Religious Exemptions to Child Neglect

Last Updated February 2015

Summary of Content

39 states, the District of Columbia and Guam have laws providing that parents or caretakers who fail to provide medical assistance to a child because of their religious beliefs are not criminally liable for harm to the child. There is also no Federal requirement that a parent or legal guardian provide a child any medical treatment that is against the religious beliefs of the parent or legal guardian.¹

At the time Congress passed the Child Abuse Prevention & Treatment Act in 1974 to create a uniform approach to child abuse, it deferred to the Department of Health, Education and Welfare (now Health and Human Services) to determine the religious exemption policies of the act.² HEW mandated that the states adopt religious exemptions to child neglect before they could receive federal funding for state child-protection programs.³ Although the department adopted new regulations in 1983 striking down this requirement,⁴ few states have repealed these religious exemption laws. Most of these statutes require that in order for religious beliefs to be a valid reason for denying a child medical care, the religion must be a recognized church or a religious denomination. The Supreme Court had not addressed whether or not neglect exemptions for religious purposes violate the Establishment Clause.⁵

³ Id.
⁴ Id.
⁵ Id. at 394.
Scope of Compilation

This document is a comprehensive compilation of Religious Exemption statutes from all U.S. jurisdictions including states, territories, and the federal government. It is up-to-date as of February 2015. Please note that we recommend checking both case law and current legislation in addition to the statutes listed below.

For further assistance, consult the National District Attorneys Association’s National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

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National District Attorneys Association

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ALABAMA


For purposes of this article, the following words and phrases shall have the following meanings:

(1) Abandonment. A voluntary and intentional relinquishment of the custody of a child by a parent, or a withholding from the child, without good cause or excuse, by the parent, of his or her presence, care, love, protection, maintenance, or the opportunity for the display of filial affection, or the failure to claim the rights of a parent, or failure to perform the duties of a parent.

(2) Abuse. Harm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.

(3) Caregiver. An individual 21 years of age or older, other than a parent, legal guardian, or legal custodian of a child who is an approved foster parent and who is a relative of the child and has been providing care and support for the child while the child has been residing in the home of the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

(4) Child-placing agency. The same as the term is defined in subdivision (3) of Section 38-7-2.

(5) Eligible child. In addition to the definition of child in subdivision (3) of Section 12-15-102, an individual under 18 years of age who has been residing with the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.
(6) Kinship guardian. A caregiver who is willing to assume care of a child because of parental incapacity of a parent, legal guardian, or legal custodian, or other dependency reasons, with the intent to raise the child to adulthood, and who is appointed the kinship guardian of the child by a juvenile court. A kinship guardian shall be responsible for the care and protection of the child and for providing for the health, education, and maintenance of the child.

(7) Neglect. Negligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.

(8) Parental incapacity. Abandonment or incapacity of such a serious nature as to demonstrate that the parent, legal guardian, or legal custodian is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of the child.

(9) Protective supervision. A legal status created by order of the juvenile court following an adjudication of dependency whereby a child is placed with a parent or other person subject to supervision by the Department of Human Resources.

(10) Reasonable efforts. Efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from his or her home, and to make it possible for a child to return safely to his or her home. Reasonable efforts also refers to efforts made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanency placement of the child. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern.

(11) Relative. An individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great grandparent, great-aunt, great-uncle, great great grandparent, niece, nephew, grandniece, grandnephew, or a stepparent.

(12) Sexual abuse. Sexual abuse includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children, or incest with children, as those acts are defined in this article or by Alabama law.

(13) Sexual exploitation. Sexual exploitation includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.

(14) Termination of parental rights. A severance of all rights of a parent to a child.

CREDIT(S)
AL. CODE § 26-14-7.2 (2015). CHILD DENIED MEDICAL TREATMENT DUE TO PARENTS’ RELIGIOUS BELIEFS

(a) When an investigation of child abuse or neglect by the Department of Human Resources determines that a parent or legal guardian legitimately practicing his or her religious beliefs has not provided specific medical treatment for a child, the parent or legal guardian shall not be considered a negligent parent or guardian for that reason alone. This exception shall not preclude a court from ordering that medical services be provided to the child when the child's health requires it.

(b) The department may, in any case, pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, as may be necessary to provide medical care or treatment for a child when the care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from infants with disabilities and with life-threatening conditions. Upon application by the department, the court may issue prelitigation or pretrial discovery orders for persons, medical records, and other documents or materials.

CREDIT(S)


(a) A man or woman commits the crime of nonsupport if he or she intentionally fails to provide support which that person is able to provide and which that person knows he or she is legally obligated to provide to a dependent spouse or child less than 19 years of age.

(b) “Support” includes but is not limited to food, shelter, clothing, medical attention and other necessary care, as determined elsewhere by law.

(c) “Child” includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(d) Nonsupport is a Class A misdemeanor.

CREDIT(S)

(Acts 1977, No. 607, p. 812, § 7025.)
ALABAMA


(a) A man or woman commits the crime of endangering the welfare of a child when:

(1) He or she knowingly directs or authorizes a child less than 16 years of age to engage in an occupation involving a substantial risk of danger to his life or health; or

(2) He or she, as a parent, guardian or other person legally charged with the care or custody of a child less than 18 years of age, fails to exercise reasonable diligence in the control of such child to prevent him or her from becoming a “dependent child” or a “delinquent child,” as defined in Section 12-15-1.

(b) A person does not commit an offense under Section 13A-13-4 or this section for the sole reason he provides a child under the age of 19 years or a dependent spouse with remedial treatment by spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical treatment.

(c) Endangering the welfare of a child is a Class A misdemeanor.

CREDIT(S)
(Acts 1977, No. 607, p. 812, § 7035.)

ALASKA

**ALASKA STAT. § 11.51.120 (2015). CRIMINAL NONSUPPORT.**

(a) A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child the person knowingly fails, without lawful excuse, to provide support for the child.

(b) As used in this section “support” includes necessary food, care, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(c) Except as provided in (d) of this section, criminal nonsupport is a class A misdemeanor.

(d) Criminal nonsupport is a class C felony if the support the person failed to provide is monetary support required by a court or administrative order from this or another jurisdiction and, at the time the person knowingly failed, without lawful excuse, to provide the support,

(1) the aggregate amount of accrued monetary child support arrearage is $20,000 or more;

(2) no child support payment has been made for a period of 24 consecutive months or more; or

(3) the person had been previously convicted under this section or a similar provision in another jurisdiction and

(A) the aggregate amount of accrued monetary child support arrearage is $5,000 or more; or
(B) no child support payment has been made for a period of six months or more.

(e) In addition to the provisions of (c) and (d) of this section, criminal nonsupport is punishable by loss or restriction of a recreational license as provided in AS 12.55.139.

(f) In this section,

(1) “child” means a person

(A) under 18 years of age; or

(B) 18 years of age or older for whom a person is ordered to pay support under a valid court or administrative order;

(2) “child support” means support for a child;

(3) “without lawful excuse” means having the financial ability to provide support or having the capacity to acquire that ability through the exercise of reasonable efforts.

CREDIT(S)

ARKANSAS


As used in this chapter:

(1) “Board” means the State Child Abuse and Neglect Prevention Board created by this chapter;

(2) “Child” means a person under eighteen (18) years of age;

(3) “Child abuse” means any nonaccidental physical injury, mental injury, sexual abuse, or sexual exploitation inflicted by those legally responsible for the care and maintenance of the child, or an injury that is at variance with the history given. The term encompasses both acts and omissions;

(4) “Local council” means an organization formed under regulations prescribed by the board consisting of an employee of the Department of Human Services, an employee of the Department of Health, an employee of a public secondary or elementary school, an employee of the county sheriff’s office or a city police department, a citizen at large, and any other persons deemed necessary by the board including, but not limited to, representatives from other groups or entities involved with child abuse and neglect or family violence;

(5) “Neglect” means:

(A) Failure to provide, by those legally responsible for:
(i) The care and maintenance of the child and the proper or necessary support;

(ii) Education, as required by law; or

(iii) Medical, surgical, or any other care necessary for his or her well-being; or

(B) Any maltreatment of the child. The term includes both acts and omissions. Nothing in this chapter shall be construed to mean a child is neglected or abused for the sole reason he or she is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment;

(6) “Parenting-from-prison program” means classes or services provided to incarcerated parents at any detention or correctional facility;

(7)(A) “Prevention program” means a system of direct provision of child abuse and neglect primary and secondary prevention services to a child or guardian and includes research programs related to prevention of child abuse and neglect.

(B)(i) “Primary prevention” means programs and services designed to promote the general welfare of children and families.

(ii) “Secondary prevention” means the identification of children who are in circumstances in which there is a high risk that abuse or neglect will occur and assistance is necessary and appropriate to prevent abuse or neglect from occurring; and

(8) “Program for the children of prisoners” means school or community-based services provided to:

(A) The children of individuals incarcerated in any detention or correctional facility; or

(B) The caregivers of children of individuals incarcerated in any detention or correctional facility.

CREDIT(S)
A.C.A. § 9-30-103, AR ST § 9-30-103

CALIFORNIA


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As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) “Severe neglect” means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) “General neglect” means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

CREDITS


As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

CREDITS

(Added by Stats.1987, c. 1459, § 9. Amended by Stats.2004, c. 842 (S.B.1313), § 1.)
COLORADO

COLO. REV. STAT. §19-3-103 (2015). CHILD NOT NEGLECTED—WHEN

(1) No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article. However, the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. In order to make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104(3), order a medical evaluation of the child. If the court determines, on the basis of any relevant evidence before the court, including the medical evaluation ordered pursuant to this section, that the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104(3), order that medical treatment be provided for the child. A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to have been neglected or dependent for the purposes of this article and injured or endangered for the purposes of section 18-6-401, C.R.S.

(2) A method of religious healing shall be presumed to be a recognized method of religious healing if:

(a)(I) Fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as medical expenses pursuant to regulations or rules promulgated by the United States internal revenue service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

CREDITS


CONNECTICUT

CONN. GEN. STAT. § 17A-104 (2015). TREATMENT BY CHRISTIAN SCIENCE PRACTITIONER

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For the purposes of sections 17a-101 to 17a-103, inclusive, and section 46b-129a, the treatment of any child by a Christian Science practitioner in lieu of treatment by a licensed practitioner of the healing arts shall not of itself constitute maltreatment.

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c. Any person who, regardless of whether a member of the child's household, is defined as family or relatives in this section or as an adult individual defined in § 1009(b)(3)a. [repealed] of this title;

d. Persons temporarily responsible for the child’s well-being or care such as a health-care provider, aide, teacher, instructor, coach, sitter, day care or child care provider, or any other person having regular direct contact with children through affiliation with a school, church, or religious institution, health-care facility, athletic or charitable organization or any other organization whether such a person is compensated or acting as a volunteer; or

e. Any person who has assumed control of or responsibility for the child.

For the purpose of investigation of child abuse, dependency or neglect, the Department of Services for Children and Their Families (DSCYF) may investigate any allegation of child abuse, dependency or neglect committed by persons identified herein, but shall only be responsible for the investigation of intrafamilial and institutional child abuse, dependency or neglect. Where the DSCYF is not responsible for the investigation of such child abuse or neglect, it shall immediately refer such report to the appropriate police authorities or child protective services agencies within or without the State.

(4) “Child” means a person who has not reached his or her eighteenth birthday.

(5) “Court” means the Family Court of the State of Delaware, and “court” refers to other courts of the State.

(6) “Custodian” means any person who is charged by law with or who has assumed responsibility for a child’s care.

(7) “Delinquent child” means a child who commits an act which if committed by an adult would constitute a crime.

(8) “Dependency” or “dependent child” means that a person:

a. Is responsible for the care, custody, and/or control of the child; and

b. Does not have the ability and/or financial means to provide for the care of the child; and

1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health care, medical care or other care necessary for the child’s emotional, physical or mental health, or safety and general well-being; or
2. The child is living in the home of an “adult individual” who fails to meet the definition of “relative” in this section on an extended basis without an assessment by DSCYF, or its licensed agency; or

3. The child has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan.

In making a finding of dependency under this section, consideration may be given to dependency, neglect, or abuse history of any party.

(9) “DSCYF” or “Department” means the Department of Services for Children, Youth and Their Families.

(10) “Emotional abuse” means threats to inflict undue physical or emotional harm, and/or chronic or recurring incidents of ridiculing, demeaning, making derogatory remarks or cursing.

(11) “Exploitation” means taking advantage of a child for unlawful or unjustifiable personal or sexual gain.

(12) “Family” means husband and wife; a man and woman cohabiting in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:

   a. Mother;
   b. Father;
   c. Mother-in-law;
   d. Father-in-law;
   e. Brother;
   f. Sister;
   g. Brother-in-law;
   h. Sister-in-law;
   i. Son;
j. Daughter;
k. Son-in-law;
I. Daughter-in-law;
m. Grandfather;
n. Grandmother;
o. Grandson;
p. Granddaughter;
q. Stepfather;
r. Stepmother;
s. Stepson;
t. Stepdaughter.

The relationships referred to in this definition include blood relationships without regard to legitimacy and relationships by adoption.

(13) “Institutional child abuse or neglect” is child abuse or neglect which has occurred to a child in the DSCYF’s custody and/or placed in a facility, center or home operated, contracted or licensed by the DSCYF.

(14) “Intrafamilial child abuse or neglect” is any child abuse or neglect committed by:

a. A parent, guardian, or custodian;

b. Other members of the child’s family or household, meaning persons living together permanently or temporarily without regard to whether they are related to each other and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child’s household;

c. Any person who, regardless of whether a member of the child's household, is defined as family or a relative in this section or as an adult individual as defined in §1009(b)(3)a. [repealed] of this title.
(15) “Law” means the common law and statutes of this State, the laws of any subdivision thereof, and regulations promulgated by a governmental agency having the force and effect of law.

(16) “Mistreatment” or “maltreatment” are behaviors that inflict unnecessary or unjustifiable pain or suffering on a child without causing physical injury. Behaviors included will consist of actions and omissions, ones that are intentional and ones that are unintentional.

(17) “Necessary care” means a type and degree of personalized attention that will tend to advance a child's physical, mental, emotional, moral and general well-being.

(18) “Neglect” or “neglected child” means that a person:

a. Is responsible for the care, custody, and/or control of the child; and

b. Has the ability and financial means to provide for the care of the child; and

1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or

2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child’s safety and general well-being; or

3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child’s own basic needs or safety, after considering such factors as the child’s age, mental ability, physical condition, the length of the caretaker’s absence, and the context of the child's environment.

In making a finding of neglect under this section, consideration may be given to dependency, neglect, or abuse history of any party.

(19) “Nonamenable child” means any child who is not amenable to the rehabilitative processes of the Family Court.

(20) “Relative” means any person within the immediate family, and any grandparent, uncle, aunt, first cousin, great-grandparent, grandaunt or granduncle, half brother or half sister.
(21) “Sexual abuse” means any act against a child that is described as a sex offense in § 761(h) of Title 11.

(22) “Truancy” or “truant” shall refer to a pupil enrolled in grades kindergarten through 12 inclusive who has been absent from school without valid excuse, as defined in rules and regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or in the case of a pupil enrolled in a charter school, by the board of directors of the charter school, with the approval of the State Board of Education, for more than 3 days or the equivalent thereof during a given school year.

CREDIT(S)


Codifications: 10 Del.C. 1953, § 901

**DELAWARE CODE ANN. TIT. 16, § 913 (2015). Child UNDER TREATMENT BY spiritual MEANS NOT neglected.**

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this chapter.

CREDIT(S)


Codifications: 16 Del.C. 1953, §§ 907, 1006

**DISTRICT OF COLUMBIA**
D.C. CODE § 4-1321.06 (2015). REPORTS OF NEGLECTED CHILDREN. EXCEPTIONS FOR TREATMENT SOLELY BY SPIRITUAL MEANS.

Notwithstanding any other provision of this subchapter, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected within the purview of this subchapter.

CREDITS

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-775, § 6.)

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FLORIDA

FLA. STAT. ANN. § 39.01 (2015). DEFINITIONS.

When used in this chapter, unless the context otherwise requires:

(1) “Abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term does not include a surrendered newborn infant as described in s. 383.50, a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(2) “Abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(3) “Addictions receiving facility” means a substance abuse service provider as defined in chapter 397.
(4) “Adjudicatory hearing” means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

(5) “Adult” means any natural person other than a child.

(6) “Adoption” means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligations of a child born to the adoptive parents in lawful wedlock.

(7) “Juvenile sexual abuse” means any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion. For purposes of this subsection, the following definitions apply:

(a) “Coercion” means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

(b) “Equality” means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

(c) “Consent” means an agreement, including all of the following:

1. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

2. Knowledge of societal standards for what is being proposed.

3. Awareness of potential consequences and alternatives.

4. Assumption that agreement or disagreement will be accepted equally.

5. Voluntary decision.

6. Mental competence.

Juvenile sexual behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.
(8) “Arbitration” means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) “Authorized agent” or “designee” of the department means an employee, volunteer, or other person or agency determined by the state to be eligible for state-funded risk management coverage, which is assigned or designated by the department to perform duties or exercise powers under this chapter.

(10) “Caregiver” means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (47).

(11) “Case plan” means a document, as described in s. 39.6011, prepared by the department with input from all parties. The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.

(12) “Child” or “youth” means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

(13) “Child protection team” means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases.

(14) “Child who has exhibited inappropriate sexual behavior” means a child who has been found by the department or the court to have committed an inappropriate sexual act.

(15) “Child who is found to be dependent” means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care;

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or

(g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.

(16) “Child support” means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.

(17) “Circuit” means any of the 20 judicial circuits as set forth in s. 26.021.

(18) “Comprehensive assessment” or “assessment” means the gathering of information for the evaluation of a child’s and caregiver’s physical, psychiatric, psychological, or mental health; developmental delays or challenges; and educational, vocational, and social condition and family environment as they relate to the child’s and caregiver’s need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(19) “Concurrent planning” means establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal that must be one of the following options:

(a) Adoption when a petition for termination of parental rights has been filed or will be filed;

(b) Permanent guardianship of a dependent child under s. 39.6221;

(c) Permanent placement with a fit and willing relative under s. 39.6231; or

(d) Placement in another planned permanent living arrangement under s. 39.6241.

(20) “Court,” unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction under this chapter.

(21) “Department” means the Department of Children and Families.

(22) “Diligent efforts by a parent” means a course of conduct which results in a meaningful change in the behavior of a parent that reduces risk to the child in the child’s home to the extent that the child may be safely placed permanently back in the home as set forth in the case plan.
(23) “Diligent efforts of social service agency” means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

(24) “Diligent search” means the efforts of a social service agency to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the social service agency is made aware of the existence of such parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

(25) “Disposition hearing” means a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases.

(26) “Expedited termination of parental rights” means proceedings wherein a case plan with the goal of reunification is not being offered.

(27) “False report” means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term “false report” does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

(28) “Family” means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(29) “Foster care” means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(30) “Harm” to a child’s health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the

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location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

   a. Sprains, dislocations, or cartilage damage.
   b. Bone or skull fractures.
   c. Brain or spinal cord damage.
   d. Intracranial hemorrhage or injury to other internal organs.
   e. Asphyxiation, suffocation, or drowning.
   f. Injury resulting from the use of a deadly weapon.
   g. Burns or scalding.
   h. Cuts, lacerations, punctures, or bites.
   i. Permanent or temporary disfigurement.
   j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term “willful” refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child’s behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term “drugs” means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child’s age or mental or physical condition, so that the child is unable to care for the child’s own needs or another’s basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:
a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of “harm,” the term “abandoned the child” or “abandonment of the child” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term “abandoned” does not include a surrendered newborn infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of

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services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(f) Neglects the child. Within the context of the definition of “harm,” the term “neglects the child” means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term “controlled substance” means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.
(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(31) “Impending danger” means a situation in which family behaviors, attitudes, motives, emotions, or situations pose a threat that may not be currently active but that can be anticipated to become active and to have severe effects on a child at any time.

(32) “Institutional child abuse or neglect” means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

(33) “Judge” means the circuit judge exercising jurisdiction pursuant to this chapter.

(34) “Legal custody” means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(35) “Licensed child-caring agency” means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(36) “Licensed child-placing agency” means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(37) “Licensed health care professional” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(38) “Likely to injure oneself” means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(39) “Likely to injure others” means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(40) “Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable
and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(41) “Medical neglect” means the failure to provide or the failure to allow needed care as recommended by a health care practitioner for a physical injury, illness, medical condition, or impairment, or the failure to seek timely and appropriate medical care for a serious health problem that a reasonable person would have recognized as requiring professional medical attention. Medical neglect does not occur if the parent or legal guardian of the child has made reasonable attempts to obtain necessary health care services or the immediate health condition giving rise to the allegation of neglect is a known and expected complication of the child's diagnosis or treatment and:

(a) The recommended care offers limited net benefit to the child and the morbidity or other side effects of the treatment may be considered to be greater than the anticipated benefit; or

(b) The parent or legal guardian received conflicting medical recommendations for treatment from multiple practitioners and did not follow all recommendations.

(42) “Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.

(43) “Necessary medical treatment” means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(44) “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

(a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

(b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Neglect of a child includes acts or omissions.
(45) “Next of kin” means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.


(47) “Other person responsible for a child's welfare” includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities; or employees of the Department of Corrections.

(48) “Out-of-home” means a placement outside of the home of the parents or a parent.

(49) “Parent” means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. 39.503(1) or s. 63.062(1). For purposes of this chapter only, when the phrase “parent or legal custodian” is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

(50) “Participant,” for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, means any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child. A community-based agency under contract with the department to provide protective services may be designated as a participant at the discretion of the court. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

(51) “Party” means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

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(52) “Permanency goal” means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. Permanency goals applicable under this chapter, listed in order of preference, are:

(a) Reunification;

(b) Adoption when a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under s. 39.6221;

(d) Permanent placement with a fit and willing relative under s. 39.6231; or

(e) Placement in another planned permanent living arrangement under s. 39.6241.

