

# Child Torture Compilation

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## *Summary of Content*

While child sexual abuse laws and other statutes criminalizing offenses against children have received increased attention over the past few years from the media, lawmakers, and the general public, child torture statutes receive less scrutiny. However, the value of child torture statutes should not be undervalued, as they can be an important tool for prosecutors to use when charging perpetrators of crimes against children.

What constitutes child torture? While the term “child torture” might not be as easy to quantify as terms used to describe other offenses against children, laws that fall under the domain of child torture tend to criminalize particularly heinous forms of child mistreatment. Among the child torture laws included in this compilation are statutes covering sexual torture, sexual exploitation of children, forcible sodomy, and ritual abuse of minors. All of the statutes cited in the compilation are either entirely focused on offenses against children, or have subsections covering offenses against children classifiable as child torture.

## *Scope of Compilation*

This document is a comprehensive compilation of **child torture** statutes from all U.S. jurisdictions including states, territories, and the federal government. It is up-to-date as of **July 2013**. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. The dates on the citation of the statutes indicate they are up-to-date as of the year listed. Please see the CREDITS below for the date of enactment and history.

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](http://www.ndaa.org/ta_form.php)

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## **ALABAMA**

### **ALA. CODE § 12-15-129 (2013). CONDUCT OF HEARINGS GENERALLY**

All hearings pursuant to this chapter shall be conducted by the juvenile court without a jury and separate from other proceedings. The general public shall be excluded from delinquency, in need of supervision, or dependency hearings and only the parties, their counsel, witnesses, and other persons requested by a party shall be admitted. Other persons as the juvenile court finds to have a proper interest in the case or in the work of the juvenile court may be admitted by the juvenile court on condition that the persons refrain from divulging any information which would identify the child under the jurisdiction of the juvenile court or family involved. If the juvenile court finds that it is in the best interests of the child under the jurisdiction of the juvenile court, the child may be temporarily excluded from the hearings, except while allegations of delinquency or in need of supervision are being heard.

#### **CREDITS**

(Acts 1975, No. 1205, p. 2384, § 5-128; Acts 1987, No. 87-597, p. 1037, § 1; Acts 1990, No. 90-674, p. 1304, § 11; Acts 1993, No. 93-256, p. 367, § 1; Acts 1995, No. 95-545, p. 1143, § 1; Act 98-372, p. 677, § 1; § 12-15-65; amended and renumbered by Act 2008-277, p. 441, § 7.)

### **ALA. CODE § 12-15-312 (2013). REASONABLE EFFORTS IN JUDICIAL DETERMINATIONS; SITUATIONS IN WHICH REASONABLE EFFORTS ARE NOT REQUIRED**

(a) When the juvenile court enters an order removing a child from his or her home and places the child into foster care or custody of the Department of Human Resources pursuant to this chapter, the order shall contain specific findings, if warranted by the evidence, within the following time periods while making child safety the paramount concern:

(1) In the first order of the juvenile court that sanctions the removal, whether continuation of the residence of the child in the home would be contrary to the welfare of the child. This order may be the pick-up order that the juvenile court issues on the filing of a dependency petition.

(2) Within 60 days after the child is removed from the home of the child, whether reasonable efforts have been made to prevent removal of the child or whether reasonable efforts were not required to be made.

(3) Within 12 months after the child is removed from the home of the child and not less than every 12 months thereafter during the continuation of the child in out-of-

home care, whether reasonable efforts have been made to finalize the existing permanency plan.

(b) As used in this chapter, reasonable efforts refers to 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 the home of the child, and to make it possible for a child to return safely to the home 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. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize a permanent plan for the child.

(c) Reasonable efforts shall not be required to be made with respect to a parent of the child if the juvenile court has determined that the parental rights of the parent to a sibling of the child have been involuntarily terminated or that a parent has done any of the following:

(1) Subjected a child to an aggravated circumstance against the child or a sibling of the child and the risk of child abuse or neglect is too high for the child to remain at home safely or to be returned home. An aggravated circumstance includes, but is not limited to, rape, sodomy, incest, aggravated stalking, abandonment, torture, chronic abuse, or sexual abuse. An aggravated circumstance may also include any of the following:

a. Allowing a child to use alcohol or illegal drugs to the point of abuse, neglect, or substantial risk of harm.

b. Substance misuse or abuse, or both, by a parent or interfering with the ability to keep the child safe and refusal of a parent to participate in or complete treatment, or where treatment has been unsuccessful.

c. A parent demonstrating extreme disinterest in the child by doing either of the following:

1. Not complying with the steps outlined in the individualized service plan or case plan over a period of six months.

2. Repeatedly leaving the child with someone who is unwilling or incapable of providing care and not returning for the child as promised.

d. Abandoning an infant or young child when the identity of the child is unknown and the parent is unknown or unable to be located after a diligent search.

e. When the parent has an emotional or mental condition and there is clearly no treatment that can improve or strengthen the condition enough to allow the child to remain at home safely or to return home safely.

f. When a parent is incarcerated and the child is deprived of a safe, stable, and permanent parent-child relationship.

(2) Committed murder or manslaughter of another child or murder or manslaughter of the other parent of the child.

(3) Aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of another child or aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of the other parent of the child.

(4) Committed a felony assault which resulted in serious bodily injury to the child or another child or to the other parent of the child. The term serious bodily injury means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(d) Nothing in the exceptions to making reasonable efforts listed in subsection (c) shall be interpreted to require the reunification of a child with a stepparent or paramour of a parent under similar circumstances. The crimes listed in subsection (c) may include those from other states or federal crimes if the elements of the crimes are substantially similar to those crimes in this state.

(e) If reasonable efforts are not made with respect to a child as a result of a determination made by a juvenile court in situations as described above, a permanency hearing, as provided in Section 12-15-315, in which in-state or out-of-state placement options for the child are considered, shall be held for the child within 30 days after the determination. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize permanent placement of the child. Reasonable efforts to place a child for adoption or with a legal guardian or legal custodian, including identifying appropriate in-state and out-of-state placements, may be made concurrently with other reasonable efforts.

#### CREDITS

(ACT 2008-277, P. 441, § 18.)

### **ALA. CODE § 12-15-319 (2013). GROUNDS FOR TERMINATION OF PARENTAL RIGHTS; FACTORS CONSIDERED; PRESUMPTION ARISING FROM ABANDONMENT**

(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge



their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents. In determining whether or not the parents are unable or unwilling to discharge their responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

(1) That the parents have abandoned the child, provided that in these cases, proof shall not be required of reasonable efforts to prevent removal or reunite the child with the parents.

(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for needs of the child.

(3) That the parent has tortured, abused, cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.

(4) Conviction of and imprisonment for a felony.

(5) Commission by the parents of any of the following:

a. Murder or manslaughter of another child of that parent.

b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of that parent.

c. A felony assault or abuse which results in serious bodily injury to the surviving child or another child of that parent. The term serious bodily injury shall mean bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) Unexplained serious physical injury to the child under those circumstances as would indicate that the injuries resulted from the intentional conduct or willful neglect of the parent.

(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed.

(8) That parental rights to a sibling of the child have been involuntarily terminated.

(9) Failure by the parents to provide for the material needs of the child or to pay a reasonable portion of support of the child, where the parent is able to do so.

(10) Failure by the parents to maintain regular visits with the child in accordance with a plan devised by the Department of Human Resources, or any public or licensed private child care agency, and agreed to by the parent.

(11) Failure by the parents to maintain consistent contact or communication with the child.

(12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review.

(b) A rebuttable presumption that the parents are unable or unwilling to act as parents exists in any case where the parents have abandoned a child and this abandonment continues for a period of four months next preceding the filing of the petition. Nothing in this subsection is intended to prevent the filing of a petition in an abandonment case prior to the end of the four-month period.

