

Children in SC day cares are safer, but more should be done, experts say

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COLUMBIA, SC Children dying in day care – with all the outrage and pain that brings for families – is being more closely monitored as South Carolina slowly gets better at protecting its youngsters while their parents are at work.

In the more than 20 years since an Irmo day care owner was investigated in the deaths of two babies and the injury of a third, state officials have tightened rules on day cares, especially those run out of private homes like Gail Cutro's.

The 1993 case eventually sent Cutro to prison for life. It also exposed a system failure in how in-home day cares were regulated in South Carolina, how case workers and police investigated child deaths, how pathologists determined whether deaths were natural or crimes and how those problems limited prosecutors in winning convictions.

A local pathologist at the time missed clues that were [red flags for abuse](#), authorities said. That forced investigators to persuade the anguished parents, who thought they'd lost their infants to natural but unexplained deaths, to have their babies exhumed from their tiny caskets.

Ashlan Daniel and Asher Maier were injured at precisely 4 months and 18 days old – an oddity that investigators still don't fully understand. Ashlan died.

Authorities think Parker Colson would have died at the same age, too, had he not been with his parents during the Christmas holidays when the day care was closed. [Parker died](#) the first day he returned to the Cutro home, at age 4 months, 29 days.

Today, police and coroners across South Carolina's 46 counties are better trained. They also are provided with how-to guides for detecting the subtleties of violence to children and for gathering evidence to find the truth.

Other things have changed as well:

- The central investigative body for child deaths, the Special Victims unit at the State Law Enforcement Division, has added more agents.
- Doctors who specialize in injuries to children, which show up differently than in adults, have created a network to help social workers and police.
- Prosecutors also have become specialized and more attuned to how to piece together criminal cases when the victims are among the most vulnerable. Some 4,000 children are victims of abuse every year in South Carolina, said Olga Rosa, director of the Division of Forensic Pediatrics at the University of South Carolina's School of Medicine and one of eight board-certified child abuse pediatricians in the state.
- And the [number of state inspectors](#) who oversee day cares has grown by 17 to 54. Federal money paid for the 17 new inspectors, according to the state's child welfare agency, the Department of Social Services.

Overall, the progress is mixed – from “light-year” improvements in criminal investigations to “snail’s pace” upgrades in regulating child care facilities, according to interviews with investigators, child death instructors, day care regulators and child advocates.

“There’s more good than bad,” said Rep. Shannon Erickson, R-Beaufort, who owns three child care centers and pushes for better regulation. “But there is more potential (with what’s undone) for the bad to affect children.”

Still, much remains to be done, those interviewed said.

Laws that regulate day cares need to be strengthened further. Coroners need to remain vigilant in reporting child deaths to SLED. A state audit disclosed that coroners failed to report 150 child deaths to SLED through 2014.

Parents need to be even more vigilant, and state regulators need to make more information available to help parents select the best and safest places for their children.

Separately, the state's culture that in-home day care is just friends and relatives helping each other and is not a business needs to be recognized for the falsehood that it is, advocates said.

Safe child care

One of the problems regulators and police faced in the Cutro case was determining whether there was a history of problems at the business in the New Friarsgate subdivision about 11 miles from downtown Columbia.

Then, regulators at DSS could not enter in-home day cares unless someone had filed a complaint. The Cutro home was clean, orderly and she appeared to run a safe facility. She also was registered in the wrong county, but no one had figured that out at the time. And Cutro kept more children than the [state limit of six](#).

It took two decades of advocacy before the Legislature agreed to change the law. Now regulators can make unannounced inspections.

Since that law took effect in 2014, 346 in-home day cares have closed, either by choice or because regulators shuttered them, according to DSS records. That's a 27.5 percent reduction just in the aftermath of that singular law.

Just this spring, lawmakers agreed to raise the mandated amount of training for the state's remaining, 900-plus in-home providers from two hours to 10 hours. Regulators also were granted the authority to shut down day care operators who fail to comply – or keep them from opening in the first place.

In addition, internal communication at DSS between child abuse caseworkers and day care regulators has improved greatly since the Cutro case, when one division had little knowledge of what the other was doing.

“I think it's a huge improvement and something that other states look to emulate,” said Leigh Bolick, who heads the agency's child care division. “It was gradual,” she said of changes within DSS, “but it was really an important march to move forward.”

Another new requirement for in-home providers is that they submit fingerprints to SLED for criminal background checks. That includes anyone 15 or older who lives, moves into or works at such facilities.

Crime victim advocate Laura Hudson said the expanded background checks will help protect children when a relative or boyfriend moves in or already is in the house but is not listed as a day care employee.

Hudson, who also serves on child safety organization boards, said the state also needs to require FBI fingerprint checks to catch people with poor track records who come to South Carolina to open day cares. “We had found that people who had been dinged (sanctioned) in other states had come here to start over.”

According to SLED’s figures, 1,096 children 17 or younger have died in the five years between 2011 and 2015. Of those, seven happened in day care. None of those, however, were determined to be homicides.

Child death investigations

SLED had just created its Child Fatalities Division when suspicion slowly fell on Cutro.