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

(53) “Permanency plan” means the plan that establishes the placement intended to serve as the child's permanent home.

(54) “Permanent guardian” means the relative or other adult in a permanent guardianship of a dependent child under s. 39.6221.

(55) “Permanent guardianship of a dependent child” means a legal relationship that a court creates under s. 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decisionmaking on behalf of the child.

(56) “Physical injury” means death, permanent or temporary disfigurement, or impairment of any bodily part.

(57) “Physician” means any licensed physician, dentist, podiatric physician, or optometrist and includes any intern or resident.

(58) “Preliminary screening” means the gathering of preliminary information to be used in determining a child’s need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of the child.

(59) “Present danger” means a significant and clearly observable family condition that is occurring at the current moment and is already endangering or threatening to endanger the child. Present danger threats are conspicuous and require that an immediate protective action be taken to ensure the child's safety.

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(60) “Preventive services” means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child’s developmental needs and need for physical, mental, and emotional health and a safe, stable, living environment; shall promote family autonomy; and shall strengthen family life, whenever possible.

(61) “Prospective parent” means a person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

(62) “Protective investigation” means the acceptance of a report alleging child abuse, abandonment, or neglect, as defined in this chapter, by the central abuse hotline or the acceptance of a report of other dependency by the department; the investigation of each report; the determination of whether action by the court is warranted; the determination of the disposition of each report without court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.

(63) “Protective investigator” means an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

(64) “Protective supervision” means a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the department and which must be reviewed by the court during the period of supervision.

(65) “Relative” means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(66) “Reunification services” means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment; shall promote family autonomy; and shall strengthen family life, whenever possible.
(67) “Safety plan” means a plan created to control present or impending danger using the least intrusive means appropriate to protect a child when a parent, caregiver, or legal custodian is unavailable, unwilling, or unable to do so.

(68) “Secretary” means the Secretary of Children and Families.

(69) “Sexual abuse of a child” for purposes of finding a child to be dependent means one or more of the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).
(70) “Shelter” means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

(71) “Shelter hearing” means a hearing in which the court determines whether probable cause exists to keep a child in shelter status pending further investigation of the case.

(72) “Sibling” means:

(a) A child who shares a birth parent or legal parent with one or more other children; or

(b) A child who has lived together in a family with one or more other children whom he or she identifies as siblings.

(73) “Social service agency” means the department, a licensed child-caring agency, or a licensed child-placing agency.

(74) “Social worker” means any person who has a bachelor's, master's, or doctoral degree in social work.

(75) “Substance abuse” means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(76) “Substantial compliance” means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child’s parent.

(77) “Taken into custody” means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.

(78) “Temporary legal custody” means the relationship that a court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(79) “Victim” means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

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(1) “Abuse investigator” means the department, any local department of family and children services, law enforcement agency, or district attorney or designee thereof.
(2) “Abuse registry” means the Child Protective Services Information System required to be established by Code Section 49-5-181.

(3) “Abused” means subjected to child abuse.

(3.1) “Administrative law judge” means the person who conducts a hearing for the Office of State Administrative Hearings pursuant to this article.

(3.2) “Alleged child abuser” means a person deemed to be an alleged child abuser pursuant to Code Section 49-5-183.1.

(4) “Child” means any person under 18 years of age.

(5) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means, and this shall be deemed to be physical abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof if said neglect or exploitation consists of a lack of supervision, abandonment, or intentional or unintentional disregard by a parent or caretaker of a child's basic needs for food, shelter, medical care, or education as evidenced by repeated incidents or a single incident which places the child at substantial risk of harm, and this shall be deemed to be child neglect for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; and

(C) Sexual abuse of a child, and this shall be deemed to be sexual abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an abused child.

(6) “Confirmed” means that an investigation by an abuse investigator has revealed that there is equal or greater credible evidence that child abuse occurred than the credible evidence that child abuse did not occur.

(6.1) “DFACS office” means the principal office of a county department of family and children services.

(7) “Division” means the Division of Family and Children Services of the Department of Human Services.
(8) “Out-of-state abuse investigator” means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

(8.1) “Sexual abuse” means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation;

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; or

(J) Sexual exploitation.

Sexual abuse shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(9) “Sexual exploitation” means conduct by a person who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.
(10) “Unconfirmed” means that an investigation by an abuse investigator has revealed that there is some credible evidence that child abuse occurred but there is not sufficient credible evidence to classify that child abuse as confirmed.

(11) Reserved.

(12) “Unfounded” means that an investigation by an abuse investigator has determined that there is no credible evidence that child abuse occurred.

CREDITS


GA. CODE ANN. § 15-11-107. R49-5-180. (2015). Religious nonmedical healing; child is in life-threatening situation or child’s condition will result in serious disability

(a) A parent, guardian, or legal custodian’s reliance on prayer or other religious nonmedical means for healing in lieu of medical care, in the exercise of religious beliefs, shall not be the sole basis for considering his or her child to be a dependent child; provided, however, that the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability.

(b) In order to make a determination as to whether a child is in a life-threatening situation or that a child’s condition will result in serious disability, the court may order a medical evaluation of a child.

(c) If the court determines, on the basis of any relevant evidence before the court, including the court ordered medical evaluation and the affidavit of the attending physician, that a child is in a life-threatening situation or that a child’s condition will result in serious disability, the court may order that medical treatment be provided for such child.

(d) A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to be a dependent child and the court may find the parent, guardian, or legal custodian in contempt and enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

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Current through Acts 343 to 669 of the 2014 Regular Session.
IDAHO

IDAHO CODE ANN. § 18-1501 (2015). INJURY TO CHILDREN.

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) years commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003, Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

(5) As used in this section, “willfully” means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.

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ILLINOIS

§ 325 ILL. COMP. STAT. 5/3 (2015). DEFINITIONS.
§ 3. As used in this Act unless the context otherwise requires:

“Adult resident” means any person between 18 and 22 years of age who resides in any facility licensed by the Department under the Child Care Act of 1969. For purposes of this Act, the criteria set forth in the definitions of “abused child” and “neglected child” shall be used in determining whether an adult resident is abused or neglected.

“Blatant disregard” means an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm.

“Child” means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services.

“Department” means Department of Children and Family Services.

“Local law enforcement agency” means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

“Abused child” means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

(a) inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(b) creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(c) commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 or in the Wrongs to Children Act, and extending those definitions of sex offenses to include children under 18 years of age;

(d) commits or allows to be committed an act or acts of torture upon such child;

(e) inflicts excessive corporal punishment;

(f) commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012 against the child;

(g) causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act, except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or

(h) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 2012 against the child.
A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.\textsuperscript{5}

“Neglected child” means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child’s well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is subjected to an environment which is injurious insofar as (i) the child’s environment creates a likelihood of harm to the child’s health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or who is abandoned by his or her parents or other person responsible for the child’s welfare without a proper plan of care; or who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant. A child shall not be considered neglected for the sole reason that the child’s parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. A child shall not be considered neglected or abused for the sole reason that such child’s parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of this Act. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of The School Code,\textsuperscript{2} as amended.

“Child Protective Service Unit” means certain specialized State employees of the Department assigned by the Director to perform the duties and responsibilities as provided under Section 7.2 of this Act.

“Person responsible for the child’s welfare” means the child’s parent; guardian; foster parent; relative caregiver; any person responsible for the child’s welfare in a public or private residential agency or institution; any person responsible for the child’s welfare within a public or private profit or not for profit child care facility; or any other person responsible for the child’s welfare at the time of the
alleged abuse or neglect, including any person that is the custodian of a child under 18 years of age who commits or allows to be committed, against the child, the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as provided in Section 10-9 of the Criminal Code of 2012, or any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy, and volunteers or support personnel in any setting where children may be subject to abuse or neglect.

“Temporary protective custody” means custody within a hospital or other medical facility or a place previously designated for such custody by the Department, subject to review by the Court, including a licensed foster home, group home, or other institution; but such place shall not be a jail or other place for the detention of criminal or juvenile offenders.

“An unfounded report” means any report made under this Act for which it is determined after an investigation that no credible evidence of abuse or neglect exists.

“An indicated report” means a report made under this Act if an investigation determines that credible evidence of the alleged abuse or neglect exists.

“An undetermined report” means any report made under this Act in which it was not possible to initiate or complete an investigation on the basis of information provided to the Department.

“Subject of report” means any child reported to the central register of child abuse and neglect established under Section 7.7 of this Act as an alleged victim of child abuse or neglect and the parent or guardian of the alleged victim or other person responsible for the alleged victim’s welfare who is named in the report or added to the report as an alleged perpetrator of child abuse or neglect.

“Perpetrator” means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

“Member of the clergy” means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs.

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§ 4. Persons required to report; privileged communications; transmitting false report. Any physician, resident, intern, hospital, hospital administrator and personnel engaged in examination, care and treatment of persons, surgeon, dentist, dentist hygienist, osteopath, chiropractor, podiatric physician, physician assistant, substance abuse treatment personnel, funeral home director or employee, coroner, medical examiner, emergency medical technician, acupuncturist, crisis line or hotline personnel, school personnel (including administrators and both certified and non-certified school employees), personnel of institutions of higher education, educational advocate assigned to a child pursuant to the School Code, member of a school board or the Chicago Board of Education or the governing body of a private school (but only to the extent required in accordance with other provisions of this Section expressly concerning the duty of school board members to report suspected child abuse), truant officers, social worker, social services administrator, domestic violence program personnel, registered nurse, licensed practical nurse, genetic counselor, respiratory care practitioner, advanced practice nurse, home health aide, director or staff assistant of a nursery school or a child day care center, recreational or athletic program or facility personnel, early intervention provider as defined in the Early Intervention Services System Act, law enforcement officer, licensed professional counselor, licensed clinical professional counselor, registered psychologist and assistants working under the direct supervision of a psychologist, psychiatrist, or field personnel of the Department of Healthcare and Family Services, Juvenile Justice, Public Health, Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities, Rehabilitation Services, or Public Aid), Corrections, Human Rights, or Children and Family Services, supervisor and administrator of general assistance under the Illinois Public Aid Code, probation officer, animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator, or any other foster parent, homemaker or child care worker having reasonable cause to believe that a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.

Any member of the clergy having reasonable cause to believe that a child known to that member of the clergy in his or her professional capacity may be an abused child as defined in item (c) of the

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definition of “abused child” in Section 3 of this Act shall immediately report or cause a report to be made to the Department.

Any physician, physician’s assistant, registered nurse, licensed practical nurse, medical technician, certified nursing assistant, social worker, or licensed professional counselor of any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives having reasonable cause to believe a child known to him or her in his or her professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.

If an allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child as defined in Section 3 of this Act, the member shall direct or cause the school board to direct the superintendent of the school district or other equivalent school administrator to comply with the requirements of this Act concerning the reporting of child abuse. For purposes of this paragraph, a school board member is granted the authority in his or her individual capacity to direct the superintendent of the school district or other equivalent school administrator to comply with the requirements of this Act concerning the reporting of child abuse.

Notwithstanding any other provision of this Act, if an employee of a school district has made a report or caused a report to be made to the Department under this Act involving the conduct of a current or former employee of the school district and a request is made by another school district for the provision of information concerning the job performance or qualifications of the current or former employee because he or she is an applicant for employment with the requesting school district, the general superintendent of the school district to which the request is being made must disclose to the requesting school district the fact that an employee of the school district has made a report involving the conduct of the applicant or caused a report to be made to the Department, as required under this Act. Only the fact that an employee of the school district has made a report involving the conduct of the applicant or caused a report to be made to the Department may be disclosed by the general superintendent of the school district to which the request for information concerning the applicant is made, and this fact may be disclosed only in cases where the employee and the general superintendent have not been informed by the Department that the allegations were unfounded. An employee of a school district who is or has been the subject of a report made pursuant to this Act during his or her employment with the school district must be informed by that school district that if he or she applies for employment with another school district, the general superintendent of the former school district, upon the request of the school district to which the employee applies, shall notify that requesting school district that the employee is or was the subject of such a report.

Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, or as a member of the clergy, he shall make report immediately to the Department in accordance with the provisions of this Act and
may also notify the person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent that such report has been made. Under no circumstances shall any person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent to whom such notification has been made, exercise any control, restraint, modification or other change in the report or the forwarding of such report to the Department.

The privileged quality of communication between any professional person required to report and his patient or client shall not apply to situations involving abused or neglected children and shall not constitute grounds for failure to report as required by this Act or constitute grounds for failure to share information or documents with the Department during the course of a child abuse or neglect investigation. If requested by the professional, the Department shall confirm in writing that the information or documents disclosed by the professional were gathered in the course of a child abuse or neglect investigation.

The reporting requirements of this Act shall not apply to the contents of a privileged communication between an attorney and his or her client or to confidential information within the meaning of Rule 1.6 of the Illinois Rules of Professional Conduct relating to the legal representation of an individual client.

A member of the clergy may claim the privilege under Section 8-803 of the Code of Civil Procedure.

Any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives shall provide to all office personnel copies of written information and training materials about abuse and neglect and the requirements of this Act that are provided to employees of the office, clinic, or physical location who are required to make reports to the Department under this Act, and instruct such office personnel to bring to the attention of an employee of the office, clinic, or physical location who is required to make reports to the Department under this Act any reasonable suspicion that a child known to him or her in his or her professional or official capacity may be an abused child or a neglected child. In addition to the above persons required to report suspected cases of abused or neglected children, any other person may make a report if such person has reasonable cause to believe a child may be an abused child or a neglected child.

Any person who enters into employment on and after July 1, 1986 and is mandated by virtue of that employment to report under this Act, shall sign a statement on a form prescribed by the Department, to the effect that the employee has knowledge and understanding of the reporting requirements of this Act. The statement shall be signed prior to commencement of the employment. The signed statement shall be retained by the employer. The cost of printing, distribution, and filing of the statement shall be borne by the employer.

Within one year of initial employment and at least every 5 years thereafter, school personnel required to report child abuse as provided under this Section must complete mandated reporter training by a provider or agency with expertise in recognizing and reporting child abuse.

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The Department shall provide copies of this Act, upon request, to all employers employing persons who shall be required under the provisions of this Section to report under this Act.

Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 2012. A violation of this provision is a Class 4 felony.

Any person who knowingly and willfully violates any provision of this Section other than a second or subsequent violation of transmitting a false report as described in the preceding paragraph, is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation; except that if the person acted as part of a plan or scheme having as its object the prevention of discovery of an abused or neglected child by lawful authorities for the purpose of protecting or insulating any person or entity from arrest or prosecution, the person is guilty of a Class 4 felony for a first offense and a Class 3 felony for a second or subsequent offense (regardless of whether the second or subsequent offense involves any of the same facts or persons as the first or other prior offense).

A child whose parent, guardian or custodian in good faith selects and depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care may be considered neglected or abused, but not for the sole reason that his parent, guardian or custodian accepts and practices such beliefs.

A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code, as amended.

Nothing in this Act prohibits a mandated reporter who reasonably believes that an animal is being abused or neglected in violation of the Humane Care for Animals Act from reporting animal abuse or neglect to the Department of Agriculture's Bureau of Animal Health and Welfare.

A home rule unit may not regulate the reporting of child abuse or neglect in a manner inconsistent with the provisions of this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

For purposes of this Section “child abuse or neglect” includes abuse or neglect of an adult resident as defined in this Act.

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§ 750 ILL.COMP. STAT. 50/1 (2015). DEFINITIONS.

§ 1. Definitions. When used in this Act, unless the context otherwise requires:

A. “Child” means a person under legal age subject to adoption under this Act.

B. “Related child” means a child subject to adoption where either or both of the adopting parents stands in any of the following relationships to the child by blood, marriage, adoption, or civil union: parent, grand-parent, great-grandparent, brother, sister, step-parent, step-grandparent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, first cousin, or second cousin. A person is related to the child as a first cousin or second cousin if they are both related to the same ancestor as either grandchild or great-grandchild. A child whose parent has executed a consent to adoption, a surrender, or a waiver pursuant to Section 10 of this Act or whose parent has signed a denial of paternity pursuant to Section 12 of the Vital Records Act or Section 12a of this Act, or whose parent has had his or her parental rights terminated, is not a related child to that person, unless (1) the consent is determined to be void or is void pursuant to subsection O of Section 10 of this Act; or (2) the parent of the child executed a consent to adoption by a specified person or persons pursuant to subsection A-1 of Section 10 of this Act and a court of competent jurisdiction finds that such consent is void; or (3) the order terminating the parental rights of the parent is vacated by a court of competent jurisdiction.

C. “Agency” for the purpose of this Act means a public child welfare agency or a licensed child welfare agency.

D. “Unfit person” means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act.¹

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(a) Abandonment of the child.

(a-1) Abandonment of a newborn infant in a hospital.

(a-2) Abandonment of a newborn infant in any setting where the evidence suggests that the parent intended to relinquish his or her parental rights.

(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.

(c) Desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding.

(d) Substantial neglect of the child if continuous or repeated.

(d-1) Substantial neglect, if continuous or repeated, of any child residing in the household which resulted in the death of that child.

(e) Extreme or repeated cruelty to the child.

(f) There is a rebuttable presumption, which can be overcome only by clear and convincing evidence, that a parent is unfit if:

(1) Two or more findings of physical abuse have been entered regarding any children under Section 2-21 of the Juvenile Court Act of 1987, the most recent of which was determined by the juvenile court hearing the matter to be supported by clear and convincing evidence; or

(2) The parent has been convicted or found not guilty by reason of insanity and the conviction or finding resulted from the death of any child by physical abuse; or

(3) There is a finding of physical child abuse resulting from the death of any child under Section 2-21 of the Juvenile Court Act of 1987.

No conviction or finding of delinquency pursuant to Article V of the Juvenile Court Act of 1987 shall be considered a criminal conviction for the purpose of applying any presumption under this item (f).

(g) Failure to protect the child from conditions within his environment injurious to the child's welfare.

(h) Other neglect of, or misconduct toward the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order or judgment affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceedings terminating parental rights as shall be had under either this Act, the Juvenile Court Act or the Juvenile Court Act of 1987.
(i) Depravity. Conviction of any one of the following crimes shall create a presumption that a parent is depraved which can be overcome only by clear and convincing evidence: (1) first degree murder in violation of paragraph 1 or 2 of subsection (a) of Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012 of conviction of second degree murder in violation of subsection (a) of Section 9-2 of the Criminal Code of 1961 or the Criminal Code of 2012 of a parent of the child to be adopted; (2) first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012; (3) attempt or conspiracy to commit first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012; (4) solicitation to commit murder of any child, solicitation to commit murder of any child for hire, or solicitation to commit second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012; (5) predatory criminal sexual assault of a child in violation of Section 11-1.40 or 12-14.1 of the Criminal Code of 1961 or the Criminal Code of 2012; (6) heinous battery of any child in violation of the Criminal Code of 1961; or (7) aggravated battery of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012.

There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights.

There is a rebuttable presumption that a parent is depraved if that parent has been criminally convicted of either first or second degree murder of any person as defined in the Criminal Code of 1961 or the Criminal Code of 2012 within 10 years of the filing date of the petition or motion to terminate parental rights.

No conviction or finding of delinquency pursuant to Article 5 of the Juvenile Court Act of 1987 shall be considered a criminal conviction for the purpose of applying any presumption under this item (i).

(j) Open and notorious adultery or fornication.

(j-1) (Blank).

(k) Habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding.

There is a rebuttable presumption that a parent is unfit under this subsection with respect to any child to which that parent gives birth where there is a confirmed test result that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or metabolites of such substances, the presence of which in the newborn infant was not the result of medical treatment administered to the mother or the newborn infant; and the biological mother of this child is the biological mother of at least one
other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987.\textsuperscript{10}

\textit{(I)} Failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a new born child during the first 30 days after its birth.

\textit{(m)} Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act\textsuperscript{11} to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, “failure to make reasonable progress toward the return of the child to the parent” includes the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987. Notwithstanding any other provision, when a petition or motion seeks to terminate parental rights on the basis of item (ii) of this subsection (m), the petitioner shall file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on. The pleading shall be filed and served on the parties no later than 3 weeks before the date set by the court for closure of discovery, and the allegations in the pleading shall be treated as incorporated into the petition or motion. Failure of a respondent to file a written denial of the allegations in the pleading shall not be treated as an admission that the allegations are true.

\textit{(m-1)} Pursuant to the Juvenile Court Act of 1987, a child has been in foster care for 15 months out of any 22 month period which begins on or after the effective date of this amendatory Act of 1998 unless the child’s parent can prove by a preponderance of the evidence that it is more likely than not that it will be in the best interests of the child to be returned to the parent within 6 months of the date on which a petition for termination of parental rights is filed under the Juvenile Court Act of 1987. The 15 month time limit is tolled during any period for which there is a court finding that the appointed custodian or guardian failed to make reasonable efforts to reunify the child with his or her family, provided that (i) the finding of no reasonable efforts is made within 60 days of the period when reasonable efforts were not made or (ii) the parent filed a motion requesting a finding of no reasonable efforts within 60 days of the period when reasonable efforts were not made. For purposes of this subdivision (m-1), the date of entering foster care is the earlier of: (i) the date of a judicial finding at an adjudicatory hearing that the child is an abused, neglected, or dependent minor; or (ii) 60 days after the date on which the child is removed from his or her parent, guardian, or legal custodian.
(n) Evidence of intent to forgo his or her parental rights, whether or not the child is a ward of the court, (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so, or (2) as manifested by the father’s failure, where he and the mother of the child were unmarried to each other at the time of the child’s birth, (i) to commence legal proceedings to establish his paternity under the Illinois Parentage Act of 1984 or the law of the jurisdiction of the child’s birth within 30 days of being informed, pursuant to Section 12a of this Act, that he is the father or the likely father of the child or, after being so informed where the child is not yet born, within 30 days of the child’s birth, or (ii) to make a good faith effort to pay a reasonable amount of the expenses related to the birth of the child and to provide a reasonable amount for the financial support of the child, the court to consider in its determination all relevant circumstances, including the financial condition of both parents; provided that the ground for termination provided in this subparagraph (n)(2)(ii) shall only be available where the petition is brought by the mother or the husband of the mother.

