

Read more at www.lynchowens.com/blog

Do Not Underestimate the Seriousness of a DCF Investigation

By Nicole K. Levy | November 11, 2019

Family Law Department of Children and Families

DCF attorney Nicole K. Levy examines common mistakes made by parents and caregivers under investigation by DCF for child neglect or abuse.



Investigations of parents and caretakers by the Department of Children and Families (DCF) for allegations of child abuse or neglect are a serious matter that often have significant, lasting impacts on the lives of individuals subject to a [DCF investigation](#). Too many parents and caregivers react to DCF involvement in their lives by dismissing the seriousness of their situation or mistakenly believing that DCF will quickly wrap up its investigation without finding fault with the individual. During many DCF investigations, parents and caregivers only realize their exposure [after DCF has](#)

[completed most of its investigation](#). This often leads to serious complications in the personal and professional lives of individuals who are subject to DCF investigations.

Don't be in Denial About How DCF Works

All too often, when a parent or caretaker learns that DCF is conducting an [investigation for child abuse or neglect](#), the individual's thought process goes something like this: *DCF won't find anything about my family, we have nothing to worry about, I will just tell them what happened and they will understand, etc.* It is part of a DCF investigator's job to make the subject of an investigation feel comfortable, so that the individual discloses information more freely to the investigator. However, DCF can and does enter [supported](#)

[findings of neglect or abuse](#) against parents and caretakers on multiple grounds. Indeed, in many instances, DCF will enter a supported finding in response to behavior that the parent or caretaker did not even realize was problematic.

Individuals often find that once DCF has entered a supported or [substantiated concern finding](#), it is [much more difficult to disentangle their lives from DCF](#) than they ever thought possible. To avoid long-term DCF involvement with a family, parents and caregivers must take DCF investigations extremely seriously, from the moment they learn of DCF's involvement until receiving notice of an unsupported finding.

DCF Investigations Dive Deeply into Subjects' Lives

The first misconception individuals have about the [first steps of DCF investigation](#) is often that the investigation will be simple. Parents and caretakers assume that DCF will hear their story, recognize there's been a misunderstanding, and simply go away. However, this is rarely the case. DCF investigators have a job to do, and they tend to pursue investigations diligently, regardless of the outcome of the investigation. DCF investigations are invasive, thorough and are often not confined to the allegations that prompted their involvement. Each "witness" the DCF investigator speaks with during the process tends to add new and (often concerning) details to the investigator's report.

DCF has the right and obligation to conduct interviews during the investigation period. These interviews will likely include you, your significant other, [the child or children in question](#), and children who are not in question. If the [initial 51A report](#) included police involvement, DCF will generally obtain the police report and contact witnesses identified within the police report. If the allegation was reported by a doctor or teacher, DCF will contact the reporter, examine records relating to the child, and seek out other professionals in the child's life to speak with. DCF has a statutory right to interview collateral persons as they see fit, such as a child's school, therapist, daycare provider and/or neighbors. DCF can share what information they have obtained, "comparing notes" with various professionals. They can even inspect your home.

Amidst the heavy scrutiny of the investigation, the DCF investigator will often take steps to put the subject of the investigation at ease. The DCF investigator is unlikely to tell you if your statement is contradicted by another collateral or even your child. The investigator is not required to tell you what they know or have heard from others. Indeed, most DCF investigators adopt an outwardly

sympathetic relationship with interview subjects, expressing empathy and understanding with the subject – leading the subject to believe that investigator understands his or her position, and may even be “on their side”.

DCF Defines Child Neglect Very Broadly

Few individuals realize that DCF’s definition of “neglect” and “abuse” is so broad that it can encompass large swaths of parenting and child supervision behavior that many may feel is acceptable. The definition of child neglect, in particular, often shifts based on short-term trends of what might define as “bad parenting”. Under [110 CMR 2.00](#), child neglect is defined as follows:

Neglect means failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is not dependent upon location {i.e., neglect can occur while the child is in an out-of-home or in-home setting.)

