

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	AND
____ JUDICIAL CIRCUIT)	FAMILY COURT
)	
COUNTY of _____)	
)	Model Administrative Order/Protocol
)	

Pursuant to the authority vested in these courts, the following Administrative Order is hereby adopted in the _____ Judicial Circuit.

The Court hereby declares and orders that all child abuse or neglect cases arising after date (_____) which involve both a Family Court child protection action and criminal charges shall be processed in a coordinated manner. Coordination is designed to minimize trauma to child victims, harmonize the goals of state intervention, and prevent the entry of inconsistent Orders while ensuring procedural fairness to the accused. The following rules are adopted to provide this coordination:

I. Receipt of Report / Investigation

1. Reports of child abuse or neglect may be made to the county DSS or law enforcement agency. Either agency must notify the other within 24 hours of receipt of a report. Law enforcement must also notify the solicitor's office and DSS must notify its attorney of receipt of a case that falls under this Order.
2. The Department of Social Services and law enforcement agency shall coordinate their investigations.
3. Interviews of the child shall be coordinated to avoid unnecessary repeated interviews. S.C. Code Ann. §63-7-920(C).
4. In accordance with S.C. Code §63-7-670, DSS must obtain concurrence of the law enforcement officer prior to returning a child home or placing with a relative following emergency removal.
5. When a child is placed with a relative and not taken into the legal custody of DSS, DSS must continue its investigation in coordination with law enforcement and may petition the Family Court for authority to intervene.

II. Probable Cause Hearing (Family Court)

1. The DSS attorney is responsible for notifying the solicitor of a probable cause hearing. This may be done by either fax or e-mail.
2. The solicitor and/or law enforcement officer may submit an affidavit with recommendations concerning placement of the child or contact with the defendant.

III. **Bond Hearing** (order of numbers in the section has changed slightly)

1. Conditions of bond regarding contact with the victim should be consistent with the Family Court order.
2. If no Family Court order exists at the time of the bond hearing, the judge may note that orders regarding contact between defendant and victim are subject to modification by the Family Court.
3. A “Bond Modification Hearing” may be scheduled by the Solicitor or the Assistant Solicitor in the appropriate court, as needed, to address and reconcile inconsistencies between bond conditions and conditions of the Family Court Order or DSS Treatment Plan.

IV. **Joint Conference**

1. A joint conference shall be held prior to the first call merits hearing.
2. The following should be present: DSS investigative worker, DSS attorney, investigating law enforcement worker, solicitor, or assistant solicitor assigned to the case, and guardian *ad litem* for child. Unless otherwise agreed upon, DSS is responsible for notifying other parties.
3. The purpose of this conference is to review the investigation and evidence, and develop, if possible, consistent case goals. (I.E. family reunification vs. termination of parental rights; incarceration vs. probationary sentence or dismissal of charges)
4. The following issues should be discussed: any need for further investigation, examinations, or evaluations; child's placement; visitation; treatment services needed; need for child's testimony in either court and plans for preparing child; need for special accommodations in court; child's best interest.
5. Determine which of the following tracks is most appropriate for processing the case:

Track 1: Defendant will admit to charges in both courts. If family reunification is the goal and the defendant is willing to cooperate with treatment, the solicitor may offer a plea to a reduced charge or a recommendation of probation.

Track 2: Defendant enters agreement in Family Court under deferred prosecution agreement. At discretion of solicitor, prosecution does not proceed during treatment. If the perpetrator complies with Family Court orders and successfully completes treatment, charges will be dismissed. If the perpetrator does not comply, prosecution will proceed. Depending upon the terms of the agreement, admissions made in treatment may or

may not be used in the prosecution.

Track 3: Defendant enters agreement in the child protection action, perhaps with modified findings, but does not admit to the criminal charges.

Track 4: Defendant denies all allegations and will proceed to trial in both courts.

6. If appropriate, prepare a proposed coordinated plan that encompasses a treatment/placement plan and plea offer. This plan shall be circulated to defense counsel.
7. Determine which case will be taken to court first, in light of statutory time requirements, docket status, likelihood of conviction, and child's best interests and need for permanency.
8. Information can be exchanged at this conference as allowed by statute or pursuant to subpoena or consent. [Solicitor and law enforcement have access to DSS file (S.C. Code Ann. §63-7-1990(B)(4) and (19)), including previous unfounded cases (§63-7-940(A)(1)). Law enforcement must provide a copy of the incident report filed in the case and advise DSS of significant developments (§63-7-980(C)), but may withhold information when necessary so as not to jeopardize the investigation. Law enforcement must provide criminal history information (§63-7-990).]
9. A multi-disciplinary team meeting held under the auspices of a Children's Advocacy Center or other organization may be used as the joint conference. (S.C. Code §63-11-310).