Contact or communication by a parent with his or her child that does not demonstrate affection and concern does not constitute reasonable contact and planning under subdivision (n). In the absence of evidence to the contrary, the ability to visit, communicate, maintain contact, pay expenses and plan for the future shall be presumed. The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting that intent, shall not preclude a determination that the parent has intended to forgo his or her parental rights. In making this determination, the court may consider but shall not require a showing of diligent efforts by an authorized agency to encourage the parent to perform the acts specified in subdivision (n).

It shall be an affirmative defense to any allegation under paragraph (2) of this subsection that the father’s failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of that fact need only be by a preponderance of the evidence.

(o) Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.

(p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period. However, this subdivision (p) shall not be construed so as to permit a licensed clinical social worker to conduct any medical diagnosis to determine mental illness or mental impairment.
(q) (Blank).

(r) The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights.

(s) The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child.

(t) A finding that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant was the result of medical treatment administered to the mother or the newborn infant, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987, after which the biological mother had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program.

E. “Parent” means a person who is the legal mother or legal father of the child as defined in subsection X or Y of this Section. For the purpose of this Act, a parent who has executed a consent to adoption, a surrender, or a waiver pursuant to Section 10 of this Act, who has signed a Denial of Paternity pursuant to Section 12 of the Vital Records Act or Section 12a of this Act, or whose parental rights have been terminated by a court, is not a parent of the child who was the subject of the consent, surrender, waiver, or denial unless (1) the consent is void pursuant to subsection O of Section 10 of this Act; or (2) the person executed a consent to adoption by a specified person or persons pursuant to subsection A-1 of Section 10 of this Act and a court of competent jurisdiction finds that the consent is void; or (3) the order terminating the parental rights of the person is vacated by a court of competent jurisdiction.

F. A person is available for adoption when the person is:

(a) a child who has been surrendered for adoption to an agency and to whose adoption the agency has thereafter consented;

(b) a child to whose adoption a person authorized by law, other than his parents, has consented, or to whose adoption no consent is required pursuant to Section 8 of this Act;
(c) child who is in the custody of persons who intend to adopt him through placement made by his parents;

(c-1) a child for whom a parent has signed a specific consent pursuant to subsection O of Section 10;

(d) an adult who meets the conditions set forth in Section 3 of this Act; or

(e) a child who has been relinquished as defined in Section 10 of the Abandoned Newborn Infant Protection Act.

A person who would otherwise be available for adoption shall not be deemed unavailable for adoption solely by reason of his or her death.

G. The singular includes the plural and the plural includes the singular and the “male” includes the “female”, as the context of this Act may require.

H. “Adoption disruption” occurs when an adoptive placement does not prove successful and it becomes necessary for the child to be removed from placement before the adoption is finalized.

I. “Habitual residence” has the meaning ascribed to it in the federal Intercountry Adoption Act of 2000 and regulations promulgated thereunder.

J. “Immediate relatives” means the biological parents, the parents of the biological parents and siblings of the biological parents.

K. “Intercountry adoption” is a process by which a child from a country other than the United States is adopted by persons who are habitual residents of the United States, or the child is a habitual resident of the United States who is adopted by persons who are habitual residents of a country other than the United States.

L. “Intercountry Adoption Coordinator” means a staff person of the Department of Children and Family Services appointed by the Director to coordinate the provision of services related to an intercountry adoption.

M. “Interstate Compact on the Placement of Children” is a law enacted by all states and certain territories for the purpose of establishing uniform procedures for handling the interstate placement of children in foster homes, adoptive homes, or other child care facilities.

N. (Blank).

O. “Preadoption requirements” means any conditions or standards established by the laws or administrative rules of this State that must be met by a prospective adoptive parent prior to the placement of a child in an adoptive home.
P. “Abused child” means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

(a) inflicts, causes to be inflicted, or allows to be inflicted upon the child physical injury, by other than accidental means, that causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(b) creates a substantial risk of physical injury to the child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(c) commits or allows to be committed any sex offense against the child, as sex offenses are defined in the Criminal Code of 2012 and extending those definitions of sex offenses to include children under 18 years of age;

(d) commits or allows to be committed an act or acts of torture upon the child; or

(e) inflicts excessive corporal punishment.

Q. “Neglected child” means any child whose parent or other person responsible for the child's welfare withholds or denies nourishment or medically indicated treatment including food or care denied solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare.

A child shall not be considered neglected or abused for the sole reason that the child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of the Abused and Neglected Child Reporting Act. A child shall not be considered neglected or abused for the sole reason that the child's parent or other person responsible for the child's welfare failed to vaccinate, delayed vaccination, or refused vaccination for the child due to a waiver on religious or medical grounds as permitted by law.

R. “Putative father” means a man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born and (2) has not established paternity of the child in a court proceeding before the filing of a petition for the adoption of the child. The term includes a male who is less than 18 years of age. “Putative father” does not mean a man who is the
child’s father as a result of criminal sexual abuse or assault as defined under Article 11 of the Criminal Code of 2012.16

S. “Standby adoption” means an adoption in which a parent consents to custody and termination of parental rights to become effective upon the occurrence of a future event, which is either the death of the parent or the request of the parent for the entry of a final judgment of adoption.

T. (Blank).

T-5. “Biological parent”, “birth parent”, or “natural parent” of a child are interchangeable terms that mean a person who is biologically or genetically related to that child as a parent.

U. “Interstate adoption” means the placement of a minor child with a prospective adoptive parent for the purpose of pursuing an adoption for that child that is subject to the provisions of the Interstate Compact on Placement of Children.

V. “Endorsement letter” means the letter issued by the Department of Children and Family Services to document that a prospective adoptive parent has met preadoption requirements and has been deemed suitable by the Department to adopt a child who is the subject of an intercountry adoption.

W. “Denial letter” means the letter issued by the Department of Children and Family Services to document that a prospective adoptive parent has not met preadoption requirements and has not been deemed suitable by the Department to adopt a child who is the subject of an intercountry adoption.

X. “Legal father” of a child means a man who is recognized as or presumed to be that child’s father:

(1) because of his marriage to or civil union with the child’s parent at the time of the child’s birth or within 300 days prior to that child’s birth, unless he signed a denial of paternity pursuant to Section 12 of the Vital Records Act or a waiver pursuant to Section 10 of this Act; or

(2) because his paternity of the child has been established pursuant to the Illinois Parentage Act, the Illinois Parentage Act of 1984, or the Gestational Surrogacy Act; or

(3) because he is listed as the child’s father or parent on the child’s birth certificate, unless he is otherwise determined by an administrative or judicial proceeding not to be the parent of the child or unless he rescinds his acknowledgment of paternity pursuant to the Illinois Parentage Act of 1984; or

(4) because his paternity or adoption of the child has been established by a court of competent jurisdiction.
The definition in this subsection X shall not be construed to provide greater or lesser rights as to the number of parents who can be named on a final judgment order of adoption or Illinois birth certificate that otherwise exist under Illinois law.

Y. “Legal mother” of a child means a woman who is recognized as or presumed to be that child’s mother:

(1) because she gave birth to the child except as provided in the Gestational Surrogacy Act; or

(2) because her maternity of the child has been established pursuant to the Illinois Parentage Act of 1984 or the Gestational Surrogacy Act; or

(3) because her maternity or adoption of the child has been established by a court of competent jurisdiction; or

(4) because of her marriage to or civil union with the child’s other parent at the time of the child’s birth or within 300 days prior to the time of birth; or

(5) because she is listed as the child’s mother or parent on the child’s birth certificate unless she is otherwise determined by an administrative or judicial proceeding not to be the parent of the child.

The definition in this subsection Y shall not be construed to provide greater or lesser rights as to the number of parents who can be named on a final judgment order of adoption or Illinois birth certificate that otherwise exist under Illinois law.

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Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

(1) places the dependent in a situation that endangers the dependent's life or health;

(2) abandons or cruelly confines the dependent;

(3) deprives the dependent of necessary support; or

(4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Level 6 felony.

(b) However, the offense is:

(1) a Level 5 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

(i) committed in a location where a person is violating IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine); or

(ii) the result of a violation of IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine);

(2) a Level 3 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;
(3) a Level 1 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

(4) a Level 5 felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under section 9(b) of this chapter;

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Level 6 felony.

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The definitions in section 235A.13 are applicable to this part 2 of division III. As used in sections 232.67 through 232.77 and 235A.12 through 235A.24, unless the context otherwise requires:

1. “Child” means any person under the age of eighteen years.

2. a. “Child abuse” or “abuse” means:

   (1) Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

   (2) Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

   (3) The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this subparagraph includes any sexual offense referred to in this subparagraph with or to a person under the age of eighteen years.

   (4) (a) The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so or when offered financial or other reasonable means to do so.

   (b) For the purposes of subparagraph division (a), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.

   (c) A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this

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provision shall not preclude a court from ordering that medical service be provided to the child where the child’s health requires it.

(5) The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this subparagraph include an act or omission referred to in this subparagraph with or to a person under the age of eighteen years.

(6) An illegal drug is present in a child’s body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

(7) The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph “p”, manufactured a dangerous substance, as defined in section 232.2, subsection 6, paragraph “p”, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(8) The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

(9) Knowingly allowing a person custody or control of, or unsupervised access to a child or minor, after knowing the person is required to register or is on the sex offender registry under chapter 692A for a violation of section 726.6.

(10) The person responsible for the care of the child has knowingly allowed the child access to obscene material as defined in section 728.1 or has knowingly disseminated or exhibited such material to the child.

b. “Child abuse” or “abuse” shall not be construed to hold a victim responsible for failing to prevent a crime against the victim.

2A. “Child protection worker” means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. “Confidential access to a child” means access to a child, during an assessment of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection and this part:

a. “Interview” means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker is not precluded from recording visible evidence of abuse.
b. “Observation” means direct physical viewing of a child under the age of four by the child protection worker where the viewing is limited to the child’s body other than the genitalia and pubes. “Observation” also means direct physical viewing of a child aged four or older by the child protection worker without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A child protection worker is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the child protection worker. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, “observation” may include viewing the child’s unclothed body other than the genitalia and pubes.

c. “Physical examination” means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148.

4. “Department” means the state department of human services and includes the local, county, and service area offices of the department.

5. “Differential response” means an assessment system in which there are two discrete pathways to respond to accepted reports of child abuse, a child abuse assessment and a family assessment. The child abuse assessment pathway shall require a determination of abuse and a determination of whether criteria for placement on the central abuse registry are met. As used in this subsection and this part:

a. “Assessment” means the process by which the department responds to all accepted reports of alleged child abuse. An “assessment” addresses child safety, family functioning, culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed. The department's assessment process occurs either through a child abuse assessment or a family assessment.

b. “Child abuse assessment” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in subsection 2, paragraph “a”, subparagraphs (1) through (3) and subparagraphs (5) through (10), or which allege child abuse as defined in subsection 2, paragraph “a”, subparagraph (4), that also allege imminent danger, death, or injury to a child. A “child abuse assessment” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

c. “Family assessment” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in subsection 2, paragraph “a”, subparagraph (4), but do not allege imminent danger, death, or injury to a child. A “family assessment” does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the registry are met.
6. “Health practitioner” includes a licensed physician and surgeon, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

7. “Mental health professional” means a person who meets the following requirements:

a. Holds at least a master’s degree in a mental health field, including but not limited to psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

8. “Person responsible for the care of a child” means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.


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Endangering a child is knowingly and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be endangered.

(b) Aggravated endangering a child is:

(1) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered;

(2) causing or permitting such child to be in an environment where the person knows or reasonably should know that any person is distributing, possessing with intent to distribute, manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(3) causing or permitting such child to be in an environment where the person knows or reasonably should know that drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(c)(1) Endangering a child is a class A person misdemeanor.

(2) Aggravated endangering a child is a severity level 9, person felony. The sentence for a violation of aggravated endangering a child shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(d) Nothing in subsection (a) shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(e) As used in this section:

(1) “ Manufacture” means the same as in K.S.A. 21-5701, and amendments thereto; and
(2) “drug paraphernalia” means the same as in K.S.A. 21-5701, and amendments thereto.

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KENTUCKY

KY. REV. STAT. ANN. § 600.020. DEFINITIONS FOR KY. REV. STAT. CHAPTERS 600-645

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;

4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

7. Abandons or exploits the child;
8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person’s religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or

(b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;

(2) “Aggravated circumstances” means the existence of one (1) or more of the following conditions:

(a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;

(b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child’s entry into foster care and there is no appropriate relative placement available during this period of time;

(c) The parent has sexually abused the child and has refused available treatment;

(d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent’s home two (2) or more times in the past two (2) years; or

(e) The parent has caused the child serious physical injury;

(3) “Beyond the control of parents” means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(4) “Beyond the control of school” means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school’s petition or as an attachment to the school’s petition. The petition or attachment shall describe the student’s behavior and all intervention strategies attempted by the school;
(5) “Boarding home” means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(6) “Cabinet” means the Cabinet for Health and Family Services;

(7) “Certified juvenile facility staff” means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(8) “Child” means any person who has not reached his or her eighteenth birthday, unless otherwise provided;

(9) “Child-caring facility” means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(10) “Child-placing agency” means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(11) “Clinical treatment facility” means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(12) “Commitment” means an order of the court which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless otherwise provided by law;

(13) “Community-based facility” means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child’s family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(14) “Complaint” means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(15) “Court” means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(16) “Court-designated worker” means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment.

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conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(17) “Deadly weapon” has the same meaning as it does in KRS 500.080;

(18) “Department” means the Department for Community Based Services;

(19) “Dependent child” means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(20) “Detention” means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;

(21) “Detention hearing” means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

(22) “Diversion agreement” means a mechanism designed to hold a child accountable for his or her behavior and, if appropriate, securing services to serve the best interest of the child and to provide redress for that behavior without court action and without the creation of a formal court record;

(23) “Eligible youth” means a person who:

(a) Is or has been committed to the cabinet as dependent, neglected, or abused;

(b) Is eighteen (18) years of age to nineteen (19) years of age; and

(c) Is requesting to extend or reinstate his or her commitment to the cabinet in order to participate in state or federal educational programs or to establish independent living arrangements;

(24) “Emergency shelter” is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(25) “Emotional injury” means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;

(26) “Evidence-based practices” means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;

(27) “Firearm” shall have the same meaning as in KRS 237.060 and 527.010;
(28) “Foster family home” means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(29) “Graduated sanction” means any of a continuum of accountability measures, programs, and sanctions, ranging from less restrictive to more restrictive in nature, that may include but are not limited to:

(a) Electronic monitoring;
(b) Drug and alcohol screening, testing, or monitoring;
(c) Day or evening reporting centers;
(d) Reporting requirements;
(e) Community service; and

(f) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment;

(30) “Habitual runaway” means any child who has been found by the court to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least three (3) days during a one (1) year period;

(31) “Habitual truant” means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150(1) two (2) or more times during a one (1) year period;

(32) “Hospital” means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(33) “Independent living” means those activities necessary to assist a committed child to establish independent living arrangements;

(34) “Informal adjustment” means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(35) “Intentionally” means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(36) “Least restrictive alternative” means, except for purposes of KRS Chapter 645, that the program developed on the child’s behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is
conducted at the suitable available facility closest to the child's place of residence to allow for appropriate family engagement;

(37) “Motor vehicle offense” means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(38) “Near fatality” means an injury that, as certified by a physician, places a child in serious or critical condition;

(39) “Needs of the child” means necessary food, clothing, health, shelter, and education;

(40) “Nonoffender” means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;

(41) “Nonsecure facility” means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(42) “Nonsecure setting” means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(43) “Out-of-home placement” means a placement other than in the home of a parent, relative, or guardian, in a boarding home, clinical treatment facility, community-based facility, detention facility, emergency shelter, foster family home, hospital, nonsecure facility, physically secure facility, residential treatment facility, or youth alternative center;

(44) “Parent” means the biological or adoptive mother or father of a child;

(45) “Person exercising custodial control or supervision” means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(46) “Petition” means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(47) “Physical injury” means substantial physical pain or any impairment of physical condition;

(48) “Physically secure facility” means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;
(49) “Public offense action” means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(50) “Qualified mental health professional” means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;

(d) A licensed registered nurse with a master’s degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor’s degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or

(g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;

(51) “Residential treatment facility” means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

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(52) “Retain in custody” means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(53) “Risk and needs assessment” means an actuarial tool scientifically proven to identify specific factors and needs that are related to delinquent and noncriminal misconduct;

(54) “School personnel” means those certified persons under the supervision of the local public or private education agency;

(55) “Secretary” means the secretary of the Cabinet for Health and Family Services;

(56) “Secure juvenile detention facility” means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;

(57) “Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(58) “Sexual abuse” includes but is not necessarily limited to any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(59) “Sexual exploitation” includes but is not limited to a situation in which a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(60) “Social service worker” means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(61) “Staff secure facility for residential treatment” means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
(62) (a) “Status offense action” is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;

2. Habitual Runaway;

3. Habitual truant;

4. Tobacco offenses as provided in KRS 438.305 to 438.340; and

5. Alcohol offenses as provided in KRS 244.085.

(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew;

(63) “Take into custody” means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(64) “Transitional living support” means all benefits to which an eligible youth is entitled upon being granted extended or reinstated commitment to the cabinet by the court;

(65) “Transition plan” means a plan that is personalized at the direction of the youth that:

(a) Includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services; and

(b) Is as detailed as the youth may elect;

(66) “Valid court order” means a court order issued by a judge to a child alleged or found to be a status offender:

(a) Who was brought before the court and made subject to the order;

(b) Whose future conduct was regulated by the order;

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States;

(67) “Violation” means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(68) “Youth alternative center” means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and

(69) “Youthful offender” means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

CREDITS

HISTORY: 2014 c 132, § 24, eff. 7-15-14; 2012 c 143, § 1, c 148, § 1, eff. 7-12-12; 2008 c 87, § 1, eff. 7-15-08; 2005 c 172, § 3, c 99, § 659, eff. 6-20-05; 2004 c 116, § 16, eff. 7-13-04; 2002 c 99, § 4, eff. 3-28-02; 2000 c 193, § 1, c 14, § 57, c 60, § 1, c 534, § 6, eff. 7-14-00; 1998 c 57, § 2, eff. 3-17-98; 1998 c 303, § 1, c 426, § 611, eff. 7-15-98; 1998 c 538, § 13, eff. 4-13-98; 1996 c 358, § 9, eff. in part 7-1-97, and in part 7-15-97; 1996 c 369, § 21, eff. 7-15-96; 1994 c 368, § 2, c 30, § 4, c 498, § 15, eff. 7-15-94; 1988 c 350, § 1, eff. 4-10-88; 1986 c 423, § 2

LOUISIANA

LA. CHILD. CODE ANN. ART. § 603 (2014). DEFINITIONS.

As used in this Title:

(1) “Abortion” means that procedure as defined in R.S. 40:1299.35.1.

(2) “Abuse” means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

(a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person, including but not limited to commercial sexual exploitation of the child.
(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or
toleration by the parent, caretaker, or any other person of the child's involvement in any of the
following:

(i) Any sexual act with any other person.

(ii) Pornographic displays.

(iii) Any sexual activity constituting a crime under the laws of this state.

(d) A coerced abortion conducted upon a child.

(3) “Administrative review body” means a panel of appropriate persons, at least one of whom is not
responsible for the case management of or delivery of services to either the child or the parents who
are the subject of the review, including the citizen review boards, state hearing examiners, special
department reviewers, or department personnel.

(4) “Caretaker” means any person legally obligated to provide or secure adequate care for a child,
including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or
private day care center, an operator or employee of a registered family child day care home, or other
person providing a residence for the child.

(5) “Case review hearing” means a review hearing by a court or administrative review body for the
purpose of determining the continuing necessity for and appropriateness of the child's placement, to
determine the extent of compliance with the case plan, to determine the extent of progress which has
been made toward alleviating or mitigating the causes necessitating placement, and to project a likely
date by which the child may be permanently placed.

(6) “Child” means a person under eighteen years of age who, prior to juvenile proceedings, has not
been judicially emancipated under Civil Code Article 385 or emancipated by marriage under Civil Code
Articles 379 through 384.

(7) “Child care agency” means any public or private agency exercising custody of a child.

(8) “Child pornography” means visual depiction of a child engaged in actual or simulated sexual
intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or
lewd exhibition of the genitals.

(9) “Coerced abortion” means the use of force, intimidation, threat of force, threat of deprivation of
food and shelter, or the deprivation of food and shelter by a parent or any other person in order to
compel a female child to undergo an abortion against her will, whether or not the abortion procedure
has been attempted or completed.
(9.1) “Commercial sexual exploitation” means involvement of the child activity prohibited by the following statutes: R.S. 14:46.2, 46.3, 81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.

(10) “Concurrent planning” means departmental efforts to preserve and reunify a family, or to place a child for adoption or with a legal guardian which are made simultaneously.

(11) “Court-appointed or court-approved administrative body” means a body appointed or approved by a court and subject to the court's supervision for the purposes of assisting the court with permanency hearings, including magistrates or other court or noncourt personnel. This body shall not be a part of the Department of Children and Family Services or the Department of Public Safety and Corrections, nor subject to the supervision or direction of either department.

(12) “Crime against the child” shall include the commission of or the attempted commission of any of the following crimes against the child as provided by federal or state statutes:

(a) Homicide.

(b) Battery.

(c) Assault.

(d) Rape.

(e) Sexual battery.

(f) Kidnapping.

(g) Criminal neglect.

(h) Criminal abandonment.


(j) Carnal knowledge of a juvenile.

(k) Indecent behavior with juveniles.

(l) Pornography involving juveniles.

(m) Molestation of a juvenile.

(n) Crime against nature.

(o) Cruelty to juveniles.
(p) Contributing to the delinquency or dependency of children.