#### CREDITS

(Acts 1984, No. 84-261, p. 442, § 7; Act 97-851, p. 138, § 1; Act 98-370, p. 670, § 1; § 26-18-7; amended and renumbered by Act 2008-277, p. 441, § 19.)

#### **ALA. CODE § 15-25-39 (2013). DEFINITION**

For purposes of this article, "a child physical offense, sexual offense, and exploitation" is defined to include the following crimes, when one or more of the victims is a child under 12 years of age:

- (1) Rape in any degree.
- (2) Sodomy in any degree.
- (3) Sexual abuse in any degree.
- (4) Sexual misconduct.
- (5) Enticing a child to enter a vehicle, room, house, office, or other place, for immoral purposes.
- (6) Any crime involving the production of child pornography.
- (7) Torture and willful abuse of a child under 18 years of age by responsible person as defined in Section 26-15-3.

(8) Sexual torture as defined in Section 13A-6-65.1.

(9) Attempted murder.

(10) Assault first degree.

(11) Assault second degree.

(12) Assault third degree.

(13) Harassment.

#### CREDITS

(Acts 1989, No. 89-876, p. 1754, § 9; Acts 1994, No. 94-704, p. 1359, § 1.)

#### **ALA. CODE § 13A-6-65.1 (2013). SEXUAL TORTURE**

(a) A person commits the crime of sexual torture:

(1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.

(2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.

(3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.

(b) The crime of sexual torture is a Class A felony.

#### CREDITS

(Acts 1993, No. 93-606, § 1.)

#### **ALA. CODE § 13A-12-190 (2013). DEFINITIONS**

For the purposes of this division, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Disseminate. To sell, lend or show for monetary consideration or to offer or agree to do the same.

(2) Display publicly. The exposing, placing, posting, exhibiting or in any fashion displaying in any location, whether public or private, an item in such a manner that it may

be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

(3) Public thoroughfare, Depot or Vehicle. Any street, highway, park, depot or transportation platform or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public.

(4) Knowingly. A person knowingly disseminates or publicly displays obscene matter when the person knows the nature of the matter. A person knows the nature of the matter when either of the following circumstances exist:

a. The person is aware of the character and content of the matter; or

b. The person recklessly disregards circumstances suggesting the character and content of the matter.

(5) Sado-masochistic abuse. Such term means either of the following:

a. Flagellation or torture, for the purpose of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or

b. The condition of a person who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound or otherwise physically restrained for the purpose of sexual stimulation.

(6) Sexual excitement. The condition of human male or female genitals when in a state of sexual stimulation.

(7) Sexual intercourse. Intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.

(8) Masturbation. Manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation.

(9) Other sexual conduct. Any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(10) Breast nudity. The lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola.

(11) Genital nudity. The lewd showing of the genitals or pubic area.

(12) Matter. Any book, magazine, newspaper, or other printed material, or any picture, photograph, motion picture, video cassette, tape, record, digital video disc (DVD), video compilation, or electronic depiction in a comparable format, or an image, file, download, or other content stored, or reproduced by using a computer or electronic device or other digital storage, or any other thing, articles, or materials that either are or contain a photographic or other visual depiction of a live act, performance, or event.

(13) Obscene. a. When used to describe any matter that contains a visual reproduction of breast nudity, such term means matter that:

1. Applying contemporary local community standards, on the whole, appeals to the prurient interest; and
2. Is patently offensive; and
3. On the whole, lacks serious literary, artistic, political or scientific value.

b. When used to describe matter that is a depiction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, such term means matter containing such a visual reproduction that itself lacks serious literary, artistic, political or scientific value.

(14) Local community. The judicial circuit in which the indictment is brought.

(15) Visual depiction. A portrayal, representation, illustration, image, likeness, or other thing that creates a sensory impression, whether an original, duplicate, or reproduction.

(16) Separate offense. The depiction of an individual less than 17 years of age that violates this division shall constitute a separate offense for each single visual depiction.

#### CREDITS

(Acts 1978, No. 592, p. 705, § 1; Code 1975, § 13-7-230; Acts 1984, No. 84-285, p. 492, § 1; Act 2006-112, p. 166, § 1.)

#### **ALA. CODE § 13A-12-191 (2013). DISSEMINATION OR DISPLAY OF OBSCENE MATTER**

Any person who shall knowingly disseminate or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony.

#### CREDITS

(Acts 1978, No. 592, p. 705, § 2; Code 1975, § 13-7-231; Acts 1984, No. 84-285, p. 492, § 2; Act 2006-112, p. 166, § 1.)

**ALA. CODE § 13A-12-192 (2013). POSSESSION OF OBSCENE MATERIAL**

(a) Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

(b) Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony.

CREDITS

(Acts 1978, No. 592, p. 705, § 3; Code 1975, § 13-7-232; Acts 1984, No. 84-285, p. 492, § 3; Act 2006-112, p. 166, § 1.)

**ALA. CODE § 26-15-3 (2013). PENALTIES**

A responsible person, as defined in Section 26-15-2, who shall torture, willfully abuse, cruelly beat or otherwise willfully maltreat any child under the age of 18 years shall, on conviction, be guilty of a Class C felony.

CREDITS

(Acts 1977, No. 502, p. 658, § 3; Act 2006-531, p. 1224, § 1.)

**ALASKA**

**ALASKA STAT. § 11.41.100 (2013). MURDER IN THE FIRST DEGREE**

(a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child;

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of the child; in this paragraph, “sexual offense” means an offense defined in AS 11.41.410--11.41.470;

(4) acting alone or with one or more persons, the person commits or attempts to commit criminal mischief in the first degree under AS 11.46.475 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants; or

(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.

(b) Murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

#### CREDITS

SLA 1978, ch. 166, § 3; SLA 1988, ch. 67, § 1; SLA 1999, ch. 54, § 3; SLA 2002, ch. 92, § 3.

#### **ALASKA STAT. § 47.10.086 (2013). REASONABLE EFFORTS**

*\*Effective July 1, 2013\**

(a) Except as provided in (b), (c), and (g) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. The department's duty to make reasonable efforts under this subsection includes the duty to

(1) identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;

(2) actively offer the parent or guardian, and refer the parent or guardian to, the services identified under (1) of this subsection; the department shall refer the parent or

guardian to community-based family support services whenever community-based services are available and desired by the parent or guardian; and

(3) document the department's actions that are taken under (1) and (2) of this subsection.

(b) If the court makes a finding at a hearing conducted under AS 47.10.080(1) that a parent or guardian has not sufficiently remedied the parent's or guardian's conduct or the conditions in the home despite reasonable efforts made by the department in accordance with this section, the court may conclude that continuation of reasonable efforts of the type described in (a) of this section are not in the best interests of the child. The department shall then make reasonable efforts to place the child in a timely manner in accordance with the permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100--11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200--11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A)--(C) of this paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A)--(C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that,



according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm; or

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult.

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

(d) If the court determines under (b) or (c) of this section that reasonable efforts under (a) of this section are not required to be provided,

(1) the court shall hold a permanency hearing for the child within 30 days after the determination; and

(2) the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, and complete whatever steps are necessary to finalize the permanent placement of the child.

(e) The department may develop and implement an alternative permanency plan for the child while the department is also making reasonable efforts to return the child to the child's family under (a) of this section.

(f) In making determinations and reasonable efforts under this section, the primary consideration is the child's best interests.

(g) The department is not required to make reasonable efforts of the type described in (a) of this section if the department took emergency custody of an infant under AS 47.10.142 after the infant was abandoned safely within the meaning of AS 47.10.013(c).

#### CREDITS

SLA 1998, ch. 99, § 33; SLA 2006, ch. 20, § 1, eff. May 4, 2006. Amended by SLA 2008, ch. 1, §§ 4, 5, eff. May 11, 2008; Amended by 2013 Alaska Laws Ch. 43 (S.B. 22)

## ARIZONA

### **ARIZ. REV. STAT. § 13-3553 (2013). SEXUAL EXPLOITATION OF A MINOR; EVIDENCE; CLASSIFICATION**

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to § 13-705.