Patsy Lightle became a self-taught expert in investigating child deaths and led a small team of agents. The team’s painstaking work led to the prosecutions of Cutro, whom authorities said suffered from a little-known, oddly named mental disorder called [Munchausen syndrome by proxy](#). The affliction usually prompts mothers to hurt children to draw sympathy to themselves. The proxy reference means the attacker is not related to the victims.

Lightle said that law enforcement officers even in the early ’90s knew little about the nuances of investigating child deaths. Doctors had a propensity for signing off on unexplained deaths as Sudden Infant Death Syndrome (SIDS), which now has been all but abandoned as a formal cause of death for babies.

“They say it’s like investigating any death,” the meticulous Lightle recently said of child fatalities. “But, guess what? It’s not.”

Children’s bodies are not fully developed, so trauma shows up differently. Babies leave even fewer clues. Police must document every detail, take hundreds of photographs from every angle, scrutinize medical, family and social histories – and much, much more, Lightle said.

She has compiled her decades of experience into written guidelines that are presented to medical professionals, coroners, police, ambulance workers, teachers and others who deal with children. Lightle, now retired from SLED and working at USC’s Children’s Law Center, estimates she and others have taught child death investigation courses to more than 3,600 people just since she joined the center in January 2014.

Her successor at SLED, Capt. Michael Greene, said the child fatalities unit has 12 agents, including supervisory lieutenants. That specially trained team recently grew by four agents because the Legislature authorized the new positions, Greene said.

“They do child death investigations every day,” he said. “Your average SLED agent and your average police officer might see a few in their careers. We have greatly improved in terms of our unit.”

SLED hands out postcards to police and others who encounter children who die without an obvious cause of death. The cards advise the 10 things they should do to handle such cases properly, including using dolls that SLED distributes for re-enactments by people who last were with a child. Videotape the re-enactments, the cards suggest.

None of that existed in South Carolina when the babies were hurt in Cutro’s home.

Current investigative teams tend to be concentrated in the state’s three largest urban areas. But they lend their expertise widely, said Rosa, who works with Palmetto Health Richland hospital through USC.

“There are 330 certified child abuse pediatricians in the U.S.,” she said. “Of those, eight are here in our little state.”

Coroners also have upgraded their training and are members of teams that examine child deaths, many of them caused by adults and older teenagers who fall asleep next to babies and inadvertently suffocate them.

Richland County Coroner Gary Watts said the local team includes three forensic pathologists who conduct autopsies. “We have come light-years from where we were in child death investigations,” Watts said.

But he’s pushing for a state law that requires an investigative team in child death cases and for a minimum salary for part-time coroners, which comprise 75 percent of South Carolina’s 46 elected coroners.

That proposal nearly passed in the most recent legislative session, until someone put a last-minute amendment on it, a noticeably frustrated Watts said.

“We’re going to try again this (2017) year.”

Winning in court

To convict Cutro, Richland County prosecutors had to overcome major obstacles.

First, they had to [override a pathologist's findings](#) that Ashlan and Parker died naturally of unexplained causes, SIDS, eight months apart at Cutro's day care.

Prosecutor Johnny Gasser argued that the pathologist, who did autopsies for nearly every homicide case that went to court in Richland and Kershaw counties, dismissed microscopic blood clots in the babies' eyes and brains called petechial hemorrhages.

Authorities consulted with a nationally known forensic pediatric pathologist who had done some 4,000 child autopsies, and she confirmed that kind of internal bleeding is a red flag for trauma.

SLED arranged to exhume the babies to confirm they were killed. Then Gasser had to call out-of-state experts to discredit the local pathologist.

Those kinds of difficulties are unlikely to happen today, said 8th Circuit Solicitor David Stumbo, who has prosecuted several child death cases in his circuit in Abbeville, Greenwood, Laurens and Newberry counties.

"You would be hard pressed now to find a pathologist in the state who would make that mistake," Stumbo said of failing to interpret correctly the tiny blood clots.

His office uses the team approach and consults with experts at Greenville Hospital System, which includes a pediatric ophthalmologist.

Doctor Nancy Henderson is a certified child abuse pediatrician at the Upstate hospital. She said the team meets weekly to review all child deaths, many of which happen in beds or cribs and involve unsafe sleeping practices.

Stumbo said emergency room doctors have become far more attuned to evidence of child abuse. They gather medical evidence quickly and report their concerns to authorities.

"You have to build a (criminal) case not on eyewitness testimony but on medical evidence," he said.

But prosecutors have been hampered by a S.C. Supreme Court decision a few years ago that is making it harder to take some cases to court, Stumbo said.

The justices restricted using one defendant's account against another defendant's version – the so-called "hand of one is the hand of all" prosecutorial technique. That technique allows police and prosecutors to discern the least culpable person and pressure them to testify against the other or others in exchange for a lesser sentence.

“It makes it very difficult to try two defendants jointly in a child homicide case,” Stumbo said. “I think it had a somewhat chilling effect on prosecutors.”

Hudson, the crime victim advocate, said she is working on a legislative bill that would attempt to get around that court ruling.

Hudson describes the investigative advancements as dramatic. As for day care regulation, things have improved at a “snail’s pace,” she said.

Hudson wants DSS to better inform parents about the vast differences between facilities that are merely registered and those that meet stricter licensing standards.

Overall, Hudson said, better safety for South Carolina’s children is about resources: “It’s going to take money and warm bodies.”