Although the formal definition of “neglect” exempts parental conduct that is “due solely to inadequate economic resources”, such as temporary homelessness or an inability to pay for heat, the reality is that DCF frequently enters supported findings of neglect for a broad range of parental “corner cutting” – such as leaving children unsupervised for short periods of time – that may be unavoidable for working parents, parents who cannot afford childcare, etc.

Perhaps most confusingly, DCF may find the exact same parenting behavior constitutes neglect with one family, but not with another. This variability arises out of DCF evaluating parental behavior based on the specific needs of individual children. In other words, DCF may find that some 13-year old children may have the maturity to be left alone in a babysitting role over their younger children. Another 13-year old may lack the responsibility to care for even him or herself when alone. Moreover, where DCF can enter a supported finding of neglect for failing to provide a child with “emotional stability and growth”, outcomes can vary drastically between children based on each child’s individual needs.

What Constitutes “Child Abuse” in Massachusetts is Dangerously Unclear

With respect to findings of child abuse, it is again important to remember that DCF is not subject to the legal standard for child abuse in a criminal case (although DCF does work with police to investigate such allegations).

Under [110 CMR 2.00](#), child abuse is defined as follows:

Abuse means the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. Abuse is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting.)

As with the definition of child neglect, it is important to study the words. The above definition permits DCF to make a supported finding of child abuse against a parent who “creates a substantial risk of ... emotional injury” for a child. Consider briefly what it *might mean* for a parent to “create” a “risk” of “emotional injury” for a teenager.

Although DCF findings are not criminal in nature, one can still gain insight into DCF’s approach to child abuse investigations by looking at the very murky law surrounding criminal child abuse in Massachusetts. In our blog, [A Massachusetts Problem: Parental Discipline vs. Child Abuse](#), we reviewed the blurry line between criminal assault and strict parenting in Massachusetts:

[A] parent or guardian may not be subjected to criminal liability for the use of force against a minor child under the care and supervision of the parent or [guardian](#), provided that (1) the force used against the minor child is reasonable; (2) the force is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (3) the force used neither causes, nor creates a substantial risk of causing, physical harm (beyond fleeting pain or minor, transient marks), gross degradation, or severe mental distress.

Obviously, opinions vary *widely* on what constitutes “reasonable force” for a parent who physically disciplines a child. (For that matter, what constitutes “severe mental distress” for a child struck by his or her parent?) In the DCF

context, it is important to understand that DCF can enter a supported finding of child abuse against a parent or caretaker *even if* the individual can articulate a defense under the criminal standard for abuse defined above. Unlike a criminal court, DCF does not need to prove child abuse beyond a reasonable doubt when it enters a supported finding of child abuse.

Finally, it should be noted that in borderline cases involving allegations of child abuse, DCF frequently issues a supported finding of “neglect” if the conduct falls somewhat short of “abuse”. Although a finding of “neglect” is arguably less serious than a finding of “abuse”, parents who are subject to a supported finding of neglect often see little difference in terms of DCF’s ongoing involvement with the family. Indeed, even the less serious finding of “substantiated concern” often subjects families to weeks or months of [additional DCF involvement following the conclusion of the investigation](#).



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

DCF is not on Your Side, even when an Investigator Acts Like It

On a final note, DCF is not on your side. The investigator is not spending time in your home, interviewing your family, and whatever else they may do to work to exonerate you. While an investigator may ultimately be seeking to “determine the truth”, the investigator is certainly not acting with your interest in mind. Nevertheless, DCF investigators are trained to develop a rapport with investigation subjects.

Your investigator is likely to express sympathy towards your positions and empathy towards your situation. He or she is likely to express agreement with your opinions. In some instances, the investigator’s sympathy may be genuine. But it is essential to remember that DCF investigators, like police detectives, work extremely hard to gain the trust and cooperation of subjects/suspects during the evidence gathering process.

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.