#### CREDITS

Added by Laws 1978, Ch. 200, § 3, eff. Oct. 1, 1978. Amended by Laws 1980, Ch. 229, § 33, eff. April 23, 1980; Laws 1983, Ch. 93, § 1; Laws 1985, Ch. 364, § 27, eff. May 16, 1985; Laws 1996, Ch. 112, § 3; Laws 1998, Ch. 147, § 3; Laws 1999, Ch. 261, § 29; Laws 2000, Ch. 189, § 28; Laws 2001, Ch. 334, § 17; Laws 2008, Ch. 301, § 80, eff. Jan. 1, 2009.

<Title 13, the revised Criminal Code, consisting of Chapters 1 to 33, 35, 35.1, and 36 to 38, was adopted by Laws 1977, Ch. 142, §§ 1 to 178, effective October 1, 1978, Laws 1978, Ch. 200, § 3, effective October 1, 1978, and Laws 1978, Ch. 215, § 3, effective October 1, 1978.>

**ARIZ. REV. STAT. § 13-3623 (2013). CHILD OR VULNERABLE ADULT ABUSE; EMOTIONAL ABUSE; CLASSIFICATION; EXCEPTIONS; DEFINITIONS**

A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section 13-705.
2. If done recklessly, the offense is a class 3 felony.
3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.
2. If done recklessly, the offense is a class 5 felony.
3. If done with criminal negligence, the offense is a class 6 felony.

C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of section 13-3407, subsection A, paragraph 3 or 4. Notwithstanding any other provision of this section, a violation committed under the circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

D. A person who intentionally or knowingly engages in emotional abuse of a vulnerable

adult who is a patient or resident in any setting in which health care, health-related services or assistance with one or more of the activities of daily living is provided or, having the care or custody of a vulnerable adult, who intentionally or knowingly subjects or permits the vulnerable adult to be subjected to emotional abuse is guilty of a class 6 felony.

E. This section does not apply to:

1. A health care provider as defined in section 36-3201 who permits a patient to die or the patient's condition to deteriorate by not providing health care if that patient refuses that care directly or indirectly through a health care directive as defined in section 36-3201, through a surrogate pursuant to section 36-3231 or through a court appointed guardian as provided for in title 14, chapter 5, article 3.

2. A vulnerable adult who is being furnished spiritual treatment through prayer alone and who would not otherwise be considered to be abused, neglected or endangered if medical treatment were being furnished.

F. For the purposes of this section:

1. "Abuse", when used in reference to a child, means abuse as defined in section 8-201, except for those acts in the definition that are declared unlawful by another statute of this title and, when used in reference to a vulnerable adult, means:

- (a) Intentional infliction of physical harm.
- (b) Injury caused by criminally negligent acts or omissions.
- (c) Unlawful imprisonment, as described in section 13-1303.
- (d) Sexual abuse or sexual assault.

2. "Child" means an individual who is under eighteen years of age.

3. "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.

4. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

5. "Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

6. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.

## CREDITS

Added by Laws 1979, Ch. 136, § 1. Amended by Laws 1981, Ch. 293, § 7; Laws 1985, Ch. 364, § 31, eff. May 16, 1985; Laws 1991, Ch. 219, § 1; Laws 1992, Ch. 193, § 1; Laws 1996, Ch. 357, § 1; Laws 1998, Ch. 276, § 38; Laws 2000, Ch. 50, § 4; Laws 2006, Ch. 252, § 1; Laws 2008, Ch. 301, § 85, eff. Jan. 1, 2009.

<Title 13, the revised Criminal Code, consisting of Chapters 1 to 33, 35, 35.1, and 36 to 38, was adopted by Laws 1977, Ch. 142, §§ 1 to 178, effective October 1, 1978, Laws 1978, Ch. 200, § 3, effective October 1, 1978, and Laws 1978, Ch. 215, § 3, effective October 1, 1978.>

## ARKANSAS

### ARK. CODE ANN. § 5-27-401 (2013). DEFINITIONS

As used in this subchapter:

(1) "Performance" means any play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation or a part of a play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation, whether:

(A) Performed live or photographed;

(B) Filmed;

(C) Videotaped; or

(D) Visually depicted by any other photographic, cinematic, magnetic, or electronic means;

(2) "Promote" means to:

(A) Sell, give, provide, distribute, circulate, disseminate, present, exhibit, or advertise; or

(B) Offer or agree to sell, give, provide, distribute, circulate, disseminate, present, exhibit, or advertise;

(3) “Sadomasochistic abuse” means flagellation, mutilation, or torture by or upon a person who is nude or clad in an undergarment or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed, in a sexual context;

(4) “Sexual conduct” means:

(A) Actual or simulated sexual intercourse;

(B) Deviate sexual activity;

(C) Sexual bestiality;

(D) Masturbation;

(E) Sadomasochistic abuse; or

(F) Lewd exhibition of the genitals or pubic area of any person or a breast of a female; and

(5) “Sexual performance” means any performance or part of a performance that includes sexual conduct by a child under eighteen (18) years of age.

#### CREDITS

Acts of 1983, Act 451, § 1; Acts of 1995, Act 337, § 1; Acts of 1995, Act 1209, § 2; Acts of 2007, Act 827, § 38, eff. July 31, 2007; Acts of 2011, Act 1190, § 2, eff. July 27, 2011.

#### **ARK. CODE ANN. § 5-27-402 (2013). EMPLOYING OR CONSENTING TO THE USE OF A CHILD IN A SEXUAL PERFORMANCE**

(a) It is unlawful for a person, knowing the character and content of the performance, to employ, authorize, or induce a child under eighteen (18) years of age to engage in a sexual performance.

(b) It is also unlawful for a parent or legal guardian or custodian of a child under eighteen (18) years of age to consent to the participation by the child in a sexual performance.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class C felony for the first offense; and

(2) Class B felony for a subsequent offense.

#### CREDITS

Acts of 1983, Act 451, § 2; Acts of 2011, Act 1190, § 3, eff. July 27, 2011.

## **CALIFORNIA**

### **CAL. PENAL CODE § 220 (2013). ASSAULT WITH INTENT TO COMMIT MAYHEM, RAPE, SODOMY, ORAL COPULATION, OR OTHER SPECIFIED OFFENSE AND COMMISSION OF SAME ACTS IN COURSE OF BURGLARY OF FIRST DEGREE; PUNISHMENT**

(a) (1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

#### **CREDITS**

(Enacted in 1872. Amended by Stats.1937, c. 553, p. 1581, § 1; Stats.1975, c. 71, p. 133, § 4; Stats.1976, c. 1139, p. 5102, § 144, operative July 1, 1977; Stats.1978, c. 579, p. 1982, § 12; Stats.1979, c. 944, p. 3253, § 3; Stats.2006, c. 337 (S.B.1128), § 5, eff. Sept. 20, 2006; Initiative Measure (Prop. 83, § 4, approved Nov. 7, 2006, eff. Nov. 8, 2006); Stats.2010, c. 219 (A.B.1844), § 2, eff. Sept. 9, 2010.)

### **CAL. PENAL CODE § 273a (2013). WILLFUL HARM OR INJURY TO CHILD; ENDANGERING PERSON OR HEALTH; PUNISHMENT; CONDITIONS OF PROBATION**

(a) 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 that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) 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 that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

## CREDITS

(Added by Stats.1905, c. 568, p. 759, § 5. Amended by Stats.1963, c. 783, p. 1811, § 1; Stats.1965, c. 697, p. 2091, § 1; Stats.1976, c. 1139, p. 5108, § 165, operative July 1, 1977; Stats.1980, c. 1117, p. 3590, § 4; Stats.1984, c. 1423, § 2, eff. Sept. 26, 1984;



Stats.1993, c. 1253 (A.B.897), § 1; Stats.1994, c. 1263 (A.B.1328), § 3; Stats.1996, c. 1090 (A.B.3215), § 1; Stats.1997, c. 134 (A.B.273), § 1.)