(q) Sale of minor children.

(r) Human trafficking.

(s) Trafficking of children for sexual purposes.

(13) “Department” means the Department of Children and Family Services.

(14) “Foster care” means placement in a foster family home, a relative's home, a residential child caring facility, or other living arrangement approved and supervised by the state for provision of substitute care for a child in the department’s custody. Such placement shall not include a detention facility.

(15) “Foster parent” means an individual who provides residential foster care with the approval and under the supervision of the department for a child in its custody.

(16) “Institutional abuse or neglect” means any case of child abuse or neglect that occurs in any public or private facility that provides residential child care, treatment, or education.

(17) “Mandatory reporter” is any of the following individuals:

(a) “Health practitioner” is any individual who provides health care services, including a physician, surgeon, physical therapist, dentist, resident, intern, hospital staff member, podiatrist, chiropractor, licensed nurse, nursing aide, dental hygienist, any emergency medical technician, a paramedic, optometrist, medical examiner, or coroner, who diagnoses, examines, or treats a child or his family.

(b) “Mental health/social service practitioner” is any individual who provides mental health care or social service diagnosis, assessment, counseling, or treatment, including a psychiatrist, psychologist, marriage or family counselor, social worker, member of the clergy, aide, or other individual who provides counseling services to a child or his family.

(c) “Member of the clergy” is any priest, rabbi, duly ordained clerical deacon or minister, Christian Science practitioner, or other similarly situated functionary of a religious organization, except that he is not required to report a confidential communication, as defined in Code of Evidence Article 511, from a person to a member of the clergy who, in the course of the discipline or practice of that church, denomination, or organization, is authorized or accustomed to hearing confidential communications, and under the discipline or tenets of the church, denomination, or organization has a duty to keep such communications confidential. In that instance, he shall encourage that person to report the allegations to the appropriate authorities in accordance with Article 610.

(d) “Teaching or child care provider” is any person who provides or assists in the teaching, training, and supervision of a child, including any public or private teacher, teacher’s aide, instructional aide, school
principal, school staff member, bus driver, coach, professor, technical or vocational instructor, technical or vocational school staff member, college or university administrator, college or university staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child in a voluntary or professional capacity.

(e) Police officers or law enforcement officials.

(f) “Commercial film and photographic print processor” is any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides for compensation.

(g) Mediators appointed pursuant to Chapter 6 of Title IV.

(h) A parenting coordinator appointed pursuant to R.S. 9:358.1 et seq.

(i) A court-appointed special advocates (CASA) volunteer under the supervision of a CASA program appointed pursuant to Chapter 4 of Title IV.

(j) “Organizational or youth activity provider” is any person who provides organized activities for children, including administrators, employees, or volunteers of any day camp, summer camp, youth center, or youth recreation programs or any other organization that provides organized activities for children.

(k) School coaches, including but not limited to public technical or vocational school, community college, college, or university coaches and coaches of intramural or interscholastic athletics.

(18) “Neglect” means the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child’s physical, mental, or emotional health and safety is substantially threatened or impaired. Neglect includes prenatal neglect. Consistent with Article 606(B), the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child’s health or welfare.

<Text of par. (19) effective upon appropriation of sufficient funds>

(19) “Newborn” means a child who is not more than thirty days old, as determined within a reasonable degree of medical certainty by an examining physician.
(20) “Other suitable individual” means a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent. “Relative” for the purpose of this title means an individual with whom the child has established a significant relationship by blood, adoption, or affinity.

(21) “Permanency hearing” means a hearing for the purpose of determining the permanent plan for the child.

(22) “Permanent placement” means:

(a) Return of the legal custody of a child to his parent(s).

(b) Placement of the child with adoptive parents pursuant to a final decree of adoption.

(c) Placement of the child with a legal guardian.

(23) “Person” means any individual, partnership, association, agency, or corporation, and specifically shall include city, parish, or state law enforcement agencies, and a parish or city school board or a person employed by a parish or city school board.

<Text of par. (24) effective until appropriation of sufficient funds>

(24) “Prenatal neglect” means the unlawful use by a mother during pregnancy of a controlled dangerous substance, as defined by R.S. 40:961 et seq., which results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant's body.

<Text of par. (24) effective upon appropriation of sufficient funds>

(24) “Prenatal neglect” means exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance, as defined by R.S. 40:961 et seq., or in a manner not lawfully prescribed, which results in symptoms of withdrawal in the newborn or the presence of a controlled substance or a metabolic thereof in his body, blood, urine, or meconium that is not the result of medical treatment, or observable and harmful effects in his physical appearance or functioning.

(25) “Reasonable efforts” means the exercise of ordinary diligence and care by department caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families.

(26) “Removal” means placing a child in the custody of the state or with someone other than the parent or caretaker during or after the course of an investigation of abuse and neglect to secure the child's protection and safeguard the child's welfare.

(27) “Safety plan” means a plan for the purpose of assuring a child's health and safety by imposing conditions for the child to safely remain in the home, or, after a child has been removed from the
home, for the continued placement of the child with a custodian and terms for contact between the child and his parents or other persons.

CREDITS


MAINE

ME. REV. STAT. TIT. 22, § 4010 (2015). SPIRITUAL TREATMENT.

1. Treatment not considered abuse or neglect. Under subchapters I to VII, a child shall not be considered to be abused or neglected, in jeopardy of health or welfare or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

2. Treatment to be considered if requested. When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parent.

CREDITS

1979, c. 733, § 18.

22 M. R. S. A. § 4010, ME ST T. 22 § 4010

Current with legislation through the 2013 Second Regular Session of the 126th Legislature. The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

ME. REV. STAT. TIT. 17-A, § 557 (2015). OTHER DEFENSES.

For the purposes of this chapter, a person who in good faith provides treatment for a child or dependent person by spiritual means through prayer may not for that reason alone be determined to have knowingly endangered the welfare of that child or dependent person.

CREDITS

National Center for Prosecution of Child Abuse
National District Attorney Association
www.ndaa.org

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EDITOR'S NOTES
COMMENT--1975

The purpose of this section is to provide that the treatment of a child or incompetent person in accordance with the tenets and practices of a religious denomination shall constitute a presumption that such treatment was provided in good faith and that the person providing the treatment shall not be deemed to have knowingly endangered the welfare of such child or incompetent person.

MICHIGAN

MICH. COMP. LAWS § 722.634 (2015). RELIGIOUS BELIEFS; MEDICAL TREATMENT

Sec. 14. A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. This section shall not preclude a court from ordering the provision of medical services or nonmedical remedial services recognized by state law to a child where the child's health requires it nor does it abrogate the responsibility of a person required to report child abuse or neglect.

MINNESOTA

MINN. STAT. § 626.556 (2015). REPORTING OF MALTREATMENT OF MINORS

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary,
safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) “Family assessment” means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) “Investigation” means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245D; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in section 256B.0625, subdivision 19a.

(c) “Substantial child endangerment” means a person responsible for a child's care, and in the case of sexual abuse includes a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.503, subdivision 2.

(d) “Sexual abuse” means the subjection of a child by a person responsible for the child’s care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

(e) “Person responsible for the child’s care” means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) “Neglect” means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:
(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;

(7) “medical neglect” as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) “Physical abuse” means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental...
Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) “Report” means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) “Facility” means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245D;
(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

(3) a nonlicensed personal care provider organization as defined in section 256B.0625, subdivision 19a.

(j) “Operator” means an operator or agency as defined in section 245A.02.

(k) “Commissioner” means the commissioner of human services.

(l) “Practice of social services,” for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) “Mental injury” means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) “Threatened injury” means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction.

A child is the subject of a report of threatened injury when the responsible social services agency receives birth match data under paragraph (o) from the Department of Human Services.

(o) Upon receiving data under section 144.225, subdivision 2b, contained in a birth record or recognition of parentage identifying a child who is subject to threatened injury under paragraph (n), the Department of Human Services shall send the data to the responsible social services agency. The data is known as “birth match” data. Unless the responsible social services agency has already begun an investigation or assessment of the report due to the birth of the child or execution of the recognition of parentage and the parent's previous history with child protection, the agency shall accept the birth match data as a report under this section. The agency may use either a family
assessment or investigation to determine whether the child is safe. All of the provisions of this section apply. If the child is determined to be safe, the agency shall consult with the county attorney to determine the appropriateness of filing a petition alleging the child is in need of protection or services under section 260C.007, subdivision 6, clause (16), in order to deliver needed services. If the child is determined not to be safe, the agency and the county attorney shall take appropriate action as required under section 260C.503, subdivision 2.

(p) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

(q) “Accidental” means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

(1) is not likely to occur and could not have been prevented by exercise of due care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

(r) “Nonmaltreatment mistake” means:

(1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;

(2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;

(3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;

(4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

(5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

Subd. 3. Persons mandated to report. (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or
physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245D; or a nonlicensed personal care provider organization as defined in section 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.
(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this section, “immediately” means as soon as possible but in no event longer than 24 hours.

Subd. 3a. Report of deprivation of parental rights or kidnapping. A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section 609.25 or 609.26, shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section 609.25 or 609.26 shall not be construed to invoke the duties of subdivision 10, 10a, or 10b.

Subd. 3b. Agency responsible for assessing or investigating reports of maltreatment. The Department of Education is the agency responsible for assessing or investigating allegations of child maltreatment in schools as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10.

Subd. 3c. Local welfare agency, Department of Human Services or Department of Health responsible for assessing or investigating reports of maltreatment. (a) The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, legally unlicensed child care, juvenile correctional facilities licensed under section 241.021 located in the local welfare agency's county, and reports involving children served by an unlicensed personal care provider organization under section 256B.0659. Copies of findings related to personal care provider organizations under section 256B.0659 must be forwarded to the Department of Human Services provider enrollment.

(b) The Department of Human Services is the agency responsible for assessing or investigating allegations of maltreatment in facilities licensed under chapters 245A and 245B, except for child foster care and family child care.

(c) The Department of Health is the agency responsible for assessing or investigating allegations of child maltreatment in facilities licensed under sections 144.50 to 144.58 and 144A.46.

Subd. 3d. Authority to interview. The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child’s care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.
Subd. 3e. Agency responsible for assessing or investigating reports of sexual abuse. The local welfare agency is the agency responsible for investigating allegations of sexual abuse if the alleged offender is the parent, guardian, sibling, or an individual functioning within the family unit as a person responsible for the child's care, or a person with a significant relationship to the child if that person resides in the child's household.

Subd. 3f. Law enforcement agency responsible for investigating maltreatment. The local law enforcement agency has responsibility for investigating any report of child maltreatment if a violation of a criminal statute is alleged. Law enforcement and the responsible agency must coordinate their investigations or assessments as required under subdivision 10.

Subd. 4. Immunity from liability. (a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(2) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.0625, subdivision 19a, complying with subdivision 10d; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency, the Department of Education, or a local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

(b) A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency, the commissioner of human services, or the commissioner of education complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is (1) acting in good faith and exercising due care, or (2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.
(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

**Subd. 4a. Retaliation prohibited.** (a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to $10,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term “adverse action” refers to action taken by an employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

1. discharge, suspension, termination, or transfer from the facility, institution, school, or agency;
2. discharge from or termination of employment;
3. demotion or reduction in remuneration for services; or
4. restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

**Subd. 5. Malicious and reckless reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

**Subd. 6. Failure to report.** (a) A person mandated by this section to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor.

(b) A person mandated by this section to report who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, as defined in subdivision 2, by the same perpetrator within the preceding ten years, and fails to report is guilty of a gross misdemeanor.
(c) A parent, guardian, or caretaker who knows or reasonably should know that the child's health is in serious danger and who fails to report as required by subdivision 2, paragraph (c), is guilty of a gross misdemeanor if the child suffers substantial or great bodily harm because of the lack of medical care. If the child dies because of the lack of medical care, the person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both. The provision in section 609.378, subdivision 1, paragraph (a), clause (1), providing that a parent, guardian, or caretaker may, in good faith, select and depend on spiritual means or prayer for treatment or care of a child, does not exempt a parent, guardian, or caretaker from the duty to report under this subdivision.

**Subd. 6a. Failure to notify.** If a local welfare agency receives a report under subdivision 3, paragraph (a) or (b), and fails to notify the local police department or county sheriff as required by subdivision 3, paragraph (a) or (b), the person within the agency who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees. If a local police department or a county sheriff receives a report under subdivision 3, paragraph (a) or (b), and fails to notify the local welfare agency as required by subdivision 3, paragraph (a) or (b), the person within the police department or county sheriff's office who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees.

**Subd. 7. Report; information provided to parent.** (a) An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency. The local welfare agency shall determine if the report is accepted for an assessment or investigation as soon as possible but in no event longer than 24 hours after the report is received.

(b) Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. The local welfare agency or agency responsible for assessing or investigating the report shall accept a report made under subdivision 3 notwithstanding refusal by a reporter to provide the reporter's name or address as long as the report is otherwise sufficient under this paragraph. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff.
(c) When requested, the agency responsible for assessing or investigating a report shall inform the reporter within ten days after the report was made, either orally or in writing, whether the report was accepted or not. If the responsible agency determines the report does not constitute a report under this section, the agency shall advise the reporter the report was screened out. A screened-out report must not be used for any purpose other than making an offer of social services to the subjects of the screened-out report.

(d) Notwithstanding paragraph (a), the commissioner of education must inform the parent, guardian, or legal custodian of the child who is the subject of a report of alleged maltreatment in a school facility within ten days of receiving the report, either orally or in writing, whether the commissioner is assessing or investigating the report of alleged maltreatment.

(e) Regardless of whether a report is made under this subdivision, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

(f) A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. Evidence not privileged. No evidence relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of privilege set forth in section 595.02, subdivision 1, paragraph (a), (d), or (g).

Subd. 9. Mandatory reporting to medical examiner or coroner. When a person required to report under the provisions of subdivision 3 knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the person shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency. If the child was receiving services or treatment for mental illness, developmentally disabled, chemical dependency, or emotional disturbance from an agency, facility, or program as defined in section 245.91, the medical examiner or coroner shall also notify and report findings to the ombudsman established under sections 245.91 to 245.97.

Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of report. (a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment.
assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment.

The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation.

If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, or sexual abuse by a person with a significant relationship to the child when that person resides in the child's household or by a sibling, the local welfare agency shall immediately conduct a family assessment or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.
(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 32 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information.
information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and developmental disabilities, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.
(h) The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for investigating the report may make a determination of no maltreatment early in an investigation, and close the case and retain immunity, if the collected information shows no basis for a full investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding sections

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13.384 or 144.291 to 144.298, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. For investigations only, the following interviewing methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local
Subd. 10a. Law enforcement agency responsibility for investigation; welfare agency reliance on law enforcement fact-finding; welfare agency offer of services. (a) If the report alleges neglect, physical abuse, or sexual abuse by a person who is not a parent, guardian, sibling, person responsible for the child's care functioning within the family unit, or a person who lives in the child's household and who has a significant relationship to the child, in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency, which shall conduct an investigation of the alleged abuse or neglect if a violation of a criminal statute is alleged.

(b) The local agency may rely on the fact-finding efforts of the law enforcement investigation conducted under this subdivision to make a determination whether or not threatened injury or other maltreatment has occurred under subdivision 2 if an alleged offender has minor children or lives with minors.

(c) If a child is the victim of an alleged crime under paragraph (a), the law enforcement agency shall immediately notify the local welfare agency, which shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subd. 10b. Duties of commissioner; neglect or abuse in facility. (a) This section applies to the commissioners of human services, health, and education. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report.

The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.
(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this subdivision, the commissioner of education shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2, paragraph (i), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

Subd. 10c. Duties of local social service agency upon receipt of report of medical neglect. If the report alleges medical neglect as defined in section 260C.007, subdivision 6, clause (5), the local welfare agency shall, in addition to its other duties under this section, immediately consult with designated hospital staff and with the parents of the infant to verify that appropriate nutrition, hydration, and medication are being provided; and shall immediately secure an independent medical review of the infant’s medical charts and records and, if necessary, seek a court order for an independent medical examination of the infant. If the review or examination leads to a conclusion of medical neglect, the agency shall intervene on behalf of the infant by initiating legal proceedings under section 260C.141 and by filing an expedited motion to prevent the withholding of medically indicated treatment.

Subd. 10d. Notification of neglect or abuse in facility. (a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections 144.50 to 144.58; 241.021; or 245A.01 to 245A.16; or chapter 245D, or a school as defined in sections 120A.05, subdivisions 9, 11,
and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.0625, subdivision 19a, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

(b) The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may also provide the information in paragraph (a) to the parent, guardian, or legal custodian of any other child in the facility if the investigative agency knows or has reason to believe the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has occurred. In determining whether to exercise this authority, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall consider the seriousness of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the number of children allegedly neglected, physically abused, sexually abused, or victims of maltreatment of a child in the facility; the number of alleged perpetrators; and the length of the investigation. The facility shall be notified whenever this discretion is exercised.

(c) When the commissioner of the agency responsible for assessing or investigating the report or local welfare agency has completed its investigation, every parent, guardian, or legal custodian previously notified of the investigation by the commissioner or local welfare agency shall be provided with the following information in a written memorandum: the name of the facility investigated; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the investigator’s name; a summary of the investigation findings; a statement whether maltreatment was found; and the protective or corrective measures that are being or will be taken. The memorandum shall be written in a manner that protects the identity of the reporter and the child and shall not contain the name, or to the extent possible, reveal the identity of the alleged perpetrator or of those interviewed during the investigation. If maltreatment is determined to exist, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child in the facility who had contact with the individual responsible for the maltreatment. When the facility is the responsible party for maltreatment, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child who received services in the population of the facility where the maltreatment occurred. This notification must be provided to the parent, guardian, or legal custodian of each child receiving services from the time the maltreatment occurred until either the individual responsible for maltreatment is no longer in contact with a child or children in the facility or the conclusion of the
investigation. In the case of maltreatment within a school facility, as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10, the commissioner of education need not provide notification to parents, guardians, or legal custodians of each child in the facility, but shall, within ten days after the investigation is completed, provide written notification to the parent, guardian, or legal custodian of any student alleged to have been maltreated. The commissioner of education may notify the parent, guardian, or legal custodian of any student involved as a witness to alleged maltreatment.

**Subd. 10e. Determinations.** (a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. No determination of maltreatment shall be made when the alleged perpetrator is a child under the age of ten.

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, “maltreatment” means any of the following acts or omissions:

1. physical abuse as defined in subdivision 2, paragraph (g);

2. neglect as defined in subdivision 2, paragraph (f);
(3) sexual abuse as defined in subdivision 2, paragraph (d);

(4) mental injury as defined in subdivision 2, paragraph (m); or

(5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

The evaluation of the facility's responsibility under clause (2) must not be based on the completeness of the risk assessment or risk reduction plan required under section 245A.66, but must be based on the

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facility’s compliance with the regulatory standards for policies and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota Rules.

(j) Notwithstanding paragraph (i), when maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under sections 245A.06 or 245A.07 apply.

(k) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county’s policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Subd. 10f. Notice of determinations. Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and, if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.
Subd. 10g. Interstate data exchange. All reports and records created, collected, or maintained under this section by a local social service agency or law enforcement agency may be disclosed to a local social service or other child welfare agency of another state when the agency certifies that:

(1) the reports and records are necessary in order to conduct an investigation of actions that would qualify as sexual abuse, physical abuse, or neglect under this section; and

(2) the reports and records will be used only for purposes of a child protection assessment or investigation and will not be further disclosed to any other person or agency.

The local social service agency or law enforcement agency in this state shall keep a record of all records or reports disclosed pursuant to this subdivision and of any agency to which the records or reports are disclosed. If in any case records or reports are disclosed before a determination is made under subdivision 10e, or a disposition of any criminal proceedings is reached, the local social service agency or law enforcement agency in this state shall forward the determination or disposition to any agency that has received any report or record under this subdivision.

Subd. 10h. Child abuse data; release to family court services. The responsible authority or its designee of a local welfare agency may release private or confidential data on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect under this section to a court services agency if:

(1) the court services agency has an active case involving a common client or clients who are the subject of the data; and

(2) the data are necessary for the court services agency to effectively process the court services' case, including investigating or performing other duties relating to the case required by law.

The data disclosed under this subdivision may be used only for purposes of the active court services case described in clause (1) and may not be further disclosed to any other person or agency, except as authorized by law.

Subd. 10i. Administrative reconsideration; review panel. (a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent.
or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The hearings specified under this section are the only administrative appeal of a decision issued under paragraph (a). Determinations under this section are not subject to accuracy and completeness challenges under section 13.04.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the reconsideration of the
maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also not be conducted when:

(1) a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, “interested person acting on behalf of the child” means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

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**Subd. 10j. Release of data to mandated reporters.** A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child’s teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual’s responsibility for caring for the child.

**Subd. 10k. Release of certain assessment or investigative records to other counties.** Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an assessment or investigation under this section of the subject of the records.

**Subd. 10l. Documentation.** When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including a description of services provided and the removal or reduction of risk to the child, if it existed.

**Subd. 10m. Provision of child protective services.** The local welfare agency shall create a written plan, in collaboration with the family whenever possible, within 30 days of the determination that child protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed. Child protective services for a family are voluntary unless ordered by the court.

**Subd. 10n. Required referral to early intervention services.** A child under age three who is involved in a substantiated case of maltreatment shall be referred for screening under the Individuals with Disabilities Education Act, part C. Parents must be informed that the evaluation and acceptance of services are voluntary. The commissioner of human services shall monitor referral rates by county and annually report the information to the legislature beginning March 15, 2014. Refusal to have a child screened is not a basis for a child in need of protection or services petition under chapter 260C.

**Subd. 11. Records.** (a) Except as provided in paragraph (b) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff.
police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

**Subd. 11a. Disclosure of information not required in certain cases.** When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes

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of section 13.04, subdivision 2, when the parent or guardian is the alleged perpetrator of the abuse or neglect.