V. Initial Appearance / First Call Merits

(Option for jurisdictions that utilize a first call merits system)

1. The Initial Appearance shall be held in conjunction with the first call of the merits hearing, or at another time agreed to by the parties.
2. The following shall be present: defendant and counsel, solicitor, DSS attorney, DSS worker, and guardian *ad litem* and attorney. The DSS attorney is responsible for scheduling the appearance and notifying the other parties.
3. The purpose of the Initial Appearance is to confirm the track to be used for case processing and allow the defendant to consider a joint settlement based on the proposed coordinated plan.
4. If defendants are represented by separate attorneys in the family court and criminal actions, these two attorneys should confer.

VI. Practice in Family Court Child Protection Proceedings

1. The merits hearing must be held within 35 days of receipt of removal petition

unless exceptional circumstances exist (S.C. Code Ann. §63-7-710(E)).

2. The DSS attorney is responsible for notifying the solicitor of all Family Court hearings.
3. The DSS attorney is responsible for informing the Court of the pending criminal matter.
4. A copy of all Family Court orders shall be provided to the solicitor until case disposition.
5. Before a deposition of a child may be conducted, a Family Court judge should hold a hearing to establish its necessity. If the deposition is allowed, the court may impose conditions to protect the child witness consistent with S.C. Code Ann. §16-3-1550(E)(Supp. 2001).
6. If the criminal matter has resulted in a conviction prior to the Family Court hearing, the Family Court may take judicial notice and find abuse. A conviction related to murder, manslaughter, or felony assault of a child may constitute grounds for termination of parental rights. S.C. Code Ann. §63-7-2570(9). Dismissal or lack of conviction of the criminal case has no bearing on the Family Court matter.
7. When a defendant is on probation for child abuse or neglect, the probation or parole officer shall be notified of all hearings.
8. Track 1 cases: Agreements must be submitted to the court.
9. Track 2 cases: Agreement must be submitted to the court.
10. Track 3 cases: Options for Agreements
 - a. An Alford type plea is acceptable in order to proceed with implementation of services. (Defendant acknowledges that the evidence would result in a finding of abuse and agrees to the entry of that finding in the Central Registry.)
 - b. The court may proceed with a treatment/placement plan and a finding that the child is abused or neglected in accordance with statute. The court may hold findings of abuse or neglect against specific defendants in abeyance provided that the defendants submit to the jurisdiction of the court. Any findings held in abeyance must be resolved at a future hearing.
11. Track 4 cases: Solicitor is allowed to observe hearings.