## **COLORADO**

### **COLO. REV. STAT. § 18-6-401 (2013). CHILD ABUSE**

(1) (a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.

(b) (I) Except as otherwise provided in subparagraph (III) of this paragraph (b), a person commits child abuse if such person excises or infibulates, in whole or in part, the labia majora, labia minora, vulva, or clitoris of a female child. A parent, guardian, or other person legally responsible for a female child or charged with the care or custody of a female child commits child abuse if he or she allows the excision or infibulation, in whole or in part, of such child's labia majora, labia minora, vulva, or clitoris.

(II) Belief that the conduct described in subparagraph (I) of this paragraph (b) is required as a matter of custom, ritual, or standard practice or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian shall not be an affirmative defense to a charge of child abuse under this paragraph (b).

(III) A surgical procedure as described in subparagraph (I) of this paragraph (b) is not a crime if the procedure:

(A) Is necessary to preserve the health of the child on whom it is performed and is performed by a person licensed to practice medicine under article 36 of title 12, C.R.S.; or

(B) Is performed on a child who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed to practice medicine under article 36 of title 12, C.R.S.

(IV) If the district attorney having jurisdiction over a case arising under this paragraph (b) has a reasonable belief that any person arrested or charged pursuant to this paragraph (b) is not a citizen or national of the United States, the district attorney shall report such information to the immigration and naturalization service, or any successor agency, in an expeditious manner.

(c) (I) A person commits child abuse if, in the presence of a child, or on the premises where a child is found, or where a child resides, or in a vehicle containing a child, the person knowingly engages in the manufacture or attempted manufacture of a controlled substance, as defined by section 18-18-102(5), or knowingly possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance. It shall be no defense to the crime of child abuse, as described in this subparagraph (I), that the defendant did not know a child was present, a child could be found, a child resided on the premises, or that a vehicle contained a child.

(II) A parent or lawful guardian of a child or a person having the care or custody of a child who knowingly allows the child to be present at or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know another person is engaged in the manufacture or attempted manufacture of methamphetamine commits child abuse.

(III) A parent or lawful guardian of a child or a person having the care or custody of a child who knowingly allows the child to be present at or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know another person possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of methamphetamine commits child abuse.

(2) In this section, “child” means a person under the age of sixteen years.

(3) The statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(4) No person, other than the perpetrator, complicitor, coconspirator, or accessory, who reports an instance of child abuse to law enforcement officials shall be subjected to criminal or civil liability for any consequence of making such report unless he knows at the time of making it that it is untrue.

(5) Deferred prosecution is authorized for a first offense under this section unless the provisions of subsection (7.5) of this section or section 18-6-401.2 apply.

(6) Repealed by Laws 2001, Ch. 125, § 1, eff. July 1, 2001.

(7) (a) Where death or injury results, the following shall apply:

(I) When a person acts knowingly or recklessly and the child abuse results in death to the child, it is a class 2 felony except as provided in paragraph (c) of this subsection (7).

(II) When a person acts with criminal negligence and the child abuse results in death to the child, it is a class 3 felony.

(III) When a person acts knowingly or recklessly and the child abuse results in serious bodily injury to the child, it is a class 3 felony.

(IV) When a person acts with criminal negligence and the child abuse results in serious bodily injury to the child, it is a class 4 felony.

(V) When a person acts knowingly or recklessly and the child abuse results in any injury other than serious bodily injury, it is a class 1 misdemeanor; except that, if it is committed under the circumstances described in paragraph (e) of this subsection (7), then it is a class 5 felony.

(VI) When a person acts with criminal negligence and the child abuse results in any injury other than serious bodily injury to the child, it is a class 2 misdemeanor; except that, if it is committed under the circumstances described in paragraph (e) of this subsection (7), then it is a class 5 felony.

(b) Where no death or injury results, the following shall apply:

(I) An act of child abuse when a person acts knowingly or recklessly is a class 2 misdemeanor; except that, if it is committed under the circumstances described in paragraph (e) of this subsection (7), then it is a class 5 felony.

(II) An act of child abuse when a person acts with criminal negligence is a class 3 misdemeanor; except that, if it is committed under the circumstances described in paragraph (e) of this subsection (7), then it is a class 5 felony.

(c) When a person knowingly causes the death of a child who has not yet attained twelve years of age and the person committing the offense is one in a position of trust with respect to the child, such person commits the crime of murder in the first degree as described in section 18-3-102(1)(f).

(d) When a person commits child abuse as described in paragraph (c) of subsection (1) of this section, it is a class 3 felony.

(e) A person who has previously been convicted of a violation of this section or of an offense in any other state, the United States, or any territory subject to the jurisdiction of the United States that would constitute child abuse if committed in this state and who commits child abuse as provided in subparagraph (V) or (VI) of paragraph (a) of this subsection (7) or as provided in subparagraph (I) or (II) of paragraph (b) of this

subsection (7) commits a class 5 felony if the trier of fact finds that the new offense involved any of the following acts:

(I) The defendant, who was in a position of trust, as described in section 18-3-401(3.5), in relation to the child, participated in a continued pattern of conduct that resulted in the child's malnourishment or failed to ensure the child's access to proper medical care;

(II) The defendant participated in a continued pattern of cruel punishment or unreasonable isolation or confinement of the child;

(III) The defendant made repeated threats of harm or death to the child or to a significant person in the child's life, which threats were made in the presence of the child;

(IV) The defendant committed a continued pattern of acts of domestic violence, as that term is defined in section 18-6-800.3, in the presence of the child; or

(V) The defendant participated in a continued pattern of extreme deprivation of hygienic or sanitary conditions in the child's daily living environment.

(7.3) Felony child abuse is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in section 18-1.3-401(10). Misdemeanor child abuse is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501(3).

(7.5) If a defendant is convicted of the class 2 or class 3 felony of child abuse under subparagraph (I) or (III) of paragraph (a) of subsection (7) of this section, the court shall sentence the defendant in accordance with section 18-1.3-401(8)(d).

(8) Repealed by Laws 1990, H.B.90-1093, § 6.

(9) If a parent is charged with permitting a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, pursuant to paragraph (a) of subsection (1) of this section, and the child was seventy-two hours old or younger at the time of the alleged offense, it shall be an affirmative defense to such charge that the parent safely, reasonably, and knowingly handed the child over to a firefighter, as defined in section 18-3-201(1), or to a hospital staff member who engages in the admission, care, or treatment of patients, when such firefighter is at a fire station or such hospital staff member is at a hospital.

## CREDITS

Amended by Laws 1975, H.B.1203, § 15; Laws 1979, H.B.1110, § 8; Laws 1980, H.B.1035, §§ 1, 2; Laws 1985, S.B.42, §§ 1, 2; Laws 1987, S.B.144, § 21; Laws 1989, S.B.29, § 2; Laws 1990, H.B.90-1093, § 6, eff. April 3, 1990; Laws 1991, H.B.91-1229, § 1, eff. May 24, 1991; Laws 1995, H.B.95-1109, § 4, eff. July 1, 1995; Laws 1999, Ch. 216, § 2, eff. May 24, 1999; Laws 2000, Ch. 384, § 1, eff. June 3, 2000; Laws 2001, Ch. 125, § 1, eff. July 1, 2001; Laws 2002, Ch. 318, § 198, eff. Oct. 1, 2002; Laws 2003, Ch. 359, §§ 1, 2, eff. July 1, 2003; Laws 2004, Ch. 200, § 9, eff. Aug. 4, 2004; Laws 2006, Ch. 341, § 4, eff. July 1, 2006; Laws 2006, Ch. 360, § 1, eff. July 1, 2006; Laws 2009, Ch. 343, § 2, eff. July 1, 2009; Laws 2011, Ch. 264, § 33, eff. Aug. 10, 2011.