**Subd. 11b. Data received from law enforcement.** Active law enforcement investigative data received by a local welfare agency or agency responsible for assessing or investigating the report under this section are confidential data on individuals. When this data become inactive in the law enforcement agency, the data are private data on individuals.

**Subd. 11c. Welfare, court services agency, and school records maintained.** Notwithstanding sections 138.163 and 138.17, records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years after the date of the final entry in the case record. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment, including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

(e) For reports alleging child maltreatment that were not accepted for assessment or investigation, counties shall maintain sufficient information to identify repeat reports alleging maltreatment of the same child or children for 365 days from the date the report was screened out. The commissioner of human services shall specify to the counties the minimum information needed to accomplish this purpose. Counties shall enter this data into the state social services information system.
Subd. 11d. Disclosure in child fatality or near-fatality cases. (a) The definitions in this paragraph apply to this section.

(1) “Child fatality” means the death of a child from suspected abuse, neglect, or maltreatment.

(2) “Near fatality” means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) “Findings and information” means a written summary described in paragraph (c) of actions taken or services rendered by a local social services agency following receipt of a report.

(b) Notwithstanding any other provision of law and subject to this subdivision, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) a person is criminally charged with having caused the child fatality or near fatality; or

(2) a county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person’s death.

(c) Findings and information disclosed under this subdivision consist of a written summary that includes any of the following information the agency is able to provide:

(1) the dates, outcomes, and results of any actions taken or services rendered;

(2) the results of any review of the state child mortality review panel, a local child mortality review panel, a local community child protection team, or any public agency; and

(3) confirmation of the receipt of all reports, accepted or not accepted, by the local welfare agency for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the agency’s determination.

(d) Nothing in this subdivision authorizes access to the private data in the custody of a local social services agency, or the disclosure to the public of the records or content of any psychiatric, psychological, or therapeutic evaluations, or the disclosure of information that would reveal the identities of persons who provided information related to suspected abuse, neglect, or maltreatment of the child.

(e) A person whose request is denied may apply to the appropriate court for an order compelling disclosure of all or part of the findings and information of the public agency. The application must set forth, with reasonable particularity, factors supporting the application. The court has jurisdiction to
issue these orders. Actions under this section must be set down for immediate hearing, and subsequent proceedings in those actions must be given priority by the appellate courts.

(f) A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Subd. 12. Duties of facility operators. Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section 609.378. The facility operator shall inform all mandated reporters employed by or otherwise associated with the facility of the duties required of mandated reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.


Subd. 14. Conflict of interest. (a) A potential conflict of interest related to assisting in an assessment under this section resulting in a direct or shared financial interest with a child abuse and neglect treatment provider or resulting from a personal or family relationship with a party in the investigation must be considered by the local welfare agency in an effort to prevent unethical relationships.

(b) A person who conducts an assessment under this section or section 626.5561 may not have:

(1) any direct or shared financial interest or referral relationship resulting in a direct shared financial gain with a child abuse and neglect treatment provider; or

(2) a personal or family relationship with a party in the investigation.

If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

Subd. 15. Auditing. The commissioner of human services shall regularly audit for accuracy the data reported by counties on maltreatment of minors.

CREDITS

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) “Youth court" means the Youth Court Division.

(b) “Judge” means the judge of the Youth Court Division.

(c) “Designee” means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.

(d) “Child” and “youth” are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a “child” or “youth” for the purposes of this chapter.

(e) “Parent” means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) “Guardian” means a court-appointed guardian of the person of a child.

(g) “Custodian” means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) “Legal custodian” means a court-appointed custodian of the child.

(i) “Delinquent child” means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) “Delinquent act” is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.
(k) “Child in need of supervision” means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(l) “Neglected child” means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who

withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) “Abused child” means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) “Sexual abuse” means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) “A child in need of special care” means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.
(p) A “dependent child” means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) “Custody” means the physical possession of the child by any person.

(r) “Legal custody” means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) “Detention” means the care of children in physically restrictive facilities.

(t) “Shelter” means care of children in physically nonrestrictive facilities.

(u) “Records involving children” means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) “Any person responsible for care or support” means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) “Out-of-home” setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) “Durable legal custody” means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as
enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) “Status offense” means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

(aa) “Financially able” means a parent or child who is ineligible for a court-appointed attorney.

CREDITS

Laws 1979, Ch. 506, § 3; Laws 1980, Ch. 550, § 2; Laws 1985, Ch. 486, § 2; Laws 1986, Ch. 416, § 1; Laws 1991, Ch. 537, § 1; Laws 1991, Ch. 539, § 7; Laws 1993, Ch. 560, § 1; Laws 1994, Ch. 591, § 5; Laws 1994, Ch. 607, § 17; Laws 1996, Ch. 323, § 1; Laws 1998, Ch. 516, § 6, eff. July 1, 19d by Laws 2001, Ch. 358, § 1, eff. July 1, 2001; Laws 2005, Ch. 471, § 4, eff. July 1, 2005. Amended by Laws 2010, Ch. 476, § 73, eff. from and after passage (approved April 1, 2010); Laws 2013, Ch. 426 (H.B. 1441), § 1, eff. July 1, 2013.

MISSOURI


1. A person commits the crime of endangering the welfare of a child in the second degree if:

(1) He or she with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or

(2) He or she knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he or she recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031; or

(4) He or she knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130; or
(5) He or she operates a vehicle in violation of subdivision (2) or (3) of subsection 1 of section 565.024, subdivision (4) of subsection 1 of section 565.060, section 577.010, or section 577.012 while a child less than seventeen years old is present in the vehicle.

2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he or she is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

3. Endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

CREDITS


MO. REV. STAT. § 210.115 (2015). REPORTS OF ABUSE, NEGLECT AND UNDER AGE EIGHTEEN DEATHS—PERSONS REQUIRED TO REPORT—DEATHS REQUIRED TO BE REPORTED TO THE DIVISION OR CHILD FATALITY REVIEW PANEL, WHEN—REPORT MADE TO ANOTHER STATE, WHEN

1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel, teacher, principal or other school official, minister as provided by section 352.400, peace officer or law enforcement official, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately report to the division in accordance with the provisions of sections 210.109 to 210.183. No internal investigation shall be initiated until such a report has been made. As used in this section, the term “abuse” is not limited to abuse inflicted by a person responsible for the child's care, custody and control as specified in section 210.110, but shall also include abuse inflicted by any other person.

2. If two or more members of a medical institution who are required to report jointly have knowledge of a known or suspected instance of child abuse or neglect, a single report may be made by a designated member of that medical team. Any member who has knowledge that the member
designated to report has failed to do so shall thereafter immediately make the report. Nothing in this section, however, is meant to preclude any person from reporting abuse or neglect.

3. The reporting requirements under this section are individual, and no supervisor or administrator may impede or inhibit any reporting under this section. No person making a report under this section shall be subject to any sanction, including any adverse employment action, for making such report. Every employer shall ensure that any employee required to report pursuant to subsection 1 of this section has immediate and unrestricted access to communications technology necessary to make an immediate report and is temporarily relieved of other work duties for such time as is required to make any report required under subsection 1 of this section.

4. Notwithstanding any other provision of sections 210.109 to 210.183, any child who does not receive specified medical treatment by reason of the legitimate practice of the religious belief of the child's parents, guardian, or others legally responsible for the child, for that reason alone, shall not be found to be an abused or neglected child, and such parents, guardian or other persons legally responsible for the child shall not be entered into the central registry. However, the division may accept reports concerning such a child and may subsequently investigate or conduct a family assessment as a result of that report. Such an exception shall not limit the administrative or judicial authority of the state to ensure that medical services are provided to the child when the child's health requires it.

5. In addition to those persons and officials required to report actual or suspected abuse or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such person has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect.

6. Any person or official required to report pursuant to this section, including employees of the division, who has probable cause to suspect that a child who is or may be under the age of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to the appropriate medical examiner or coroner. If, upon review of the circumstances and medical information, the medical examiner or coroner determines that the child died of natural causes while under medical care for an established natural disease, the coroner, medical examiner or physician shall notify the division of the child's death and that the child's attending physician shall be signing the death certificate. In all other cases, the medical examiner or coroner shall accept the report for investigation, shall immediately notify the division of the child's death as required in section 58.452 and shall report the findings to the child fatality review panel established pursuant to section 210.192.

7. Any person or individual required to report may also report the suspicion of abuse or neglect to any law enforcement agency or juvenile office. Such report shall not, however, take the place of reporting to the division.
8. If an individual required to report suspected instances of abuse or neglect pursuant to this section has reason to believe that the victim of such abuse or neglect is a resident of another state or was injured as a result of an act which occurred in another state, the person required to report such abuse or neglect may, in lieu of reporting to the Missouri children's division, make such a report to the child protection agency of the other state with the authority to receive such reports pursuant to the laws of such other state. If such agency accepts the report, no report is required to be made, but may be made, to the children's division.

CREDITS


MONTANA

MONT. CODE ANN. § 41-3-102. (2015). DEFINITIONS.

As used in this chapter, the following definitions apply:

(1)(a) “Abandon”, “abandoned”, and “abandonment” mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.
(2) “A person responsible for a child's welfare” means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect.

(4)(a) “Adequate health care” means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) “Best interests of the child” means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) “Child” or “youth” means any person under 18 years of age.

(7)(a) “Child abuse or neglect” means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b)(i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), “dangerous drugs” means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as “serious emotional or physical damage to the child” as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) “Concurrent planning” means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) “Department” means the department of public health and human services provided for in 2-15-2201.

(10) “Family group decisionmaking meeting” means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) “Indian child” means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) “Indian child's tribe” means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child’s parent.

(14) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

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(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) “Limited emancipation” means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) “Parent” means a biological or adoptive parent or stepparent.

(17) “Parent-child legal relationship” means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) “Permanent placement” means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) “Physical abuse” means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) “Physical neglect” means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21)(a) “Physical or psychological harm to a child” means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;
(v) exposes or allows the child to be exposed to an unreasonable risk to the child’s health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth’s behavior.

(22)(a) “Protective services” means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23)(a) “Psychological abuse or neglect” means severe maltreatment through acts or omissions that are injurious to the child’s emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) “Qualified expert witness” as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.
(25) “Reasonable cause to suspect” means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) “Residential setting” means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27)(a) “Sexual abuse” means the commission of sexual assault, sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) “Sexual exploitation” means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29)(a) “Social worker” means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) “Treatment plan” means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) “Unfounded” means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) “Unsubstantiated” means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33)(a) “Withholding of medically indicated treatment” means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.
(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), “infant” means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) “Youth in need of care” means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

CREDITS

NEVADA

1. “Injury” to a child’s health or welfare occurs when the parent, guardian or custodian:

(a) Inflicts or allows to be inflicted upon the child, physical, mental or emotional injury, including injuries sustained as a result of excessive corporal punishment;

(b) Commits or allows to be committed against the child, sexual abuse as defined in NRS 432B.100;

(c) Neglects or refuses to provide for the child proper or necessary subsistence, education or medical or surgical care, although he or she is financially able to do so or has been offered financial or other reasonable means to do so; or

(d) Fails, by specific acts or omissions, to provide the child with adequate care, supervision or guardianship under circumstances requiring the intervention of:

(1) An agency which provides child welfare services; or

(2) The juvenile or family court itself.

2. A child’s health or welfare is not considered injured solely because the child’s parent or guardian, in the practice of his or her religious beliefs, selects and depends upon nonmedical remedial treatment for the child, if such treatment is recognized and permitted under the laws of this State.

CREDITS
N. R. S. 128.013, NV ST 128.013
Current through End of 28th Special Session (2014)

A child is not abused or neglected, nor is the child’s health or welfare harmed or threatened for the sole reason that his or her parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment.

CREDITS
Added by Laws 1979, p. 437.
N. R. S. 200.5085, NV ST 200.5085
Current through End of 28th Special Session (2014)

NEW HAMPSHIRE

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When used in this chapter and unless the specific context indicates otherwise:

I. “Abandoned” means the child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.

II. “Abused child” means any child who has been:

(a) Sexually abused; or

(b) Intentionally physically injured; or

(c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or

(d) Physically injured by other than accidental means.

III. “Adjudicatory hearing” means a hearing to determine the truth of the allegations in the petition filed under this chapter.

IV. [Repealed].

V. “Child” means any person who has not reached his eighteenth birthday.

VI. “Child care agency” means a “child day care agency” as defined in RSA 170-E:2, IV or a “child care agency” as defined in RSA 170-E:25, II.

VII. “Child placing agency” means the department, Catholic charities of New Hampshire, or child and family services of New Hampshire, or any successor organization.

VII-a. “Concurrent plan” means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

VIII. “Consent order” means a written agreement entered into among or between the parties regarding the facts and the disposition in a neglect or abuse case, and approved by the court.

IX. “Court” means the district court, unless otherwise indicated.

X. “Custodian” means an agency or person, other than a parent or guardian, licensed pursuant to RSA 170-E to whom legal custody of the child has been given by court order.

XI. “Dispositional hearing” means a hearing held after a finding of abuse or neglect to determine what dispositional order should be made on behalf of the child.

XII. “Department” means the department of health and human services.
XIII. “Foster home” means a residential care facility licensed pursuant to RSA 170-E for child care in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage.

XIII-a. “Founded report” means a report made pursuant to this chapter for which the department finds probable cause to believe that the child who is the subject of such report is abused or neglected.

XIV. “Guardian” means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. Such duty and authority include but are not necessarily limited either in number or kind to:

(a) The authority to consent: (1) to marriage, (2) to enlistment in the armed forces of the United States, and (3) to major medical, psychiatric and surgical treatment, (4) to represent the child in legal actions; and (5) to make other decisions of substantial legal significance concerning the child;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order; and

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

XIV-a. “Household member” means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

XV. “Imminent danger” means circumstances or surroundings causing immediate peril or risk to a child’s health or life.

XVI. “Institutional child abuse or neglect” means situations of known or suspected child abuse or neglect wherein the person responsible for the child’s welfare is a foster parent or is an employee of a public or private residential home, institution or agency.

XVII. “Legal custody” means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

(a) The right to determine where and with whom the child shall live;

(b) The right to have the physical possession of the child;

(c) The right and the duty to protect and constructively discipline the child; and

(d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to
the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

XVIII. “Legal supervision” means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

XIX. “Neglected child” means a child:

(a) Who has been abandoned by his parents, guardian, or custodian; or

(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian; or

(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

XX. “Notice” means communication given in person or in writing to the parent, guardian, custodian or other interested party not having custody or control of the child, of the time and place fixed for hearing; and it shall be given in all cases, unless it appears to the court that such notice will be ineffectual.

XX-a. “Out-of-home placement” means the placement of a child in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or legal guardian.

XXI. “Parent” means mother, father, adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

XXI-a. “Party having an interest” means the child; the guardian ad litem of the child; the child's parent, guardian or custodian; the state; or any household member subject to court order.

XXI-b. “Permanency hearing” means a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan.

XXI-c. “Permanency plan” means a plan for a child in an out-of-home placement that is adopted by the court and provides for timely reunification, termination of parental rights or parental surrender when
an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XXII. “A person responsible for a child's welfare” includes the child's parent, guardian or custodian, as well as the person providing out-of-home care of the child, if that person is not the parent, guardian or custodian. For purposes of this definition, “out-of-home care” includes child day care, and any other settings in which children are given care outside of their homes.

XXIII. “Probable cause” means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

XXIV. “Protective custody” means the status of a child who has been taken into physical custody by a police officer or juvenile probation and parole officer because the child was in such circumstances or surroundings which presented an imminent danger to the child's health or life and where there was not sufficient time to obtain a court order.

XXV. “Protective supervision” means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

XXVI. “Relative” means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

XXVII. “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation and responsibilities for support.

XXVII-a. “Sexual abuse” means the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term “child” or “children” means any individual who is under the age of 18 years.

XXVIII. “Unfounded report” means a report made pursuant to this chapter for which the department finds that there is no probable cause to believe that the child is abused or neglected.

I. A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.

II. In the prosecution of any person under this section, the tattooing or branding by any person of a child under the age of 18 constitutes endangering the welfare of such child.

III. In the prosecution of any person under this section, the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III for the purpose of creating a visual representation as defined in RSA 649-A:2, IV, or to engage in sexual penetration as defined by RSA 632-A:1, V, constitutes endangering the welfare of such child.

IV. A person who pursuant to the tenets of a recognized religion fails to conform to an otherwise existing duty of care or protection is not guilty of an offense under this section.

V. A person who endangers the welfare of a child or incompetent by violating paragraph III of this section is guilty of a class B felony. All other violations of this section are misdemeanors.

VI. No person acting in accordance with the provisions of RSA 132-A shall be guilty of an offense under this section.

NEW JERSEY


The article to which this act is a supplement shall not be construed to deny the right of a parent, guardian or person having the care, custody and control of any child to treat or provide treatment for an ill child in accordance with the religious tenets of any church as authorized by other statutes of this State; provided, that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

CREDITS
L.1950, c. 126, p. 236, § 1.
Current with laws effective through L.2015, c. 3.

As used in P.L. 1974, c. 119 (C.9:8.21 et seq.), unless the specific context indicates otherwise:

a. “Parent or guardian” means any natural parent, adoptive parent, resource family parent, stepparent, paramour of a parent, or any person, who has assumed responsibility for the care, custody, or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee, or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L.1974, c. 119 (C.9:6-8.21).

b. “Child” means any child alleged to have been abused or neglected.

c. “Abused or neglected child” means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by exhibiting a pattern of behavior that emotionally impairs or creates an imminent danger of emotional impairment for the child, or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

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6 Introduced on Jan. 30 2014 for inclusion.

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A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for this reason alone be considered to be abused or neglected.

d. “Law guardian” means an attorney admitted to the practice of law in this State, regularly employed by the Office of the Public Defender or appointed by the court, and designated under P.L.1974, c. 119 to represent minors in alleged cases of child abuse or neglect and in termination of parental rights proceedings.

e. “Attorney” means an attorney admitted to the practice of law in this State who shall be privately retained; or, in the instance of an indigent parent or guardian, an attorney from the Office of the Public Defender or an attorney appointed by the court who shall be appointed in order to avoid conflict between the interests of the child and the parent or guardian in regard to representation.

f. “Division” means the Division of Child Protection and Permanency in the Department of Children and Families unless otherwise specified.

g. “Institution” means a public or private facility in the State which provides children with out of home care, supervision, or maintenance. Institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, day care center, residential school, shelter, and hospital.

h. “Day school” means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

CREDITS

NEW MEXICO

N.M. STAT. ANN. § 32A-4-2 (2015). DEFINITIONS.

As used in the Abuse and Neglect Act:

A. “abandonment” includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or
(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. “abused child” means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. “aggravated circumstances” includes those circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

(4) had parental rights over a sibling of the child terminated involuntarily;

D. “great bodily harm” means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

E. “neglected child” means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

F. “physical abuse” includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. “sexual abuse” includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

H. “sexual exploitation” includes but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; and

I. “transition plan” means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation.

CREDITS

L. 1993, Ch. 77, § 96; L. 1997, Ch. 34, § 1, eff. July 1, 1997; L. 1999, Ch. 77, § 3, eff. July 1, 1999; L. 2009, Ch. 239, § 33, eff. July 1, 2009.
NEW YORK


In any prosecution for endangering the welfare of a child, pursuant to section 260.10 of this article, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets.

CREDITS

OHIO

OHIO REV. CODE ANN. §2151.03 (2014). “NEGLECTED CHILD” DEFINED.

(A) As used in this chapter, “neglected child” includes any child:

(1) Who is abandoned by the child's parents, guardian, or custodian;

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.
(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person’s responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

CREDIT(S)

(2006 S 17, eff. 8-3-06; 1996 H 274, eff. 8-8-96; 1989 H 257, eff. 8-3-89; 1969 H 320; 1953 H 1; GC 1639-3)


(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

1. Abuse the child;
2. Torture or cruelly abuse the child;
3. Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
4. Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;
(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 to 4511.197 of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

(a) “Controlled substance” has the same meaning as in section 3719.01 of the Revised Code.

(b) “Vehicle,” “streetcar,” and “trackless trolley” have the same meanings as in section 4511.01 of the Revised Code.

(D)(1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance,
through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

(a) “Material,” “performance,” “obscene,” and “sexual activity” have the same meanings as section 2907.01 of the Revised Code.

(b) “Nudity-oriented matter” means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) “Sexually oriented matter” means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E)(1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following, and, in the circumstances described in division (E)(2)(e) of this section, that division applies:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(e) If the violation is a felony violation of division (B)(1) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency

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of, or physical abuse of a child, endangering children is a felony of the second degree. If the offender violates division (B)(2), (3), or (4) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code. If the offender violates division (B)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(a) If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(b) If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(4) If the offender violates division (B)(5) of this section, endangering children is a felony of the second degree. If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:
(a) Except as otherwise provided in division (E)(5)(b) or (c) of this section, endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(5)(c) of this section, endangering children in violation of division (C) of this section is a felony of the fifth degree.

(c) If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of division (C) of this section, section 2903.06 or 2903.08 of the Revised Code, section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony of the fourth degree.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(5)(a), (b), or (c) of this section or pursuant to any other provision of law and in addition to any suspension of the offender’s driver’s or commercial driver’s license or permit or nonresident operating privilege under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender’s driver’s or commercial driver’s license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(e) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to division (E)(5)(a), (b), (c), or (d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with section 4511.19 of the Revised Code for that violation of division (A) of section 4511.19 of the Revised Code.

(F)(1)(a) A court may require an offender to perform not more than two hundred hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender’s community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender’s participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the court requires the offender to perform supervised community service work as part of the offender’s community control sanction or sentence, the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section.
service work as part of the offender’s community control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

(i) The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of division (C) of this section, if applicable.

(ii) The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of section 2951.02 of the Revised Code.

(iii) The community service work shall be supervised in the manner described in division (B)(4) of section 2951.02 of the Revised Code by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.