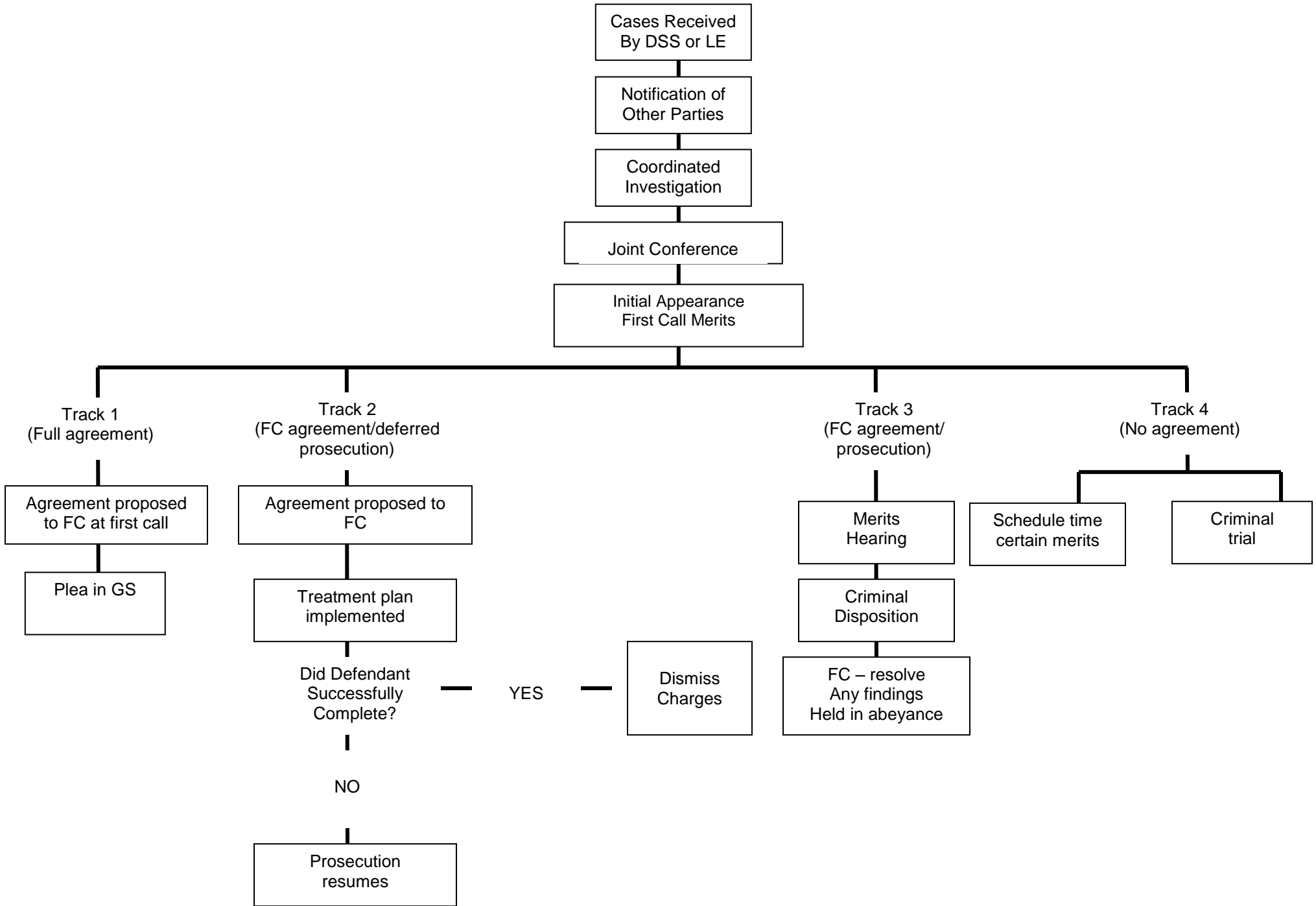
VII. General Sessions Practice

1. The solicitor shall notify DSS and the child's guardian *ad litem* of upcoming court proceedings.

2. Prior to sentencing, the solicitor is responsible for informing the court of the status of the Family Court matter, including whether the defendant has engaged in treatment, and providing copies of existing orders in the case.
3. The child's guardian *ad litem* shall assist the solicitor's staff in completing a Victim Impact Statement to relate the child's wishes and concerns to the court, and to ensure that appropriate notifications are made of defendant's release from incarceration.
4. When a sentence involves probation, consideration shall be given to including compliance with the DSS Treatment Plan and the Family Court order as a condition. The sentence should also provide as a condition of probation that contact with the victim is permitted only as allowed by Family Court Order.
5. At the discretion of the solicitor, cases involving child witnesses may be given priority for disposition.

VIII. Post-Disposition

1. At the time of sentencing, DSS shall request notification by the Department of Corrections of a perpetrator's release if it will occur prior to the victim's eighteenth birthday and, upon such notification, shall initiate an investigation to determine whether the child is at risk.



Option #1: Administrative Order

Name, Chief Administrative Judge
Family Court of the _____ Judicial Circuit

Date

Name, Chief Administrative Judge
General Sessions Court of the _____ Judicial Circuit

Date

Addendum: Case Tracking Summary

Track 1:

Defendant will admit to charges in both courts. A joint settlement offer may be made.

Any agreement is subject to approval by the Family Court.

If family reunification is the goal and the defendant is willing to cooperate with treatment, the solicitor may offer a plea to a reduced charge or a recommendation of probation. When a plea offer involves probation, consideration shall be given to including compliance with the Family Court order and the DSS treatment plan as a condition of probation.

A plea arrangement is subject to approval of General Sessions Court.

Sentencing should be expedited; defendant may be asked to waive indictment and/or preliminary hearing.

Track 2:

Defendant enters agreement in Family Court under a deferred prosecution agreement. At discretion of the solicitor, prosecution does not proceed during treatment. If the perpetrator complies with Family Court Orders and successfully completes treatment, charges will be dismissed. If the perpetrator does not comply, prosecution will proceed. Depending upon the terms of the agreement, any admissions made in treatment may or may not be used in the prosecution.

Agreement is subject to Family Court approval.

Track 3:

Defendant enters agreement in the child protection action, perhaps with modified findings, but does not admit to the criminal charges.

Subject to approval of the Family Court, the agreement may involve one of the following in order to proceed with intervention:

- An Alford type plea; defendant acknowledges that the evidence would result in a finding of abuse and agrees to the entry of that finding in the Central Registry.
- Holding findings of abuse against specific perpetrators in abeyance, provided that the defendants submit to the jurisdiction of the court. Findings held in abeyance to be resolved at a later hearing.

Criminal cases involving child witnesses may be given priority for disposition.

Track 4:

Defendant denies all allegations and will proceed to trials in both courts.

Solicitor is allowed to observe Family Court proceedings.

Criminal cases involving child witnesses may be given priority for disposition.