## **COLO. REV. STAT. § 18-6-403 (2013). SEXUAL EXPLOITATION OF CHILDREN**

(1) The general assembly hereby finds and declares: That the sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a sexual purpose; and that to protect children from sexual exploitation it is necessary to prohibit the production of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

(1.5) The general assembly further finds and declares that the mere possession or control of any sexually exploitative material results in continuing victimization of our children by the fact that such material is a permanent record of an act or acts of sexual abuse of a child; that each time such material is shown or viewed, the child is harmed; that such material is used to break down the will and resistance of other children to encourage them to participate in similar acts of sexual abuse; that laws banning the production and distribution of such material are insufficient to halt this abuse; that in order to stop the sexual exploitation and abuse of our children, it is necessary for the state to ban the possession of any sexually exploitative materials; and that the state has a compelling interest in outlawing the possession of any sexually exploitative materials in order to protect society as a whole, and particularly the privacy, health, and emotional welfare of its children.

(2) As used in this section, unless the context otherwise requires:

(a) “Child” means a person who is less than eighteen years of age.

(b) Deleted by Laws 2003, Ch. 291, § 1, eff. July 1, 2003.

(c) “Erotic fondling” means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. “Erotic fondling” shall not be construed to include physical

contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) “Erotic nudity” means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) “Explicit sexual conduct” means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(f) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts, or developing or undeveloped breast area (if the person is a child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) “Sadomasochism” means:

(I) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(II) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) “Sexual excitement” means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) “Sexual intercourse” means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) “Sexually exploitative material” means any photograph, motion picture, video, video tape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(k) “Video”, “video tape”, or “motion picture” means any material that depicts a moving image of a child engaged in, participating in, observing, or being used for explicit sexual conduct.

(3) A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

(a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(b.5) Possesses or controls any sexually exploitative material for any purpose; except that this paragraph (b.5) does not apply to peace officers or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or

(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

(4) Deleted by Laws 2003, Ch. 291, § 1, eff. July 1, 2003.

(5)(a) Except as provided in paragraph (b) of this subsection (5), sexual exploitation of a child is a class 3 felony.

(b) Sexual exploitation of a child by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony; except that said offense is a class 4 felony if:

(I) It is a second or subsequent offense; or

(II) The possession is of a video, video tape, or motion picture or more than twenty different items qualifying as sexually exploitative material.

(6) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

## CREDITS

Added by Laws 1979, S.B.201, § 1. Amended by Laws 1981, S.B.315, § 1; Laws 1984, H.B.1018, § 1; Laws 1988, H.B.1082, §§ 1 to 4; Laws 1988, H.B.1200, § 18; Laws 1998, Ch. 139, § 3, eff. April 21, 1998; Laws 2003, Ch. 291, § 1, eff. July 1, 2003; Laws 2006, Ch. 359, § 1, eff. July 1, 2006; Laws 2006, Ch. 362, § 7, eff. July 1, 2006; Laws 2009, Ch. 343, § 3, eff. July 1, 2009.

## COLO. REV. STAT. § 18-7-501 (2013). DEFINITIONS

As used in this part 5, unless the context otherwise requires:

- (1) "Child" means a person under the age of eighteen years.
- (2) "Harmful to children" means that quality of any description or representation, in whatever form, of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
  - (a) Taken as a whole, predominantly appeals to the prurient interest in sex of children;
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and
  - (c) Is, when taken as a whole, lacking in serious literary, artistic, political, and scientific value for children.
- (3) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, of:
  - (a) The character and content of any material described herein which is reasonably susceptible of examination; and
  - (b) The age of the child; however, an honest mistake shall constitute an excuse from liability hereunder if a reasonable bona fide attempt is made to ascertain the true age of such child.
- (4) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- (5) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, sodomy, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast.
- (6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (7) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion



thereof below the top of the areola, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

## CREDITS

Added by Laws 1981, H.B.1310, § 1.

### **COLO. REV. STAT. § 18-7-502 (2013). UNLAWFUL ACTS**

(1) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a child:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(2) It shall be unlawful for any person knowingly to sell to a child an admission ticket or pass, or knowingly to admit a child to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by children not admitted to any such premises.

(3) It shall be unlawful for any child falsely to represent to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is eighteen years of age or older, with the intent to procure any material set forth in subsection (1) of this section, or with the intent to procure his admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(4) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is the parent or guardian of any juvenile, or that any child is eighteen years of age or older, with the intent to procure any material set forth in subsection (1) of this section, or with the intent to procure any child's admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(5) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment frequented by children or where children are or may be invited as part of the general public:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (5), or explicit verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(6) A violation of any provision of this section is a class 2 misdemeanor.

#### CREDITS

Added by Laws 1981, H.B.1310, § 1.

## CONNECTICUT

### **CONN. GEN. STAT. § 53-20 (2013). CRUELTY TO PERSONS.**

(a)(1) Any person who intentionally tortures, torments or cruelly or unlawfully punishes another person or intentionally deprives another person of necessary food, clothing, shelter or proper physical care shall be fined not more than five thousand dollars or imprisoned not more than five years or both.

(2) Any person who, with criminal negligence, deprives another person of necessary food, clothing, shelter or proper physical care shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

(b) (1) Any person who, having the control and custody of any child under the age of nineteen years, in any capacity whatsoever, intentionally maltreats, tortures, overworks or cruelly or unlawfully punishes such child or intentionally deprives such child of necessary food, clothing or shelter shall be fined not more than five thousand dollars or imprisoned not more than five years or both.

(2) Any person who, having the control and custody of any child under the age of nineteen years, in any capacity whatsoever, with criminal negligence, deprives such child of necessary food, clothing or shelter shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

#### CREDITS

(1949 Rev., § 8368; 2005, P.A. 05-72, § 1.)

# DELAWARE

## DEL. CODE ANN. tit. 10, § 901 (2013). DEFINITIONS

For the purpose of this chapter, unless the context indicates differently:

(1) “Abuse” or “abused child” means that a person:

- a. Causes or inflicts sexual abuse on a child; or
- b. Has care, custody or control of a child, and causes or inflicts:
  1. Physical injury through unjustified force as defined in § 468 of Title 11;
  2. Emotional abuse
  3. Torture;
  4. Exploitation; or
  5. Maltreatment or mistreatment.

(2) “Adult” means a person who has reached his or her 18th birthday.

(3) “Care, custody and control” or “those responsible for care custody and control” shall mean a person or persons in a position of trust, authority, supervision or control over a child. It may include:

- 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 relatives in this section or as an adult individual defined in § 1009(b)(3)a. of this title;
- d. Persons temporarily responsible for the child's well-being or care such as a healthcare 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 18th 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 a nonrelated home on an extended basis without the consent and approval of the DSCYF or any agency or court licensed or authorized to place children in a nonrelated home; 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;
- l. 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. 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.

## CREDITS

Added by 58 Laws 1971, ch. 114, § 1. Amended by 60 Laws 1976, ch. 449, § 1; 61 Laws 1978, ch. 334, § 1; 63 Laws 1981, ch. 73, § 1; 63 Laws 1982, ch. 290, § 7; 64 Laws 1983, ch. 108, § 4; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 71 Laws 1997, ch. 176, § 2; 71 Laws 1998, ch. 240, § 1, eff. May 1, 1998; 73 Laws 2001, ch. 65, § 8, eff. June 27, 2001; 74 Laws 2003, ch. 175, § 12, eff. July 17, 2003; 76 Laws 2007, ch. 136, §§ 1-5, eff. July 12, 2007; 77 Laws 2009, ch. 43, § 1, eff. June 16, 2009; 77 Laws 2009, ch. 70, § 1, eff. June 26, 2009.