(iv) The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

(b) If a court, pursuant to division (F)(1)(a) of this section, orders an offender to perform community service work as part of the offender’s community control sanction or sentence and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually
was imprisoned under that sentence or term and by the total amount of time that the offender was
confined for any reason arising out of the offense for which the offender was convicted and sentenced
as described in sections 2949.08 and 2967.191 of the Revised Code.

(2) Division (F)(1) of this section does not limit or affect the authority of the court to suspend the
sentence imposed upon a misdemeanor offender and place the offender under a community control
sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony
offender to perform supervised community service work in accordance with division (B) of section
2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G)(1) If a court suspends an offender’s driver’s or commercial driver’s license or permit or nonresident
operating privilege under division (E)(5)(d) of this section, the period of the suspension shall be
consecutive to, and commence after, the period of suspension of the offender’s driver’s or commercial
driver’s license or permit or nonresident operating privilege that is imposed under Chapter 4506.,
4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the
violation of division (C) of this section that is the basis of the suspension under division (E)(5)(d) of this
section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the
basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving
privileges if the offender’s license, permit, or privilege has been suspended under division (E)(5)(d) of
this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to
three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 of the Revised Code.

(H)(1) If a person violates division (C) of this section and if, at the time of the violation, there were two
or more children under eighteen years of age in the motor vehicle involved in the violation, the
offender may be convicted of a violation of division (C) of this section for each of the children, but the
court may sentence the offender for only one of the violations.

(2)(a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the
person is not also convicted of and does not also plead guilty to a separate charge charging the
violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the
violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties
and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or
plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A)
of section 4511.19 of the Revised Code;

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(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(I) As used in this section:

(1) “Community control sanction” has the same meaning as in section 2929.01 of the Revised Code;

(2) “Limited driving privileges” has the same meaning as in section 4501.01 of the Revised Code;

(3) “Methamphetamine” has the same meaning as in section 2925.01 of the Revised Code.

CREDITS

(2011 H 86, eff. 9-30-11; 2008 H 280, eff. 4-7-09; 2006 S 8, eff. 8-17-06; 2006 S 53, eff. 5-17-06; 2004 S 58, eff. 8-11-04; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 S 180, eff. 3-22-01; 1999 S 107, eff. 3-23-00; 1999 H 162, eff. 8-25-99; 1997 S 60, eff. 10-21-97; 1996 S 269, § 8, eff. 5-15-97; 1996 S 269, § 1, eff. 7-1-96; 1996 H 353, § 4, eff. 5-15-97; 1996 H 353, § 1, eff. 9-17-96; 1995 H 167, eff. 5-15-97; 1995 S 2, eff. 7-1-96; 1994 H 236, eff. 9-29-94; 1988 H 51, eff. 3-17-89; 1985 H 349; 1984 S 321, H 44; 1977 S 243; 1972 H 511)

OKLAHOMA


When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. “Abandonment” means:

a. the willful intent by words, actions, or omissions not to return for a child, or
b. the failure to maintain a significant parental relationship with a child through visitation or
communication in which incidental or token visits or communication are not considered significant, or
c. the failure to respond to notice of deprived proceedings;

2. “Abuse” means harm or threatened harm or failure to protect from harm or threatened harm to the
health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare,
including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual
exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using
ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

a. “Harm or threatened harm to the health or safety of a child” means any real or threatened physical,
mental, or emotional injury or damage to the body or mind that is not accidental including but not
limited to sexual abuse, sexual exploitation, neglect, or dependency.
b. “Sexual abuse” includes but is not limited to rape, incest, and lewd or indecent acts or proposals
made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the
child.
c. “Sexual exploitation” includes but is not limited to allowing, permitting, or encouraging a child to
engage in prostitution, as defined by law, by a person responsible for the health, safety, or welfare of a
child, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as
defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for
the health, safety, and welfare of the child;

3. “Adjudication” means a finding by the court that the allegations in a petition alleging that a child is
deprived are supported by a preponderance of the evidence;

4. “Adjudicatory hearing” means a hearing by the court as provided by Section 1-4-601 of this title;

5. “Assessment” means a comprehensive review of child safety and evaluation of family functioning
and protective capacities that is conducted in response to a child abuse or neglect referral that does
not allege a serious and immediate safety threat to a child;

6. “Behavioral health” means mental health, substance abuse, or co-occurring mental health and
substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring
mental health and substance abuse treatment;

7. “Child” means any unmarried person under eighteen (18) years of age;

8. “Child advocacy center” means a center and the multidisciplinary child abuse team of which it is a
member that is accredited by the National Children's Alliance or that is completing a sixth year of

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reaccreditation. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:

a. nonurban centers in districts with child populations that are less than sixty thousand (60,000), and

b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa counties;

9. “Child with a disability” means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child, or who is regarded as having such an impairment by a competent medical professional;

10. “Child-placing agency” means an agency that arranges for or places a child in a foster family home, group home, adoptive home, or independent living program;

11. “Commission” means the Commission for Human Services;

12. “Community-based services” or “community-based programs” means services or programs which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

13. “Concurrent permanency planning” means, when indicated, the implementation of two plans for a child entering foster care. One plan focuses on reuniting the parent and child; the other seeks to find a permanent out-of-home placement for the child with both plans being pursued simultaneously;

14. “Court-appointed special advocate” or “CASA” means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and when appointed by the court, serves as an officer of the court in the capacity as a guardian ad litem;

15. “Court-appointed special advocate program” means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent, not-for-profit corporation or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem;

16. “Custodian” means an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. As used in this title, the term “custodian” shall not mean the Department of Human Services;
17. “Day treatment” means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

18. “Department” means the Department of Human Services;

19. “Dependency” means a child who is homeless or without proper care or guardianship through no fault of his or her parent, legal guardian, or custodian;

20. “Deprived child” means a child:
   a. who is for any reason destitute, homeless, or abandoned,
   b. who does not have the proper parental care or guardianship,
   c. who has been abused, neglected, or is dependent,
   d. whose home is an unfit place for the child by reason of depravity on the part of the parent or legal guardian of the child, or other person responsible for the health or welfare of the child,
   e. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child,
   f. who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of the child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment shall be necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,
   g. who, due to improper parental care and guardianship, is absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance,
   h. whose parent, legal guardian or custodian for good cause desires to be relieved of custody,
   i. who has been born to a parent whose parental rights to another child have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the parent to the other child, have not been corrected, or
j. whose parent, legal guardian, or custodian has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, legal guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

21. “Dispositional hearing” means a hearing by the court as provided by Section 1-4-706 of this title;

22. “Drug-endangered child” means a child who is at risk of suffering physical, psychological or sexual harm as a result of the use, possession, distribution, manufacture or cultivation of controlled substances, or the attempt of any of these acts, by a person responsible for the health, safety or welfare of the child, as defined in paragraph 51 of this section. This term includes circumstances wherein the substance abuse of the person responsible for the health, safety or welfare of the child interferes with that person's ability to parent and provide a safe and nurturing environment for the child. The term also includes newborns who test positive for a controlled dangerous substance, with the exception of those substances administered under the care of a physician;

23. “Emergency custody” means the custody of a child prior to adjudication of the child following issuance of an order of the district court pursuant to Section 1-4-201 of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 1-4-203 of this title;

24. “Facility” means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children;

25. “Foster care” or “foster care services” means continuous twenty-four-hour care and supportive services provided for a child in foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent;
26. “Foster family home” means the private residence of a foster parent who provides foster care services to a child. Such term shall include a nonkinship foster family home, a therapeutic foster family home, or the home of a relative or other kinship care home;

27. “Foster parent eligibility assessment” includes a criminal background investigation including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Office of Juvenile Affairs, or any child-placing agency pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

28. “Guardian ad litem” means a person appointed by the court pursuant to the provisions of Section 1-4-306 of this title having those duties and responsibilities as set forth in that section. The term “guardian ad litem” shall refer to a court-appointed special advocate as well as to any other person appointed pursuant to the provisions of Section 1-4-306 of this title to serve as a guardian ad litem;

29. “Guardian ad litem of the estate of the child” means a person appointed by the court to protect the property interests of a child pursuant to Section 1-8-109 of this title;

30. “Group home” means a residential facility licensed by the Department to provide full-time care and community-based services for more than five but fewer than thirteen children;

31. “Harm or threatened harm to the health or safety of a child” means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency;

32. “Heinous and shocking abuse” includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. “Serious bodily injury” means injury that involves:

a. a substantial risk of death,

b. extreme physical pain,

c. protracted disfigurement,

d. a loss or impairment of the function of a body member, organ, or mental faculty,

e. an injury to an internal or external organ or the body,

f. a bone fracture,

gh. sexual abuse or sexual exploitation,

h. chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation which is repeated or continuing,
i. torture that includes, but is not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person, or

j. any other similar aggravated circumstance;

33. “Heinous and shocking neglect” includes, but is not limited to:

a. chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child which results in harm to the child,

b. neglect that has resulted in a diagnosis of the child as a failure to thrive,

c. an act or failure to act by a parent that results in the death or near death of a child or sibling, serious physical or emotional harm, sexual abuse, sexual exploitation, or presents an imminent risk of serious harm to a child, or

d. any other similar aggravating circumstance;

34. “Independent living program” means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, such features as minimal direct staff supervision, and the provision of supportive services to assist children with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

35. “Individualized service plan” means a document written pursuant to Section 1-4-704 of this title that has the same meaning as “service plan” or “treatment plan” where those terms are used in the Oklahoma Children's Code;

36. “Infant” means a child who is twelve (12) months of age or younger;

37. “Institution” means a residential facility offering care and treatment for more than twenty residents;

38. a. “Investigation” means a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of the child, making it necessary to determine:

(1) the current safety of a child and the risk of subsequent abuse or neglect, and

(2) whether child abuse or neglect occurred and whether the family needs prevention- and intervention-related services.

b. “Investigation” results in a written response stating one of the following findings:

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(1) “Substantiated ” means the Department has determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect has occurred. When child abuse or neglect is substantiated, the Department may recommend:

(a) court intervention if the Department finds the health safety, or welfare of the child is threatened, or

(b) child abuse and neglect prevention and intervention-related services for the child, parents or persons responsible for the care of the child if court intervention is not determined to be necessary,

(2) “Unsubstantiated -- Services recommended” means the Department has determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine whether child abuse or neglect has occurred. If child abuse or neglect is unsubstantiated, the Department may recommend, when determined to be necessary, that the parents or persons responsible for the care of the child obtain child abuse and neglect prevention- and intervention-related services, or

(3) “Ruled out” means a report in which a child protective services specialist has determined, after an investigation of a report of child abuse or neglect, that no child abuse or neglect has occurred;

39. “Kinship care” means full-time care of a child by a kinship relation;

40. “Kinship guardianship” means a permanent guardianship as defined in this section;

41. “Kinship relation” or “kinship relationship” means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child’s parents or the child; provided, however, in cases where the Indian Child Welfare Act applies, the definitions contained in 25 U.S.C., Section 1903 shall control;

42. “Mental health facility” means a mental health or substance abuse treatment facility as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

43. “Minor” means the same as the term “child” as defined in this section;

44. “Minor in need of treatment” means a child in need of mental health or substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

45. “Multidisciplinary child abuse team” means any team established pursuant to Section 1-9-102 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse. For purposes of this definition, “freestanding” means a team not used by a child advocacy center for its accreditation;
46. “Near death” means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

47. “Neglect” means:

a. the failure or omission to provide any of the following:

(1) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,

(2) medical, dental, or behavioral health care,

(3) supervision or appropriate caretakers, or

(4) special care made necessary by the physical or mental condition of the child,

b. the failure or omission to protect a child from exposure to any of the following:

(1) the use, possession, sale, or manufacture of illegal drugs,

(2) illegal activities, or

(3) sexual acts or materials that are not age-appropriate, or

c. abandonment.

Nothing in this paragraph shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child. Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

48. “Permanency hearing” means a hearing by the court pursuant to Section 1-4-811 of this title;

49. “Permanent custody” means the court-ordered custody of an adjudicated deprived child when a parent-child relationship no longer exists due to termination of parental rights or due to the death of a parent or parents;

50. “Permanent guardianship” means a judicially created relationship between a child, a kinship relation of the child, or other adult established pursuant to the provisions of Section 1-4-709 of this title;
51. “Person responsible for a child's health, safety, or welfare” includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

52. “Protective custody” means custody of a child taken by a law enforcement officer or designated employee of the court without a court order;

53. “Putative father” means an alleged father as that term is defined in Section 7700-102 of Title 10 of the Oklahoma Statutes;

54. “Relative” means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child;

55. “Residential child care facility” means a twenty-four-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives;

56. “Review hearing” means a hearing by the court pursuant to Section 1-4-807 of this title;

57. “Risk” means the likelihood that an incident of child abuse or neglect will occur in the future;

58. “Safety threat” means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;

59. “Safety analysis” means action taken by the Department in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to priority guidelines and other criteria adopted by the Department;

60. “Safety evaluation” means evaluation of a child's situation by the Department using a structured, evidence-based tool to determine if the child is subject to a safety threat;

61. “Secure facility” means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

62. “Sibling” means a biologically or legally related brother or sister of a child;

63. “Specialized foster care” means foster care provided to a child in a foster home or agency-contracted home which:

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a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,

b. is monitored by the Division, and

c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

64. “Temporary custody” means court-ordered custody of an adjudicated deprived child;

65. “Therapeutic foster family home” means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

66. “Transitional living program” means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. The program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

67. “Voluntary foster care placement” means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child’s parent, legal guardian or custodian.

CREDITS

Pennsylvania


(a) Environmental factors.--No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors, such as inadequate housing, furnishings, income, clothing and medical care, that are beyond the control of the parent or person responsible for the child's welfare with whom the child resides. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

(b) Practice of religious beliefs.--If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of sincerely held religious beliefs of the child's parents or relative within the third degree of consanguinity and with whom the child resides, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. In such cases the following shall apply:

1. The county agency shall closely monitor the child and the child's family and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.

2. All correspondence with a subject of the report and the records of the department and the county agency shall not reference child abuse and shall acknowledge the religious basis for the child's condition.

3. The family shall be referred for general protective services, if appropriate.

4. This subsection shall not apply if the failure to provide needed medical or surgical care causes the death of the child.

5. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

(c) Use of force for supervision, control and safety purposes.--Subject to subsection (d), the use of reasonable force on or against a child by the child's own parent or person responsible for the child's welfare shall not be considered child abuse if any of the following conditions apply:

1. The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.

2. The use of reasonable force is necessary.
(i) to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;

(ii) to prevent the child from self-inflicted physical harm;

(iii) for self-defense or the defense of another individual; or

(iv) to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.

(d) Rights of parents.--Nothing in this chapter shall be construed to restrict the generally recognized existing rights of parents to use reasonable force on or against their children for the purposes of supervision, control and discipline of their children. Such reasonable force shall not constitute child abuse.

(e) Participation in events that involve physical contact with child.--An individual participating in a practice or competition in an interscholastic sport, physical education, a recreational activity or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.

(f) Child-on-child contact.--

(1) Harm or injury to a child that results from the act of another child shall not constitute child abuse unless the child who caused the harm or injury is a perpetrator.

(2) Notwithstanding paragraph (1), the following shall apply:

(i) Acts constituting any of the following crimes against a child shall be subject to the reporting requirements of this chapter:

(A) rape as defined in 18 Pa.C.S. § 3121 (relating to rape);

(B) involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);

(C) sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault);

(D) aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);

(E) indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault);

(F) indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
(ii) No child shall be deemed to be a perpetrator of child abuse based solely on physical or mental injuries caused to another child in the course of a dispute, fight or scuffle entered into by mutual consent.

(iii) A law enforcement official who receives a report of suspected child abuse is not required to make a report to the department under section 6334(a) (relating to disposition of complaints received), if the person allegedly responsible for the child abuse is a nonperpetrator child.

(g) Defensive force.--Reasonable force for self-defense or the defense of another individual, consistent with the provisions of 18 Pa.C.S. §§ 505 (relating to use of force in self-protection) and 506 (relating to use of force for the protection of other persons), shall not be considered child abuse.

CREDITS


RHODE ISLAND


(a) Every person having the custody or control of any child under the age of eighteen (18) years who shall abandon that child, or who shall treat the child with gross or habitual cruelty, or who shall wrongfully cause or permit that child to be an habitual sufferer for want of food, clothing, proper care, or oversight, or who shall use or permit the use of that child for any wanton, cruel, or improper purpose, or who shall compel, cause, or permit that child to do any wanton or wrongful act, or who shall cause or permit the home of that child to be the resort of lewd, drunken, wanton, or dissolute persons, or who by reason of neglect, cruelty, drunkenness, or depravity, shall render the home of that child a place in which it is unfit for that child to live, or who shall neglect or refuse to pay the reasonable charges for the support of that child, whenever the child shall be placed by him or her in the custody of, or be assigned by any court to, any individual, association, or corporation, shall be guilty of a felony and shall for every such offense be imprisoned for not less than one year nor more than three (3) years, or be fined not exceeding one thousand dollars ($1,000), or both, and the child may be proceeded against as a neglected child under the provisions of chapter 1 of title 14.

(b) In addition to any penalty provided in this section, any person convicted or placed on probation for this offense may be required to receive psychosociological counseling in child growth, care and development as a part of that sentence or probation. For purposes of this section, and in accordance with § 40-11-15, a parent or guardian practicing his or her religious beliefs which differ from general community standards who does not provide specified medical treatment for a child shall not, for that
reason alone, be considered an abusive or negligent parent or guardian; provided, the provisions of this section shall not: (1) exempt a parent or guardian from having committed the offense of cruelty or neglect if the child is harmed under the provisions of (a) above; (2) exempt the department from the provisions of § 40-11-5; or (3) prohibit the department from filing a petition, pursuant to the provisions of § 40-11-15, for medical services for a child, where his or her health requires it.

CREDITS

A parent or guardian practicing his or her religious beliefs which differ from general community standards who does not provide specified medical treatment for a child shall not, for that reason alone, be considered a negligent parent or guardian. However, nothing in this section shall: (1) prevent the child from being considered abused or neglected if the child is harmed or threatened with harm as described in § 40-11-2; or (2) preclude the court from ordering medical services or nonmedical services recognized by the laws of this state to be provided to the child where his or her health requires it.

CREDITS

TENNESSEE

(a) A person commits the offense of aggravated child abuse, aggravated child neglect or aggravated child endangerment, who commits child abuse, as defined in § 39-15-401(a); child neglect, as defined in § 39-15-401(b); or child endangerment, as defined in § 39-15-401(c) and:

(1) The act of abuse, neglect or endangerment results in serious bodily injury to the child;

(2) A deadly weapon, dangerous instrumentality, controlled substance or controlled substance analogue is used to accomplish the act of abuse, neglect or endangerment;

(3) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim; or
(4) The act of abuse, neglect or endangerment results from the knowing exposure of a child to the initiation of a process intended to result in the manufacture of methamphetamine as described in § 39-17-435.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) Nothing in this part shall be construed to mean a child is abused, neglected, or endangered, or abused, neglected or endangered in an aggravated manner, for the sole reason the child is being provided treatment by spiritual means through prayer alone, in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner of the recognized church or religious denomination, in lieu of medical or surgical treatment.

(d) “Serious bodily injury to the child” includes, but is not limited to, second- or third-degree burns, a fracture of any bone, a concussion, subdural or subarachnoid bleeding, retinal hemorrhage, cerebral edema, brain contusion, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by whipping children with objects.

(e) A “dangerous instrumentality” is any item that, in the manner of its use or intended use as applied to a child, is capable of producing serious bodily injury to a child, as serious bodily injury to a child is defined in this section.

(f) This section shall be known and may be cited as “Haley's Law”.

(g) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of aggravated child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through Internet services or social networking websites; provided, that the person has no parental rights to such victim at the time of the court’s order.

CREDITS


UTAH

UTAH CODE ANN. § 76-5-109 (2015). CHILD ABUSE—CHILD ABANDONMENT.

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(1) As used in this section:

(a) “Child” means a human being who is under 18 years of age.

(b)(i) “Child abandonment” means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C)(I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) “Child abandonment” does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) “Child abuse” means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) “Enterprise” is as defined in Section 76-10-1602.

(e) “Physical injury” means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f)(i) “Serious physical injury” means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;
(C) causes serious emotional harm to the child; or

(D) involves a substantial risk of death to the child.

(ii) “Serious physical injury” includes:

(A) fracture of any bone or bones;

(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.
(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

(i) the child suffers a serious physical injury; or

(ii) the person or enterprise receives, directly or indirectly, any benefit.

(5)(a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

CREDITS

**Utah Code Ann. § 76-5-110 (2015). Abuse or neglect of a Child with a Disability.**

(1) As used in this section:

(a) “Abuse” means:

(i) inflicting physical injury, as that term is defined in Section 76-5-109;

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) “Caretaker” means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) “Child with a disability” means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) “Neglect” means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child with a disability is guilty of a third degree felony.

(3)(a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

(b) Subject to Subsection 78A-6-117 (2)(n)(iii), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the child with a disability.
As used in this chapter:

(1)(a) “Abuse” means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation; or

(iv) sexual abuse.

(v) that a child’s natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) “Abuse” does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) “Abused child” means a child who has been subjected to abuse.

(3) “Adjudication” means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.
(4) “Adult” means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) “Board” means the Board of Juvenile Court Judges.

(6) “Child” means a person under 18 years of age.

(7) “Child placement agency” means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) “Clandestine laboratory operation” is as defined in Section 58-37d-3.

(9) “Commit” means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) “Court” means the juvenile court.

(11) “Dependent child” includes a child who is homeless or without proper care through no fault of the child’s parent, guardian, or custodian.

(12) “Deprivation of custody” means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) “Detention” means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) “Division” means the Division of Child and Family Services.

(15) “Formal referral” means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court’s jurisdiction and that a petition may be filed.

(16) “Group rehabilitation therapy” means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) “Guardianship of the person” includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

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(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) “Habitual truant” is as defined in Section 53A-11-101.

