating evidence and testimony. Physical evidence of abuse supported by medical records and witness testimony is likely to result in a finding of abuse. Clearly, the statements of a child made directly to the investigator are critical parts of the evidentiary puzzle, while child statements to independent third parties (such as teachers, doctors or therapists) also carry weight. Intentional or inadvertent admissions made by parents and caregivers also play a critical role.

Know the Consequences of DCF’s Involvement with Your Family

After the initial screening process, a complete 51A/51B non-emergency investigation can last weeks or months. The investigation generally includes multiple home visits, spread out over time, as well as multiple contacts between the DCF investigator and the children and parents involved. The duration of such investigations can be hard to predict. Although state regulations require DCF investigators to adhere to time limits, the practical reality is that investigators can (and will) extend the investigation for as long as they feel is necessary.

At the conclusion of the investigation, DCF must determine if neglect or abuse occurred. If DCF finds that neglect or abuse occurred, it will enter a finding that the allegation was “supported”. If no neglect or abuse occurred, DCF will enter a finding of “unsupported”. If the evidence was ambiguous, or if DCF has concerns about the family that do not rise to the level of neglect or abuse, then DCF may enter a finding of “[substantiated concern](#)”.

The consequences of these findings include:

- **Unsupported** – Generally no further involvement with family and DCF, but DCF may still refer criminal conduct it identifies during its investigation to the local District Attorney.
- **Supported** – The parent or caregiver is added to DCF’s Central Registry, which may create employment or background check consequences, such as CORI checks performed for school-related activities. Also triggers further DCF involvement through a [family assessment](#) and a service plan, which can include counseling, treatment and behavioral goals. If DCF refers the case to a District Attorney, parent or caregiver added to additional “Alleged Perpetrator” list, even if DA does not pursue charges or charges are dismissed. Supported findings of neglect or abuse can be appealed through the fair hearing process.

- **Substantiated Concern** – The parent is not added to DCF’s Central Registry or “Alleged Perpetrator” list, even if DCF makes referral to DA. Often triggers further DCF involvement through a [family assessment](#). If DCF investigators subsequently find evidence of neglect or abuse during the family assessment, a new 51A/51B investigation may begin while the family assessment is ongoing. Findings of substantiated concern can be appealed through the grievance process.

Even if DCF enters an unsupported finding, a family’s involvement with DCF can have consequences. DCF frequently speaks directly with children’s teachers, therapists, medical professionals and others. If parents are divorced or separated, DCF’s involvement with a parent can have profound effects in [child custody proceedings](#) in the Probate Court. Copies of DCF records from the investigation are not available to the general public, but may be obtained and used in other legal proceedings, such as [child custody](#) or criminal proceedings, in which statements made by children, parents and witnesses could impact the proceedings.

Minimizing Harm When DCF Will Enter Supported Finding of Neglect or Abuse

It’s important to know that sometimes “the facts are the facts”, and no amount of clever wording or strategic thinking will prevent DCF from entering a supported finding of neglect or abuse. Parents and caregivers with substance abuse problems, or individuals who have been caught committing crimes, may face overwhelming evidence when DCF investigates.

Of course, a supported finding of neglect or abuse is not the end of the story for most DCF-involved parents and caregivers. DCF typically continues its involvement with the family after the supported finding enters, and how the parent and caregiver conducts him or herself with DCF during the investigation can often have a bigger impact on their lives than DCF’s administrative finding of neglect or abuse.

Just because a parent or caregiver is likely to be subject to a supported finding of neglect or abuse does not mean that the individual should (a.) avoid dealing with DCF completely or (b.) reveal every confidence to the Department. Managing the fallout from a supported finding requires smart tactics and careful planning.

For parents facing a criminal investigation, DCF’s continued involvement with the family can pose serious complications, where evidence and statements obtained by DCF can be used by police and prosecutors in the criminal case. Similarly, divorce or separated parents often feel the impact of DCF’s involvement in child custody cases, where DCF records are often fully admissible as evidence in child custody cases.

Finally, even parents and caregivers who are subjected to a supported finding of neglect or abuse have an opportunity to reverse such a decision through a [fair hearing appeal](#). The strength of the parent’s appeal often depends on the choices made by the parent during the investigation. Parents who make smart decisions during the investigation process often have a better chance of succeeding on appeal.

L&O
DIVORCE & FAMILY LAW ATTORNEYS

Need a family law lawyer? Hire the Best

Need a Department of Children and Families Attorney?

CONTACT NICOLE TODAY!

Nicole Levy
Senior Associate Attorney

Know Your Rights After DCF Enters a Finding

Other than informing you of your right to appeal through a [fair hearing](#) or [grievance](#), DCF generally does not explain your rights after it enters a supported finding or a finding of substantiated concern. In either case, DCF will expect you to participate in a [family assessment](#) – which often feels like a continuation of the investigation – and may ask you to sign a voluntary “service plan” in which you agree to accept services such as counseling, treatment and behavioral rules.

Responding to a service plan request from DCF can be enormously challenging, as parents and caregivers seek to balance the desire to satisfy DCF’s request against the risks involved with executing the service plan. Other complexities include how the family assessment or service plan may be affected if you plan on filing a grievance or appeal.

Every parent or caregiver who is subject to a supported finding or substantiated concern finding must weigh their next steps carefully, particularly in the [family assessment](#) phase to follow. Invariably, a balance must be struck between protecting the individual’s rights and privacy, and his or her desire to satisfy DCF’s request so that the Department concludes its involvement in the individual’s life.

Ask for a Copy of Your DCF Report in Writing

Parents and caregivers can request a copy of DCF’s written report at the conclusion of the 51A/51B investigation. In general, requests for the report must be made in a written letter signed by the parent or caregiver and addressed to the DCF area office responsible for the investigation.

Information relating to the initial (anonymous) report of neglect or abuse is generally redacted in the DCF report provided to parents and guardians, as are subsequent DCF contacts with the initial reporter. However, unredacted DCF records may be produced to the Probate Court in child custody proceedings affecting a parent or child. Generally speaking, the redacted DCF report provides an explanation of how and why DCF reached its conclusion, including summaries of interviews conducted with witnesses other than the initial reporter. Without a report, it can be difficult to determine whether a parent or caregiver should proceed with a fair hearing or grievance.

Speak with an Attorney if You Are Under Investigation by DCF

You have the right to have a [qualified DCF attorney](#) present throughout the entire DCF investigation process. Your attorney can guide you through the process and liaise between you and DCF when necessary.

Having counsel on your side can help mitigate the challenges surrounding a DCF investigation and assist you minimizing the Department's involvement in your life.

About the Author: [Nicole K. Levy](#) is a Massachusetts divorce lawyer and Massachusetts family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. She is also a mediator for [South Shore Divorce Mediation](#).

Schedule a consultation with [Nicole K. Levy](#) today at (781) 253-2049 or send her an [email](#).

© Lynch & Owens, P.C. and [www.lynchowens.com](#),2019. Unauthorized use and/or duplication of this material without express and written permission from this site's author and/or owner is strictly prohibited. Excerpts and links may be used, provided that full and clear credit is given to Lynch & Owens, P.C. and [www.lynchowens.com](#) with appropriate and specific direction to the original content.