## **DEL. CODE ANN. tit. 11, § 1100 (2013). DEFINITIONS RELATING TO CHILDREN**

When used in this subchapter:

(a) “Abuse” means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

(b) “Child” shall mean any individual less than 18 years of age. For the purposes of § 1108, § 1109, § 1110, § 1111 and 1112A of this Title, “child” shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

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

(d) “Neglect” or “neglected child” is as defined in § 901 of Title 10.

(e) “Prohibited sexual act” shall include:

- (1) Sexual intercourse;
- (2) Anal intercourse;
- (3) Masturbation;
- (4) Bestiality;
- (5) Sadism;
- (6) Masochism;

- (7) Fellatio;
- (8) Cunnilingus;
- (9) Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;
- (10) Sexual contact;
- (11) Lascivious exhibition of the genitals or pubic area of any child;
- (12) Any other act which is intended to be a depiction or simulation of any act described in this subsection.

(f) “Truancy” or “truant” shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in 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 where a student is enrolled in a charter school, by the board of directors of the charter school.

(g) “Visual depiction” includes, but is not limited to:

(1) Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

(2) Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

(3) Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

(h) “Previous pattern” of abuse and/or neglect shall mean 2 or more incidents of conduct:

(1) That constitute an act of abuse and/or neglect; and

(2) Are not so closely related to each other or connected in point of time and place that they constitute a single event.

A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this subchapter, including an act used as proof of a previous pattern as defined in this subsection. A conviction for any act of abuse or neglect, including one which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this subchapter.

(i) “Significant intellectual or developmental disabilities” means impairment in the intellectual or physical capacity of a child as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.



(j) “Physical injury” to a child shall mean any impairment of physical condition or pain.

(k) “Serious physical injury” shall mean physical injury which creates a risk of death, or which causes disfigurement, impairment of health or loss or impairment of the function of any bodily organ or limb, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

## CREDITS

Added by 58 Laws 1972, ch. 497, § 1. Amended by 59 Laws 1974, ch. 547, § 7; 60 Laws 1976, ch. 449, § 2; 61 Laws 1977, ch. 179, §§ 1, 2; 61 Laws 1978, ch. 334, § 4; 63 Laws 1982, ch. 290, § 8; 65 Laws 1986, ch. 494, § 2; 70 Laws 1995, ch. 266, §§ 3, 4, eff. July 19, 1995; 72 Laws 2000, ch. 346, § 17, eff. June 28, 2000; 72 Laws 2000, ch. 480, §§ 1 to 4, eff. July 26, 2000; 74 Laws 2003, ch. 175, § 13, eff. July 17, 2003; 76 Laws 2007, ch. 136, § 8, eff. July 12, 2007. Redesignated from 11 Del.C. § 1103 and amended by 78 Laws 2012, ch. 406, § 1, eff. Sept. 12, 2012.

## DISTRICT OF COLUMBIA

### D.C. CODE ANN. § 22-1101 (2013). DEFINITION AND PENALTY

*\*Effective June 11, 2013\**

(a) A person commits the crime of cruelty to children in the first degree if that person intentionally, knowingly, or recklessly tortures, beats, or otherwise willfully maltreats a child under 18 years of age or engages in conduct which creates a grave risk of bodily injury to a child, and thereby causes bodily injury.

(b) A person commits the crime of cruelty to children in the second degree if that person intentionally, knowingly, or recklessly:

(1) Maltreats a child or engages in conduct which causes a grave risk of bodily injury to a child; or

(2) Exposes a child, or aids and abets in exposing a child in any highway, street, field house, outhouse or other place, with intent to abandon the child.

(c) (1) Any person convicted of cruelty to children in the first degree shall be fined *not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, passed on 2nd reading on November 1, 2012 (Enrolled version of Bill 19-214)* or be imprisoned not more than 15 years, or both.

(2) Any person convicted of cruelty to children in the second degree shall be fined *not more than the amount set forth in section 101 of the Criminal Fine Proportionality*

*Amendment Act of 2012, passed on 2nd reading on November 1, 2012 (Enrolled version of Bill 19–214) or be imprisoned not more than 10 years, or both.*

## CREDITS

(Feb. 13, 1885, 23 Stat. 303, ch. 58, § 3; Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 814; May 21, 1994, D.C. Law 10-119, § 7, 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 201, 41 DCR 2608 ; 2012 District of Columbia Laws 19-317 (Act 19-641))

## FLORIDA

### **FLA. STAT. ANN. § 775.0847 (2013). POSSESSION OR PROMOTION OF CERTAIN IMAGES OF CHILD PORNOGRAPHY; RECLASSIFICATION**

(1) For purposes of this section:

(a) "Child" means any person, whose identity is known or unknown, less than 18 years of age.

(b) "Child pornography" means any image depicting a minor engaged in sexual conduct.

(c) "Sadomasochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(d) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(e) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(f) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(2) A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to the next higher degree as provided in subsection (3) if:

(a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.

5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

(3) (a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

#### CREDITS

Added by Laws 2007, c. 2007-143, § 3, eff. Oct. 1, 2007.

#### **FLA. STAT. ANN. § 827.03 (2013). ABUSE, AGGRAVATED ABUSE, AND NEGLECT OF A CHILD; PENALTIES**

(1) Definitions.--As used in this section, the term:

- (a) “Aggravated child abuse” occurs when a person:
1. Commits aggravated battery on a child;
  2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
  3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

- (b) “Child abuse” means:
1. Intentional infliction of physical or mental injury upon a child;
  2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

(c) “Maliciously” means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

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

(e) “Neglect of a child” means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or

2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(2) Offenses.--

(a) A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Expert testimony.--

(a) Except as provided in paragraph (b), a physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapter 458 or chapter 459 or has obtained certification as an expert witness pursuant to s. 458.3175.

(b) A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry or has obtained certification as an expert witness pursuant to s. 458.3175.

(c) A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490.

(d) The expert testimony requirements of this subsection apply only to criminal child abuse cases and not to family court or dependency court cases.

## CREDITS

Laws 1899, c. 4721, § 1; Laws 1901, c. 4971, § 1; Gen.St.1906, §§ 3236, 3238; Rev.Gen.St.1920, §§ 5069, 5071; Laws 1923, c. 9331, § 1; Comp. Gen.Laws 1927, §§ 7171, 7173; Laws 1965, c. 65-113, § 1; Laws 1970, c. 70-8, § 1; Laws 1971, c. 71-136, § 940; Fla.St.1973, § 828.04; Laws 1974, c. 74-383, § 49; Laws 1975, c. 75-298, § 30; Laws 1984, c. 84-238, § 1. Amended by Laws 1996, c. 96-322, § 8, eff. Oct. 1, 1996; Laws 1999, c. 99-168, § 16, eff. July 1, 1999; Laws 2003, c. 2003-130, § 1, eff. June 10, 2003; Laws 2012, c. 2012-155, § 9, eff. Oct. 1, 2012.

## GEORGIA

### **GA. CODE ANN. § 16-12-100 (2013). SEXUAL EXPLOITATION OF CHILDREN; REPORTING VIOLATION; FORFEITURE; PENALTIES**

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(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 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

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

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

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section;

except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

## CREDITS

Laws 1978, p. 2193, § 1; Laws 1983, p. 1437, § 1; Laws 1987, p. 1164, § 1; Laws 1988, p. 11, §§ 1, 2; Laws 1991, p. 886, § 3; Laws 1995, p. 957, § 6; Laws 1996, p. 6, § 16; Laws 2003, Act 216, § 2, eff. June 2, 2003.

## **GA. CODE ANN. § 19-7-5 (2013). REPORTING OF CHILD ABUSE; WHEN MANDATED OR AUTHORIZED; CONTENT OF REPORT; TO WHOM MADE; IMMUNITY FROM LIABILITY; REPORT BASED UPON PRIVILEGED COMMUNICATION; PENALTY FOR FAILURE TO REPORT**

*\*Effective May 3, 2013\**

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these



children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

(b) As used in this Code section, the term:

(1) “Abortion” shall have the same meaning as set forth in Code Section 15-11-111.