(19) “Harm” means:
(a) physical, emotional, or developmental injury or damage;
(b) sexual abuse; or
(c) sexual exploitation.

(20)(a) “Incest” means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.
(b) The relationships described in Subsection (20)(a) include:
(i) blood relationships of the whole or half blood, without regard to legitimacy;
(ii) relationships of parent and child by adoption; and
(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) “Intellectual disability” means:
(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;
(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and
(c) the onset is before the person reaches the age of 18 years.

(22) “Legal custody” means a relationship embodying the following rights and duties:
(a) the right to physical custody of the minor;
(b) the right and duty to protect, train, and discipline the minor;
(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
(d) the right to determine where and with whom the minor shall live; and
(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) “Mental disorder” means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) “Minor” means:

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(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) “Molestation” means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) “Natural parent” means a minor’s biological or adoptive parent, and includes the minor’s noncustodial parent.

(27)(a) “Neglect” means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d)(i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(28) “Neglected child” means a child who has been subjected to neglect.
(29) “Nonjudicial adjustment” means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b)(i) the minor; or

(ii) the minor and the minor’s parent, legal guardian, or custodian.

(30) “Not competent to proceed” means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) “Physical abuse” means abuse that results in physical injury or damage to a child.

(32) “Probation” means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor’s home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) “Protective supervision” means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor’s home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) “Related condition” means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35)(a) “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.
(36) “Secure facility” means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) “Severe abuse” means abuse that causes or threatens to cause serious harm to a child.

(38) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.

(39) “Sexual abuse” means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) “Sexual exploitation” means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) “Shelter” means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.
(42) “State supervision” means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) “Substance abuse” means the misuse or excessive use of alcohol or other drugs or substances.

(44) “Substantiated” is as defined in Section 62A-4a-101.

(45) “Supported” is as defined in Section 62A-4a-101.

(46) “Termination of parental rights” means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) “Therapist” means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) “Unsubstantiated” is as defined in Section 62A-4a-101.

(49) “Without merit” is as defined in Section 62A-4a-101.

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VT. STAT. ANN. TIT. 33, § 4912 (2015). DEFINITIONS.

As used in this subchapter:

(1) “Abused or neglected child” means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(2) “Assessment” means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

(3) “Child” means an individual under the age of majority.
(4) “Child Protection Registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(5) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.

(6) “Harm” can occur by:
(A) Physical injury or emotional maltreatment.
(B) Failure to supply the child with adequate food, clothing, shelter, or health care. As used in this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapters 51 and 53 of this title, a parent or other person responsible for a child’s care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone.
(C) Abandonment of the child.

(7) “Investigation” means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(8) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(9) “Multidisciplinary team” means a group of professionals, paraprofessionals, and other appropriate individuals impaneled by the Commissioner under this chapter for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.

(10) “Person responsible for a child's welfare” includes the child's parent, guardian, foster parent, any other adult residing in the child's home who serves in a parental role, an employee of a public or private residential home, institution, or agency, or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.

(11) “Physical injury” means death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(12) “Redacted investigation file” means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in section 4913 of this title.

(13) “Registry record” means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.
(14) “Risk of harm” means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment, or sexual abuse.

(15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitements, or sadomasochistic abuse involving a child.

(16) “Substantiated report” means that the Commissioner or the Commissioner’s designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

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VIRGINIA


   abandoned infant.

   A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or omission or refusal to provide any necessary care for the child’s health causes or permits serious injury to the life or health of such child shall be guilty of a Class 4 felony. For purposes of this subsection, “serious injury” shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, or (vii) life-threatening internal injuries.

   B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be guilty of a Class 6 felony.

   2. If a prosecution under this subsection is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this

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subsection that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child’s life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

C. Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

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VA. CODE ANN. § 63.2-100 (2015). DEFINITIONS.

As used in this title, unless the context requires a different meaning:

“Abused or neglected child” means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child’s parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

“Adoptive home” means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

“Adoptive placement” means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

“Adult abuse” means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

“Adult day care center” means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

“Adult exploitation” means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

“Adult foster care” means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

“Adult neglect” means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

“Adult protective services” means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

“Assisted living care” means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

“Assisted living facility” means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

“Auxiliary grants” means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

“Birth family” or “birth sibling” means the child's biological family or biological sibling.

“Birth parent” means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

“Board” means the State Board of Social Services.

“Child” means any natural person under 18 years of age.

“Child day center” means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

“Child day program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.
“Child-placing agency” means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

“Child-protective services” means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

“Child support services” means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

“Child-welfare agency” means a child day center, child-placing agency, children’s residential facility, family day home, family day system, or independent foster home.

“Children’s residential facility” means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children’s residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

“Commissioner” means the Commissioner of the Department, his designee or authorized representative.

“Department” means the State Department of Social Services.

“Department of Health and Human Services” means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

“Disposable income” means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

“Energy assistance” means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established...
pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

“Family day home” means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

“Family day system” means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

“Foster care placement” means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

“Foster home” means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

“General relief” means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

“Independent foster home” means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

“Independent living” means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

“Independent living arrangement” means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.
“Independent living services” means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. “Independent living services” may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

“Independent physician” means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

“Intercountry placement” means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

“Interstate placement” means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child’s parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child’s parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

“Kinship care” means the full-time care, nurturing, and protection of children by relatives.

“Local board” means the local board of social services representing one or more counties or cities.

“Local department” means the local department of social services of any county or city in this Commonwealth.

“Local director” means the director or his designated representative of the local department of the city or county.

“Merit system plan” means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

“Parental placement” means locating or effecting the placement of a child or the placing of a child in a family home by the child’s parent or legal guardian for the purpose of foster care or adoption.

“Public assistance” means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

“Qualified assessor” means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument.

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for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

“Registered family day home” means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

“Residential living care” means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of “residential living care” includes the services provided by independent living facilities that voluntarily become licensed.

“Social services” means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

“Special order” means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

“Temporary Assistance for Needy Families” or “TANF” means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

“Temporary Assistance for Needy Families-Unemployed Parent” or “TANF-UP” means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

“Title IV-E Foster Care” means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

CREDITS


WASHINGTON

WASH. REV. CODE ANN. § 9A.42.005 (2015). FINDINGS AND INTENT—CHRISTIAN

National Center for Prosecution of Child Abuse
National District Attorney Association
www.ndaa.org

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The legislature finds that there is a significant need to protect children and dependent persons, including frail elder and vulnerable adults, from abuse and neglect by their parents, by persons entrusted with their physical custody, or by persons employed to provide them with the basic necessities of life. The legislature further finds that such abuse and neglect often takes the forms of either withholding from them the basic necessities of life, including food, water, shelter, clothing, and health care, or abandoning them, or both. Therefore, it is the intent of the legislature that criminal penalties be imposed on those guilty of such abuse or neglect. It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned. Prosecutions under this chapter shall be consistent with the rules of evidence, including hearsay, under law.

CREDITS

[1997 c 392 § 507.]

WEST VIRGINIA

W. VA. CODE ANN. § 61-8D-4 (2015). CHILD NEGLECT RESULTING IN INJURY; CHILD NEGLECT CREATING RISK OF INJURY; CRIMINAL PENALTIES

(a) If a parent, guardian or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian or custodian neglects a child and by such neglect cause the child serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than $300 nor more than $3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ten years, or both.

(c) If a parent, guardian or custodian grossly neglects a child and by that gross neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, of the child then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.
(d)(1) If a parent, guardian or custodian who has not been previously convicted under this section, section three of this article or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in section one, article eight-b of this chapter, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail not less than thirty days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian is due primarily to a lack of financial means on the part of such parent, guardian or custodian.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of article thirteen, chapter fifteen of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

CREDITS


criminal penalties.

(a) If any parent, guardian or custodian shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars or committed to the custody of the division of corrections for not less than three nor more than fifteen years, or both such fine and imprisonment.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as “medical expenses” pursuant to regulations or rules promulgated by the United States internal revenue service.

(c) A child whose parent, guardian or legal custodian has inhibited or interfered with the provision of medical treatment in accordance with a court order may be considered to have been neglected for the purposes of this section.

CREDITS

Acts 1997, c. 75, eff. 90 days after April 12, 1997.

WISCONSIN


(1) Definitions. In this section:

(ag) “Agency” means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) “Caregiver” means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, greatgrandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.
3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An employee of a residential facility or residential care center for children and youth in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(b) “Community placement” means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35(1); conditional transfer or discharge under s. 51.37(9); placement in a Type 2 residential care center for children and youth or a Type 2 juvenile correctional facility authorized under s. 938.539(5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534, or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health services, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 or any other person under contract with the department of corrections, the department of health services, or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 to exercise custody or supervision over the offender.

(ct) “Indian unborn child” means an unborn child who, when born, may be eligible for affiliation with an Indian tribe in any of the following ways:

1. As a member of the Indian tribe.

2. As a person who is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(cv) “Member of a religious order” means an individual who has taken vows devoting himself or herself to religious or spiritual principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) “Member of the clergy” has the meaning given in s. 765.002(1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(f) “Record” means any document relating to the investigation, assessment and disposition of a report under this section.
(g) “Reporter” means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) “Subject” means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.


(2) Persons required to report. (a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under subs. (2m) and (2r), report as provided in sub. (3):

1. A physician.

2. A coroner.

3. A medical examiner.

4. A nurse.

5. A dentist.

6. A chiropractor.

7. An optometrist.

8. An acupuncturist.

9. A medical or mental health professional not otherwise specified in this paragraph.

10. A social worker.

11. A marriage and family therapist.

12. A professional counselor.
13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141(1)(d).


15. A school administrator


16m. A school employee not otherwise specified in this paragraph.

17. A mediator under s. 767.405.

18. A child care worker in a child care center, group home, or residential care center for children and youth.

19. A child care provider.

20. An alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist.

22m. A physical therapist assistant.

23. An occupational therapist.


25. A speech-language pathologist.


27. An emergency medical technician.

28. A first responder.

29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236(3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in subs. (2m) and (2r), report as provided in sub. (3).
(bm)1. Except as provided in subd. 3. and subs. (2m) and (2r), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02(1)(b) to (f); or

b. Has been threatened with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and subs. (2m) and (2r), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02(1)(b) to (f).

b. Threatened a child with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection in good faith may be discharged from employment, disciplined or otherwise discriminated against in regard to employment, or threatened with any such treatment for so doing.

(2m) Exception to reporting requirement; health care services. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:
1. “Health care provider” means a physician, as defined under s. 448.01(5), a physician assistant, as defined under s. 448.01(6), or a nurse holding a certificate of registration under s. 441.06(1) or a license under s. 441.10(3).

2. “Health care service” means family planning services, as defined in s. 253.07(1)(b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02(1)(b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c)1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c)1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child’s participation in the sexual contact or sexual intercourse.

(2r) Exception to reporting requirement; person delegated parental powers. A person delegated care and custody of a child under s. 48.979 is not required to report as provided in sub. (3) any suspected or threatened abuse or neglect of the child as required under sub. (2)(a), (b), or (bm) or (2m)(d) or (e). Such a person who has reason to suspect that the child has been abused or neglected or who has reason to believe that the child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).
(3) Reports; investigation. (a) Referral of report. 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all of the following types of cases reported to the sheriff or police department:

   a. Cases in which a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of a child.

   b. Cases in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child.

   c. Cases in which it cannot be determined who abused or neglected or threatened to abuse or neglect a child.

   d. Cases in which there is reason to suspect that an unborn child has been abused or there is reason to believe that an unborn child is at substantial risk of abuse.

2d. The sheriff or police department may refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department a case reported to the sheriff or police department in which a person who is not a caregiver is suspected of abuse or of threatened abuse of a child.

2g. The county department, department, or licensed child welfare agency may require that a subsequent report of a case referred under subd. 2. or 2d. be made in writing.

3. Except as provided in sub. (3m), a county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02(1)(a), (am), (g), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under
contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) **Duties of local law enforcement agencies.** 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1)(b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) **Notice of report to Indian tribal agent.** In a county that has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department that receives a report under par. (a) pertaining to a child or unborn child knows or has reason to know that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the Indian child or expectant mother and the fact that a report has been received about that Indian child or Indian unborn child, within 24 hours to one of the following:

1. If the county department knows with which Indian tribe the child is affiliated, or with which Indian tribe the Indian unborn child, when born, may be eligible for affiliation, and the Indian tribe is a Wisconsin Indian tribe, the tribal agent of that tribe.

2. If the county department does not know with which Indian tribe the child is affiliated, or with which Indian tribe the Indian unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin Indian tribe, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.
3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) **Duties of county departments.** 1. a. Immediately after receiving a report under par. (a), the agency shall evaluate the report to determine whether there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. Except as provided in sub. (3m), if the agency determines that a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the child, determines that a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of the child, or cannot identify an individual who is suspected of abuse or neglect or of threatened abuse or neglect of the child, within 24 hours after receiving the report the agency shall, in accordance with the authority granted to the department under s. 48.48(17)(a)1. or the county department under s. 48.57(1)(a), initiate a diligent investigation to determine if the child is in need of protection or services. If the agency determines that a person who is not a caregiver is suspected of abuse or of threatened abuse, the agency may, in accordance with that authority, initiate a diligent investigation to determine if the child is in need of protection or services. Within 24 hours after receiving a report under par. (a) of suspected unborn child abuse, the agency, in accordance with that authority, shall initiate a diligent investigation to determine if the unborn child is in need of protection or services. An investigation under this subd. 1. a. shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations.

b. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1)(am)5. to 8. who continues to have access to the child or a caregiver specified in sub. (1)(am)1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child’s parents, guardian, or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child’s dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child’s parents, guardian, or legal custodian. The agency may contact, observe, or interview the child at any location without permission from the child’s parent, guardian, or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child’s dwelling only with permission from the child’s parent, guardian, or legal custodian or after obtaining a court order permitting the person to do so.

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under
contract with the department and he or she determines that it is consistent with the child’s best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08(2) or 48.19(1)(c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08(2) or 48.19(1)(c) and deliver the child to the intake worker under s. 48.20.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08(2), 48.19(1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08(2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child’s family or the child’s guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child’s parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report that the county department, department, or licensed child welfare agency
investigates under subd. 1., whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child’s parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child’s health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

<Text of subsec. (3)(c)5m. eff. until Jan. 1, 2015>

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person’s right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

<Text of subsec. (3)(c)5m. eff. Jan. 1, 2015>

5m. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department may include in a determination under subd. 4. a determination that a specific person has abused or neglected a child. If the county department, department, or licensed child welfare agency makes an initial determination that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency shall provide that person with an opportunity for a review of that initial determination in accordance with rules promulgated by the department before the county department, department, or licensed child welfare agency may make a final determination that the person has abused or neglected a child. Within 5 days after the date of a final determination that a
specific person has abused or neglected a child, the county department, department, or licensed child welfare agency shall notify the person in writing of the determination, the person's right to a contested case hearing on the determination under ch. 227, and the procedures under sub. 5p.by which the person may receive that hearing.


5p. A person who is the subject of a final determination under subd. 5m. that the person has abused or neglected a child has the right to a contested case hearing on that determination under ch. 227. To receive that hearing, the person must send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the notice under subd. 5m. of the determination. The department shall commence the hearing within 90 days after receipt of the request for the hearing, unless the hearing is rescheduled on the request of the person requesting the hearing or the contested case proceeding is held in abeyance as provided in this subdivision, and shall issue a final decision within 60 days after the close of the hearing. Judicial review of the final administrative decision following the hearing may be had by any party to the contested case proceeding as provided in ch. 227. The person presiding over a contested case proceeding under this subdivision may hold the hearing in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

<Text of subsec. (3)(c)5r. eff. until Jan. 1, 2015>

5r. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency, within 15 days after the date of the determination, shall provide the subunit of the department that administers s. 48.685 with information about the person who has been determined to have abused or neglected the child.

<Text of subsec. (3)(c)5r. eff. Jan. 1, 2015>

5r. Within 15 days after a final determination is made under subd. 5m. that a specific person has abused or neglected a child or, if a contested case hearing is held on such a determination, within 15 days after a final decision is made under subd. 5p. determining that a specific person has abused or neglected a child, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall provide the subunit of the department that administers s. 48.685 with information about the person who has been determined to have abused or neglected the child.
6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child’s parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. The department shall use the information to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the
9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25(6).

(cm) **Contract with licensed child welfare agencies.** A county department may contract with a licensed child welfare agency to fulfill the county department’s duties specified under par. (c)1., 2. b., 2m. b., 5., 5r., 6., 6m., and 8. The department may contract with a licensed child welfare agency to fulfill the department’s duties specified under par. (c)1., 2. a., 2m. b., 3., 4., 5., 5m., 5r., 6., 6m., 7., 8., and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) **Independent investigation.** 1. In this paragraph, “agent” includes a foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(3m) **Alternative response pilot program.** (a) In this subsection, “substantial abuse or neglect” means abuse or neglect or threatened abuse or neglect that under the guidelines developed by the department under par. (b) constitutes severe abuse or neglect or a threat of severe abuse or neglect and a significant threat to the safety of a child and his or her family.

(b) The department shall establish a pilot program under which an agency in a county having a population of 500,000 or more or a county department that is selected to participate in the pilot program may employ alternative responses to a report of abuse or neglect or of threatened abuse or neglect. The department shall select agencies and county departments to participate in the pilot program in accordance with the department’s request-for-proposal procedures and according to
criteria developed by the department. Those criteria shall include an assessment of the plan of an agency or county department for involving the community in providing services for a family that is participating in the pilot program and a determination of whether an agency or a county department has an agreement with local law enforcement agencies and the representative of the public under s. 48.09 to ensure interagency cooperation in implementing the pilot program. To implement the pilot program, the department shall provide all of the following:

1. Guidelines for determining the appropriate alternative response to a report of abuse or neglect or of threatened abuse or neglect, including guidelines for determining what types of abuse or neglect or threatened abuse or neglect constitute substantial abuse or neglect. The department need not promulgate those guidelines as rules under ch. 227.

2. Training and technical assistance for an agency or county department that is selected to participate in the pilot program.

(c) Immediately after receiving a report under sub. (3)(a), an agency or county department that is participating in the pilot program shall evaluate the report to determine the most appropriate alternative response under subds. 1. to 3. to the report. Based on that evaluation, the agency or county department shall respond to the report as follows:

1. If the agency or county department determines that there is reason to suspect that substantial abuse or neglect has occurred or is likely to occur or that an investigation under sub. (3) is otherwise necessary to ensure the safety of the child and his or her family, the agency or county department shall investigate the report as provided in sub. (3). If in conducting that investigation the agency or county department determines that it is not necessary for the safety of the child and his or her family to complete the investigation, the agency or county department may terminate the investigation and conduct an assessment under subd. 2. If the agency or county department terminates an investigation, the agency or county department shall document the reasons for terminating the investigation and notify any law enforcement agency that is cooperating in the investigation.

2. a. If the agency or county department determines that there is reason to suspect that abuse or neglect, other than substantial abuse or neglect, has occurred or is likely to occur, but that under the guidelines developed by the department under par. (b) there is no immediate threat to the safety of the child and his or her family and court intervention is not necessary, the agency or county department shall conduct a comprehensive assessment of the safety of the child and his or her family, the risk of subsequent abuse or neglect, and the strengths and needs of the child's family to determine whether services are needed to address those issues assessed and, based on the assessment, shall offer to provide appropriate services to the child's family on a voluntary basis or refer the child's family to a service provider in the community for the provision of those services.

b. If the agency or county department employs the assessment response under subd. 2. a., the agency or county department is not required to refer the report to the sheriff or police department under sub.
or determine by a preponderance of the evidence under sub. (3)(c)4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child. If in conducting the assessment the agency or county department determines that there is reason to suspect that substantial abuse or neglect has occurred or is likely to occur or that an investigation under sub. (3) is otherwise necessary to ensure the safety of the child and his or her family, the agency or county department shall immediately commence an investigation under sub. (3).

3. If the agency or county department determines that there is no reason to suspect that abuse or neglect has occurred or is likely to occur, the agency or county department shall refer the child's family to a service provider in the community for the provision of appropriate services on a voluntary basis. If the agency or county department employs the community services response under this subdivision, the agency or county department is not required to conduct an assessment under subd. 2., refer the report to the sheriff or police department under sub. (3)(a)3., or determine by a preponderance of the evidence under sub. (3)(c)4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child.

(d) The department shall conduct an evaluation of the pilot program and, by July 1, 2012, shall submit a report of that evaluation to the governor and to the appropriate standing committees of the legislature under s. 13.172(3). The evaluation shall assess the issues encountered in implementing the pilot program and the overall operations of the pilot program, include specific measurements of the effectiveness of the pilot program, and make recommendations to improve that effectiveness. Those specific measurements shall include all of the following:

1. The turnover rate of the agency or county department caseworkers providing services under the pilot program.
2. The number of families referred for each type of response specified in par. (c)1. to 3.
3. The number of families that accepted, and the number of families that declined to accept, services offered under par. (c)2. and 3.
4. The effectiveness of the evaluation under par. (c)(intro.) in determining the appropriate response under par. (c)1. to 3.
5. The impact of the pilot program on the number of out-of-home placements of children by the agencies or county departments participating in the pilot program.
6. The availability of services to address the issues of child and family safety, risk of subsequent abuse or neglect, and family strengths and needs in the communities served under the pilot project.
7g. The rate at which children referred for each type of response specified in par. (c)1. to 3. are subsequently the subjects of reports of suspected or threatened abuse or neglect.
7m. The satisfaction of families referred for each type of response specified in par. (c)1. to 3. with the process used to respond to those referrals.

7r. The cost effectiveness of responding to reports of suspected or threatened abuse or neglect in the manner provided under the pilot program.

(4) Immunity from liability. Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) Coroner’s report. Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) Penalty. Whoever intentionally violates this section by failure to report as required may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(7) Confidentiality. (a) All reports made under this section, notices provided under sub. (3)(bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

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2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. A health care provider, as defined in s. 146.81(1)(a) to (p), for purposes of diagnosis and treatment.