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

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

(4) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that 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;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

However, 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.

(5) “Child service organization personnel” means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) “Clergy” means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(7) “Pregnancy resource center” means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) “Reproductive health care facility” means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) “School” means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

(10) “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; or

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

“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

(11) “Sexual exploitation” means conduct by any person who allows, permits, encourages, or requires that 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.

(c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:

- (A) Physicians licensed to practice medicine, physician assistants, interns, or residents;
- (B) Hospital or medical personnel;
- (C) Dentists;
- (D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;
- (E) Podiatrists;
- (F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 26 of Title 43 or nurse's aides;
- (G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;
- (H) School teachers;
- (I) School administrators;
- (J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;
- (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;
- (L) Child-counseling personnel;
- (M) Child service organization personnel;
- (N) Law enforcement personnel; or
- (O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

(e) An oral report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information

## CREDITS

Laws 1965, p. 588, § 1; Laws 1968, p. 1196, § 1; Laws 1973, p. 309, § 1; Laws 1974, p. 438, § 1; Laws 1977, p. 242, §§ 1-3; Laws 1978, p. 2059, §§ 1, 2; Laws 1980, p. 921, § 1;

Laws 1981, p. 1034, §§ 1-3; Laws 1988, p. 1624, § 1; Laws 1990, p. 1761, § 1; Laws 1993, p. 1695, §§ 1, 1.1; Laws 1994, p. 97, § 19; Laws 1999, p. 81, § 19; Laws 2006, Act 602, § 1, eff. April 27, 2006; Laws 2009, Act 102, § 2-2, eff. July 1, 2009; Laws 2009, Act 151, § 1, eff. May 5, 2009; Laws 2012, Act 709, § 5-1, eff. July 1, 2012; Laws 2013, Act 33, § 19, eff. April 24, 2013. CREDITS

## **HAWAII**

### **HAW. REV. STAT. ANN. § 707-750 (2013). PROMOTING CHILD ABUSE IN THE FIRST DEGREE.**

(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person:

- (a) Produces or participates in the preparation of child pornography;
- (b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or
- (c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

- (a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or
- (b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

"Computer" shall have the same meaning as in section 708-890.

"Lascivious" means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

"Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

"Minor" means any person less than eighteen years old.

"Performance" means any play, motion picture film, dance, or other exhibition performed before any audience.

"Pornographic" shall have the same meaning as in section 712-1210.

"Produces" means to produce, direct, manufacture, issue, publish, or advertise.

"Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

"Visual representation" refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the first degree is a class A felony.

#### CREDITS

Laws 1978, ch. 214, § 1; Laws 1982, ch. 218, § 1; Laws 1986, ch. 314, § 58; Laws 1988, ch. 91, § 1; Laws 1997, ch. 363, § 1; Laws 2002, ch. 200, § 2.

#### **HAW. REV. STAT. ANN. § 707-751 (2013). PROMOTING CHILD ABUSE IN THE SECOND DEGREE**

(1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person:

- (a) Disseminates child pornography;
- (b) Reproduces child pornography with intent to disseminate;

(c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography;

(d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(e) Possesses thirty or more images of any form of child pornography, and the content of at least one image contains one or more of the following:

(i) A minor who is younger than the age of twelve;

(ii) Sadomasochistic abuse of a minor; or

(iii) Bestiality involving a minor.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” shall have the same meaning as in section 712-1210.



“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape, and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the second degree is a class B felony.

#### CREDITS

Laws 1978, ch. 214, § 2; Laws 1982, ch. 218, § 2; Laws 1986, ch. 314, § 59; Laws 1997, ch. 363, § 2; Laws 2002, ch. 200, § 3; Laws 2012, ch. 212, § 1, eff. July 3, 2012.

#### **HAW. REV. STAT. ANN. § 707-752 (2013). PROMOTING CHILD ABUSE IN THE THIRD DEGREE**

(1) A person commits the offense of promoting child abuse in the third degree if, knowing or having reason to know its character and content, the person possesses:

(a) Child pornography;

(b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of the visual representation involves the use of a

minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

"Computer" shall have the same meaning as in section 708-890.

"Lascivious" means tending to incite lust, to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

"Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

"Minor" means any person less than eighteen years old.

"Pornographic" shall have the same meaning as in section 712-1210.

"Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

"Visual representation" includes but is not limited to undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the third degree is a class C felony.

#### CREDITS

Laws 2002, ch. 200, § 1.

# IDAHO

## IDAHO CODE ANN. § 16-1602 (2013). DEFINITIONS

For purposes of this chapter:

(1) “Abused” means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) “Abandoned” means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) “Adaptive equipment” means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) “Adjudicatory hearing” means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency

(5) “Aggravated circumstances” include, but are not limited to:

(a) Circumstances in which the parent has engaged in any of the following:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate that return of the child to the home would result in unacceptable risk to the health and welfare of the child.

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code.

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(b) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The parental rights of the parent to another child have been terminated involuntarily.

(6) “Authorized agency” means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(7) “Case plan hearing” means a hearing to approve, modify or reject the case plan as provided in section 16-1621, Idaho Code.

(8) “Child” means an individual who is under the age of eighteen (18) years.

(9) “Circumstances of the child” includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(10) “Commit” means to transfer legal and physical custody.

(11) “Concurrent planning” means a planning model that prepares for and implements different outcomes at the same time.

(12) “Court” means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(13) “Custodian” means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(14) “Department” means the department of health and welfare and its authorized representatives.

(15) “Disability” means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activity of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an

impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(16) “Family or household member” shall have the same meaning as in section 39-6303(6), Idaho Code.

(17) “Foster care” means twenty-four (24) hour substitute parental care for children placed away from their parents or guardians by persons who may or may not be related to the children and for whom the state agency has placement and care responsibility.

(18) “Grant administrator” means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(19) “Guardian ad litem” means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(20) “Guardian ad litem coordinator” means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(21) “Guardian ad litem program” means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(22) “Homeless,” as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(23) “Law enforcement agency” means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(24) “Legal custody” means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

- (a) To have physical custody and control of the child, and to determine where and with whom the child shall live.
- (b) To supply the child with food, clothing, shelter and incidental necessities.
- (c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(25) “Mental injury” means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(26) “Neglected” means a child:

(a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(27) “Permanency hearing” means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(28) “Permanency plan” means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(29) “Protective order” means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an order shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39,

Idaho Code. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

(30) “Protective supervision” is a legal status created by court order in a child protective case whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s), subject to supervision by the department.

(31) “Relative” means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(32) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(33) “Shelter care” means places designated by the department for temporary care of children pending court disposition or placement.

(34) “Supportive services,” as used in this chapter, shall mean services which assist parents with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

## CREDITS

S.L. 1976, ch. 204, § 2; S.L. 1982, ch. 186, § 2; S.L. 1986, ch. 84, § 5; S.L. 1989, ch. 281, § 1; S.L. 1989, ch. 302, § 1; S.L. 1991, ch. 38, § 1; S.L. 1991, ch. 212, § 2; S.L. 1996, ch. 272, § 2; S.L. 2000, ch. 136, § 3; S.L. 2001, ch. 107, § 2; S.L. 2003, ch. 279, § 2; S.L. 2005, ch. 391, § 5; S.L. 2007, ch. 26, § 1, eff. July 1, 2007; S.L. 2009, ch. 103, § 1, eff. July 1, 2009. Amended by S.L. 2010, ch. 147, § 1, eff. July 1, 2010; S.L. 2013, ch. 287, § 1, eff. July 1, 2013.

## **IDAHO CODE ANN. § 16-1619 (2013). ADJUDICATORY HEARING -- CONDUCT OF HEARING -- CONSOLIDATION**

(1) When a petition has been filed, the court shall set an adjudicatory hearing to be held no later than thirty (30) days after the filing of the petition.