3m. A child’s parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child’s foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4m. A relative of a child placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative or to a person provided with the notice under s. 48.21(5)(e), 48.355(2)(cm), or 48.357(2v)(d). In this subdivision, “relative” includes a relative whose relationship is derived through a parent of the child whose parental rights are terminated.

4p. A public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of
corrections, the department of health services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health services, county department or other person shall cooperate with the agency making the investigation under sub. (3)(c) or (d).

8s. Authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the reports or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13(3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for
use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during
the time period covered by the report or record, was in the home of the child who is the subject of the
report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the
agency legal counsel and the counsel or guardian ad litem representing the interests of a child in
proceedings under subd. 10., 10g or 10j and the guardian ad litem representing the interests of an
unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe in proceedings under subd. 10m. or 10r.,
of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings
under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236(1) or person employed
by a court-appointed special advocate program recognized by the chief judge of a judicial
administrative district under s. 48.07(5), to the extent necessary for the court-appointed special
advocate to perform the advocacy services specified in s. 48.236(3) that the court-appointed special
advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information
identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57(1)(e) or (hm) or a licensed child welfare
agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88(2)(c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its
official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a
population of 500,000 or more, the department or a licensed child welfare agency under contract with
the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of
a child whose death is unexplained or unusual or is associated with unexplained or suspicious
circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in
this state or any other state that has a need for a report or record in order to carry out its responsibility
to protect children from abuse or neglect or to protect unborn children from abuse.
(am) Notwithstanding par. (a)(intro.), a tribal agent who receives notice under sub. (3)(bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.41 or 767.451 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25(6), 813.122 or 813.125.

(cp) Notwithstanding par. (a), an agency may disclose a determination made before January 1, 2015, that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 only if that determination has not been reversed or modified on appeal and may disclose such a determination made on or after January 1, 2015, for those purposes only as provided in sub. (3)(c)5r. Nothing in this paragraph prevents the disclosure of a report or record as otherwise permitted under this subsection.

(cr)1. In this paragraph:

a. “Incident of death or serious injury” means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section or in which a child who has been placed outside the home by a court order under this chapter or ch. 938 is suspected to have committed suicide.

b. “Incident of egregious abuse or neglect” means an incident of suspected abuse or neglect that has been reported under this section, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.

2. Notwithstanding par. (a), if an agency that receives a report under sub. (3) has reason to suspect that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, within 2 working days after determining that such an incident is suspected to have occurred the agency shall provide all of the following information to the subunit of the department responsible for statewide oversight of child abuse and neglect programs:

a. The name of the agency and the name of a contact person at the agency.

b. Information about the child, including the age of the child.
c. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child.

d. A brief history of any reports under sub. (3) received in which the child, a member of the child's family, or the person suspected of the abuse or neglect was the subject and of any services under this chapter offered or provided to any of those persons.

e. A statement of whether the child was residing in his or her home or was placed outside the home when the incident occurred.

f. The identity of any law enforcement agency that referred the report of the incident and of any law enforcement agency, district attorney, or other officer or agency to which the report of the incident was referred.

3. a. Within 2 working days after receiving the information provided under subd. 2., the subunit of the department that received the information shall disclose to the public the fact that the subunit has received the information; whether the department is conducting a review of the incident and, if so, the scope of the review and the identities of any other agencies with which the department is cooperating at that point in conducting the review; whether the child was residing in the home or was placed in an out-of-home placement at the time of the incident; and information about the child, including the age of the child. If the information received is about an incident of egregious abuse or neglect, the subunit of the department shall make the same disclosure to a citizen review panel, as described in par. (a)15g., and, in a county having a population of 500,000 or more, to the Milwaukee child welfare partnership council.

b. Within 90 days after receiving the information provided under subd. 2., the subunit of the department that received the information shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172(3), and make available to the public a summary report that contains the information specified in subd. 4. or 5., whichever is applicable. That subunit may also include in the summary report a summary of any actions taken by the agency in response to the incident and of any changes in policies or practices that have been made to address any issues raised in the review and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those actions or changes and recommended changes in the summary report, the subunit shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172(3), and make available to the public a report of those actions or changes and recommended changes within 6 months after receiving the information provided under subd. 2. Those committees shall review all summary reports and reports of changes and recommended changes transmitted under this subd. 3. b., conduct public hearings on those reports no less often than annually, and submit recommendations to the department regarding those reports.
c. Subdivision 3. a. and b. does not preclude the subunit of the department that prepares the summary report from releasing to the governor, to the appropriate standing committees of the legislature under s. 13.172(3), or to the public any of the information specified in subd. 4. or 5. before the summary report is transmitted to the governor and to those committees and made available to the public; adding to or amending a summary report if new information specified in subd. 4. or 5. is received after the summary report is transmitted to the governor and to those committees and made available to the public; or releasing to the governor, to those committees, and to the public any information at any time to correct any inaccurate information reported in the news media.

4. If the child was residing in his or her home when the incident of death or serious injury or the incident of egregious abuse or neglect occurred, the summary report under subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.

b. A statement of whether any services under this chapter or ch. 938 were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a report being investigated under sub. (3) or of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.

c. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in any incident reported under sub. (3) or in receiving services under this chapter or ch. 938 in the 5 years preceding the date of the incident.

d. A summary of any actions taken by the agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any investigation by the agency under sub. (3) of a report in which any of those persons was the subject and any referrals by the agency of any of those persons for services.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

g. A summary of any investigation that has been conducted under sub. (3) of a report in which the child, any member of the child's family, or the person suspected of the abuse or neglect was the
subject and of any services that have been provided to the child and the child’s family since the date of
the incident.

5. If the child was placed in an out-of-home placement under this chapter or ch. 938 at the time of the
incident of death or serious injury or incident of egregious abuse or neglect, the summary report under
subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child and, if
relevant to the incident, a description of any special needs of the child.

b. A description of the out-of-home placement, including the basis for the decision to place the child in
that placement.

c. A description of all other persons residing in the out-of-home placement.

d. The licensing history of the out-of-home placement, including the type of license held by the
operator of the placement, the period for which the placement has been licensed, and a summary of
all violations by the licensee of any provisions of licensure under s. 48.70(1) or rules promulgated by
the department under s. 48.67 and of any other actions by the licensee or an employee of the licensee
that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or
neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious
injury or an incident of egregious abuse or neglect has occurred, including any material circumstances
leading to the death, serious injury, or egregious abuse or neglect of the child.

6. A summary report or other release or disclosure of information under subd. 3. may not include any
of the following:

a. Any information that would reveal the identity of the child who is the subject of the summary report,
any member of the child's family, any member of the child's household who is a child, or any caregiver
of the child.

b. Any information that would reveal the identity of the person suspected of the abuse or neglect or
any employee of any agency that provided services under this chapter to the child or that participated
in the investigation of the incident of death or serious injury or the incident of egregious abuse or
neglect.

c. Any information that would reveal the identity of a reporter or of any other person who provides
information relating to the incident of death or serious injury or the incident of egregious abuse or
neglect.
d. Any information the disclosure of which would not be in the best interests of the child who is the
subject of the summary report, any member of the child's family, any member of the child's household
who is a child, or any caregiver of the child, as determined by the subunit of the department that
received the information, after consultation with the agency that reported the incident of death or
serious injury or the incident of egregious abuse or neglect, the district attorney of the county in which
the incident occurred, or the court of that county, and after balancing the interest of the child, family
or household member, or caregiver in avoiding the stigma that might result from disclosure against the
interest of the public in obtaining that information.

e. Any information the disclosure of which is not authorized by state law or rule or federal law or
regulation.

7. The subunit of the department that prepares a summary report or otherwise transmits, releases, or
discloses information under subd. 3. may not transmit the summary report to the governor and to the
appropriate standing committees of the legislature under s. 13.172(3), make the summary report
available to the public, or transmit, release, or disclose the information to the governor, to those
standing committees, or to the public if the subunit determines that transmitting or making the
summary report available or transmitting, releasing, or disclosing the information would jeopardize any
of the following:

a. Any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial.

b. Any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

8. If the department fails to disclose to the governor, to the appropriate standing committees of the
legislature under s. 13.172(3), or to the public any information that the department is required to
disclose under this paragraph, any person may request the department to disclose that information. If
the person's request is denied, the person may petition the court to order the disclosure of that
information. On receiving a petition under this subdivision, the court shall notify the department, the
agency, the district attorney, the child, and the child's parent, guardian, or legal custodian of the
petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence
and hear argument relating to the disclosure of the information. The court shall make an in camera
inspection of the information sought to be disclosed and shall order disclosure of the information,
unless the court finds that any of the circumstances specified in subd. 6. or 7. apply.

9. Any person acting in good faith in providing information under subd. 2., in preparing, transmitting,
or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or
disclosing information under subd. 3. is immune from any liability, civil or criminal, that may result by
reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in
providing information under subd. 2., in preparing, transmitting, or making available a summary report
under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. shall be
presumed.
(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(dm) Notwithstanding par. (a), an agency may enter the content of any report or record maintained by the agency into the statewide automated child welfare information system established under s. 48.47(7g).

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(8) Education, training and program development and coordination. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 49.165(1)(a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set

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by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d)1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 49.165(1)(a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06(1)(am)3. and (2)(c).

(9) Annual and quarterly reports. (a) Annual reports. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172(2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(b) Quarterly reports. 1. Within 30 days after the end of each calendar quarter, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.172(3), a summary report of all reports received by the department under sub. (3)(c)8. during the previous calendar quarter of abuse, as defined in s. 48.02(1)(b) to (f), of a child who is placed in the home of a foster parent or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth. For each report included in the summary report the department shall provide the number of incidents of abuse reported; the dates of those incidents; the county in which those incidents occurred; the age or age group of the child who is the subject of the report; the type of placement in which the child was placed at the time of the incident; whether it was determined under sub. (3)(c)4. that abuse occurred; and, if so, the nature of the relationship between the child and the person who abused the child, but may not provide any of the information specified in sub. (7)(cr)6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7)(cr)7. a. or b.

2. In every 4th summary report prepared and transmitted under subd. 1., the department shall provide for all reports of abuse, as defined in s. 48.02(1)(b) to (f), of a child who is placed as described in subd. 1. received by the department under sub. (3)(c)8. during the previous year information indicating whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by
the abuse, but may not provide any of the information specified in sub. (7)(cr)6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7)(cr)7. a. or b. A county department reporting under sub. (3)(c)8. shall make an active effort to obtain that information and report the information to the department under sub. (3)(c)8.

3. The appropriate standing committees of the legislature shall review all summary reports transmitted under subd. 1., conduct public hearings on those summary reports no less often than annually, and submit recommendations to the department regarding those summary reports. The department shall also make those summary reports available to the public.

(10) Current list of tribal agents. The department shall annually provide to each agency described in sub. (3)(bm)(intro.) a current list of all tribal agents in the state.

CREDITS

<<For credits, see Historical Note field.>>

WIS. STAT. ANN. § 948.03 (2015). PHYSICAL ABUSE OF A CHILD.

(1) Definitions. In this section, “recklessly” means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) Intentional causation of bodily harm. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class H felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class F felony.

(3) Reckless causation of bodily harm. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class E felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class I felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class H felony.

(4) Failing to act to prevent bodily harm. (a) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to
take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by
the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class H felony if that person has knowledge
that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to
the child and is physically and emotionally capable of taking action which will prevent the bodily harm
from occurring or being repeated, fails to take that action and the failure to act exposes the child to an
unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is
caused by the other person.

(6) Treatment through prayer. A person is not guilty of an offense under this section solely because he
or she provides a child with treatment by spiritual means through prayer alone for healing in
accordance with the religious method of healing permitted under s. 48.981(3)(c)4. or 448.03(6) in lieu
of medical or surgical treatment.

Credits

<<For credits, see Historical Note field.>>

WYOMING


(a) As used in W.S. 14-3-201 through 14-3-216:

(i) “A person responsible for a child's welfare” includes the child's parent, noncustodial parent,
guardian, custodian, stepparent, foster parent or other person, institution or agency having the
physical custody or control of the child;

(ii) “Abuse” means inflicting or causing physical or mental injury, harm or imminent danger to the
physical or mental health or welfare of a child other than by accidental means, including
abandonment, unless the abandonment is a relinquishment substantially in accordance with W.S. 14-
11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial
risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the
commission of a sexual offense against a child as defined by law:

(A) “Mental injury” means an injury to the psychological capacity or emotional stability of a child as
evidenced by an observable or substantial impairment in his ability to function within a normal range
of performance and behavior with due regard to his culture;
(B) “Physical injury” means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition;

(C) “Substantial risk” means a strong possibility as contrasted with a remote or insignificant possibility;

(D) “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. “Imminent danger” includes violation of W.S. 31-5-233(m).

(iii) “Child” means any person under the age of eighteen (18);

(iv) “Child protective agency” means the field or regional offices of the department of family services;

(v) “Court proceedings” means child protective proceedings which have as their purpose the protection of a child through an adjudication of whether the child is abused or neglected, and the making of an appropriate order of disposition;

(vi) “Institutional child abuse and neglect” means situations of child abuse or neglect where a foster home or other public or private residential home, institution or agency is responsible for the child's welfare;

(vii) “Neglect” means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone;

(viii) “State agency” means the state department of family services;

(ix) “Subject of the report” means any child reported under W.S. 14-3-201 through 14-3-216 or the child's parent, guardian or other person responsible for the child's welfare;

(x) “Unsubstantiated report” means any report made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is not supported by a preponderance of the evidence;

(xi) “Substantiated report” means any report of child abuse or neglect made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is supported by a preponderance of the evidence;

(xii) to (xiv) Repealed by Laws 2002, Sp. & Bud. Sess., Ch. 86, § 3.

(xv) “Collaborative” means the interagency children's collaborative created by W.S. 14-3-215;

(xvi) “Department” means the state department of family services and its local offices;
(xvii) “Transportation” means the provision of a means to convey the child from one place to another by the custodian or someone acting on his behalf in the performance of required duties, but does not require the state to provide incidental travel or to purchase a motor vehicle for the child’s own use to travel.

CREDITS


FEDERAL LEGISLATION


(a) Establishment

The Secretary of Health and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

(b) Purpose

The purpose of the Office established under subsection (a) of this section shall be to execute and coordinate the functions and activities of this subchapter and subchapter III of this chapter. In the event that such functions and activities are performed by another entity or entities within the Department of Health and Human Services, the Secretary shall ensure that such functions and activities are executed with the necessary expertise and in a fully coordinated manner involving regular intradepartmental and interdepartmental consultation with all agencies involved in child abuse and neglect activities.

CREDITS


(a) In general

Nothing in this subchapter and subchapter III of this chapter shall be construed--

(1) as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian; and

(2) to require that a State find, or to prohibit a State from finding, child abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

(b) State requirement

Notwithstanding subsection (a) of this section, a State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life threatening conditions, case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.

CREDIT(S)


U.S. TERRITORIES
GUAM

GUAM CODE ANN. TIT. 19, § 13101 (PUBLIC LAW 31-25). DEFINITIONS

For purposes of this Chapter:
(a) Abandonment means the desertion or willful forsaking of a minor by the person responsible for the child's welfare under circumstances in which a reasonable person would continue to provide care or custody;
(b) Abused or neglected child means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare;
(c) Authorized agency means a department or other public or private agency, or a person, organization, corporation, or benevolent society or association which is licensed or approved by such department or agency or the court to receive children for control, care, maintenance or placement;
(d) Child means a person under the age of 18 years;
(e) Child protective agency means the Guam Police Department, the Office of Special Investigation, Naval Investigative Service, the Attorney General's Office, or the Department of Public Health and Social Services and its authorized representatives, including but not limited to Child Protective Services;
(f) Child protective proceeding means any action, hearing or other civil proceeding before the court under this Chapter;
(g) Child Protective Services means the agency established by § 13301 of this Chapter under the Department of Public Health and Social Services;
(h) Clear and convincing evidence means that measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established;
(i) Criminal history record check means an examination of an individual's criminal history record through fingerprint analysis or name inquiry into territorial, state and national criminal history record files, including but not limited to the files of the Federal Bureau of Investigation, the Guam Police Department, the Prosecution Division of the Attorney General's Office, and the Child Protective Services; provided, that the information obtained shall be used exclusively for purposes under this Chapter and shall be subject to applicable federal and local laws and regulations;
(j) Department means the Department of Public Health and Social Services and its authorized representatives, including but not limited to the Child Protective Services;
(k) Disposition hearing means a hearing held pursuant to § 13320 of this Chapter;
(l) Expunge means to strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any means: mechanical, electronic or otherwise;
(m) Fact-finding hearing means an adjudicatory hearing held pursuant to § 13318 of this Chapter to determine the truth of the allegations contained in the petition filed under this Chapter;
(n) Family means each legal parent, the grandparents, each parent's spouse, each sibling or person related by consanguinity up to the second degree or by marriage, each person residing in the same

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dwelling unit, and any other person or legal entity which is a child’s legal or physical custodian or guardian, or who is otherwise responsible for the child's care;

(o) Family Court means the court established pursuant to § 5101, Title 9, Guam Code Annotated;

(p) Family home means the home of the child's parents or legal custodian where there is the provision of care for the child's physical and psychological health and welfare;

(q) Foster care means when a child is placed, pursuant to an order of the court, in a residence which has been designated as suitable by an authorized agency or the court for the appropriate care of a child;

(r) Foster custody means the legal status created by an order of the court after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home;

(s) Guardian ad litem means a person appointed by the court pursuant to § 13308 of this Chapter whose role is to protect and promote the needs and interests of the child or ward;

(t) Harm to a child's physical health or welfare occurs in a case where there exists evidence of injury, including but not limited to:

1. Any case where the child exhibits evidence of:
   (A) skin bruising or any other internal bleeding,
   (B) any injury to skin causing bleeding,
   (C) burn or burns,
   (D) poisoning,
   (E) fracture of any bone,
   (F) subdural hematoma
   (G) soft tissue swelling,
   (H) extreme pain,
   (I) death or
   (J) disfigurement or impairment of any bodily organ, and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is at variance with the degree or type of such condition or death; or

2. Any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code; or

3. Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

4. Any case where the physical health of the child is adversely affected because the person responsible for the child's welfare has not regularly provided the child, in a timely manner, with adequate food, clothing, shelter, psychological care, physical care, health care or supervision, when financially able to do so or if offered financial assistance or health care or other reasonable means to do so. “Adequate health care” includes any medical or non-medical health care permitted or
authorized under territorial laws; provided, however, that a person responsible for the child's welfare who, while legitimately practicing his or her religious beliefs, does not specify medical treatment for a child should not for that reason alone be considered as harming or threatening harm to the child; or

(5) Any case where the child is provided with a controlled substance as defined by the Criminal and Correctional Code. However, this paragraph shall not apply to a child's family who provides such drugs to the child pursuant to the direction or prescription of a practitioner as defined in § 67.12(t) of the Criminal and Correctional Code of Guam; or

(6) Any case where the child is abandoned.

(u) Indicated report means a report made pursuant to this Article if an investigation by a child protective agency results in a determination by Child Protective Services that substantial evidence of the alleged abuse exists based on available medical evidence and the investigation or an admission of the acts of harm or threatened harm by the person responsible for the child's welfare;

(v) Licensing agency means any department or agency that licenses child care facilities;

(w) Long-term foster custody means the legal status created by order of the court after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate long-term plan concerning the child;

(x) Party means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to § 13306 of this Chapter, any other member of the child's family, or any other person who is alleged in the petition filed under this Chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing or contributing to the acts or condition which bring the child within this Chapter;

(y) Permanency plan is a specific written plan prepared by Child Protective Services which sets forth the goal of the child's permanent placement as being either adoption, permanent foster custody with subsequent adoption or guardianship, or permanent foster custody until majority.

(z) Permanency plan hearing means a hearing held pursuant to § 13324 of this Chapter.

(aa) Person responsible for the child's welfare includes the child's parent, guardian, foster parent, an employee of a public or private residential home or an institution or authorized agency responsible for the child's welfare;

(bb) PINS means a person in need of services who has been harmed as defined in this § 13101.

(cc) Police officer means a person employed by the government of Guam to enforce the laws and ordinances for preserving the peace, safety, and good order of the community;

(dd) Preliminary hearing means a hearing held pursuant to § 13317 of this Chapter;

(ee) Preponderance of evidence means evidence which as a whole shows that the fact sought to be proved is more probable than not;

(ff) Progress hearing means any hearing held pursuant to § 13322 of this Chapter;

(gg) Protective custody means the legal status of a child whose physical custody is retained by a police officer, Child Protective Services social worker or physician pursuant to § 13302 of this Chapter in order to protect such child from harm or threatened imminent harm;

(hh) Reasonable cause to believe means evidence which would cause a reasonable person to believe;
(ii) Service plan means a specific written plan prepared by Child Protective Services and presented to members of the child’s family which indicates the specific services or treatment with which the parties will be provided, the specific actions the parties must take, the specific responsibilities that the parties must assume, and the specific consequences that may be reasonably anticipated to result from the parties’ success or failure in complying with the plan;

(jj) Subject of the report means any child reported to the central register of child abuse and the person(s) responsible for the child’s welfare named in the report;

(kk) Substantiated report means a report made pursuant to this Chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report is an abused or neglected child;

(ll) Suspected report means any report that is not indicated, substantiated or unsubstantiated;

(mm) Temporary foster custody means a legal status created under this Chapter pursuant to an order of the court whereby the Department assumes the duties and rights of a foster custodian over a child;

(nn) Threatened harm means any reasonably foreseeable, substantial risk of harm to a child with due consideration being given to the age of the child;

(oo) Unsubstantiated report means any report made pursuant to this Chapter if an investigation by a child protective agency results in a determination by Child Protective Services that substantial evidence of the alleged abuse does not exist.

19 G.C.A. § 13101, GU ST T. 19, § 13101