(2) A pretrial conference shall be held outside the presence of the court within three (3) to five (5) days before the adjudicatory hearing. Investigative reports required under section 16-1616, Idaho Code, shall be delivered to the court with copies to each of the parents and other legal custodians, guardian ad litem and attorney for the child prior to the

pretrial conference.

(3) At the adjudicatory hearing, parents or guardians with disabilities shall have the right to introduce admissible evidence regarding how use of adaptive equipment or supportive services may enable the parent or guardian to carry out the responsibilities of parenting the child by addressing the reason for the removal of the child.

(4) If a preponderance of the evidence at the adjudicatory hearing shows that the child comes within the court's jurisdiction under this chapter upon the grounds set forth in section 16-1603, Idaho Code, the court shall so decree and in its decree shall make a finding on the record of the facts and conclusions of law upon which it exercises jurisdiction over the child.

(5) Upon entering its decree the court shall consider any information relevant to the disposition of the child but in any event shall:

(a) Place the child under the protective supervision of the department for an indeterminate period not to exceed the child's eighteenth birthday; or

(b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court of all matters relating to the custody of the child by the department or other authorized agency.

(6) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record, that, in addition to the findings required in subsection (4) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In addition the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

(a) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;

(b) The department made reasonable efforts to prevent removal but was not able to safely provide preventive services;

(c) Reasonable efforts to temporarily place the child with related persons were made but were not successful; or

(d) Reasonable efforts to reunify the child with one (1) or both parents were not required because aggravated circumstances were present. If aggravated circumstances are found, a permanency hearing for the child shall be held within thirty (30) days of the determination of aggravated circumstances.



(7) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday.

(8) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday, and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.

(9) In order to preserve the unity of the family system and to ensure the best interests of the child whether issuing an order of protective supervision or an order of legal custody, the court may consider extending or initiating a protective order as part of the decree. The protective order shall be determined as in the best interests of the child and upon a showing of continuing danger to the child. The conditions and terms of the protective order shall be clearly stated in the decree.

(10) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (4) of this section it shall dismiss the petition.

#### CREDITS

S.L. 1976, ch. 204, § 2; S.L. 1982, ch. 186, § 8; S.L. 1988, ch. 280, § 1; S.L. 1989, ch. 377, § 1; S.L. 2001, ch. 107, § 8; S.L. 2003, ch. 279, § 4; S.L. 2005, ch. 391, § 21; S.L. 2007, ch. 223, § 3, eff. July 1, 2007. Amended by S.L. 2010, ch. 216, § 1, eff. July 1, 2010; S.L. 2013, ch. 287, § 3, eff. July 1, 2013.

#### **IDAHO CODE ANN. § 16-2005 (2013). CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED**

(1) The court may grant an order terminating the relationship where it finds that termination of parental rights is in the best interests of the child and that one (1) or more of the following conditions exist:

(a) The parent has abandoned the child.

(b) The parent has neglected or abused the child.

(c) The presumptive parent is not the biological parent of the child.

(d) The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

(e) The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.

(2) The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:

(a) The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under the age of sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

(b) The following circumstances are present:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate continuing the relationship would result in unacceptable risk to the health and welfare of the child;

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code;

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(iv) The parent has committed murder, aided or abetted

(c) The court determines the child to be an abandoned infant, except in a parental termination action brought by one (1) parent against another parent.

(3) The court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.

(4) The court may grant an order terminating the relationship where a consent to termination in the manner and form prescribed by this chapter has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this chapter must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE ... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN  
AND FOR THE COUNTY OF ...

In the Matter of the termination )

of the parental rights of \_\_\_\_\_ )

..... )

..... )

I (we), the undersigned, being the ... of ....., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said ....., who was born ....., ....., unto ....., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ....., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said ....., and respectfully request the petition be granted.

DATED: ....., 20 ..

.....

STATE OF IDAHO \_\_\_\_\_ )

\_\_\_\_\_ ) ss.

COUNTY OF ... \_\_\_\_\_ )

On this ... day of ....., 20 ....., before me, the undersigned ....., ... (Judge or Magistrate) of the District Court of the ... Judicial District of the state of Idaho, in and for the county of ....., personally appeared ....., known to me (or proved to me on the oath of ....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(1) It is witnessed by a magistrate or district judge of the state where signed; or

(2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any

other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

(5) Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

(6) If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

#### CREDITS

S.L. 1963, CH. 145, § 5; S.L. 1971, CH. 266, § 2; S.L. 1987, CH. 207, § 1; S.L. 1990, CH. 25, § 1; S.L. 1994, CH. 393, § 4; S.L. 1994, CH. 426, § 2; S.L. 1996, CH. 365, § 2; S.L. 1998, CH. 310, § 1; S.L. 1999, CH. 314, § 1; S.L. 2000, CH. 77, § 1; S.L. 2000, CH. 171, § 9; S.L. 2002, CH. 233, § 10; S.L. 2003, CH. 260, § 1; S.L. 2005, CH. 391, § 49. AMENDED BY S.L. 2013, CH. 287, § 12, EFF. JULY 1, 2013.

#### **IDAHO CODE ANN. § 18-1506 (2013). SEXUAL ABUSE OF A CHILD UNDER THE AGE OF SIXTEEN YEARS**

(1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

- (a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;
- (b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508, Idaho Code;
- (c) Make any photographic or electronic recording of such minor child; or
- (d) Induce, cause or permit a minor child to witness an act of sexual conduct.

(2) For the purposes of this section “solicit” means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third

party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purposes of this section “sexual contact” means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

(4) For the purposes of this section “sexual conduct” means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

#### CREDITS

S.L. 1982, ch. 192, § 1; S.L. 1984, ch. 63, § 1; S.L. 1987, ch. 178, § 1; S.L. 1988, ch. 329, § 1; S.L. 1992, ch. 145, § 1; S.L. 2006, ch. 178, § 3, eff. March 24, 2006; S.L. 2008, ch. 240, § 1, eff. July 1, 2008.

#### **IDAHO CODE ANN. § 18-1506A (2013). RITUALIZED ABUSE OF A CHILD -- EXCLUSIONS -- PENALTIES – DEFINITION**

(1) A person is guilty of a felony when he commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(a) Actually or in simulation, tortures, mutilates or sacrifices any warm-blooded animal or human being;

(b) Forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(c) Forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(d) Involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(e) Places a living child into a coffin or open grave containing a human corpse or remains;

(f) Threatens death or serious harm to a child, his parents, family, pets or friends which instills a well-founded fear in the child that the threat will be carried out; or

- (g) Unlawfully dissects, mutilates, or incinerates a human corpse.
- (2) The provisions of this section shall not be construed to apply to:
- (a) Lawful agricultural, animal husbandry, food preparation or wild game hunting and fishing practices and specifically the branding or identification of livestock;
  - (b) The lawful medical practice of circumcision or any ceremony related thereto; or
  - (c) Any state or federally approved, licensed or funded research project.
- (3) Any person convicted of a violation of this section shall be imprisoned in the state prison for a term of not more than life.
- (4) For the purposes of this section, "child" means any person under eighteen (18) years of age.

#### CREDITS

S.L. 1990, ch. 210, § 1; S.L. 2006, ch. 178, § 4, eff. March 24, 2006.

#### **IDAHO CODE ANN. § 18-1507 (2013). SEXUAL EXPLOITATION OF A CHILD**

- (1) As used in this section, unless the context otherwise requires:
- (a) “Bestiality” means a sexual connection in any manner between a human being and any animal.
  - (b) “Child” means a person who is less than eighteen (18) years of age.
  - (c) “Erotic fondling” means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. “Erotic fondling” shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.
  - (d) “Erotic nudity” means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) “Explicit sexual conduct” means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) “Sadomasochism” means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) “Sexual excitement” means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) “Sexual intercourse” means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) “Sexually exploitative material” means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.

(2) A person commits sexual exploitation of a child if he knowingly and willfully:

(a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; or

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or

(d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any

sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

(3) The sexual exploitation of a child pursuant to subsection (2)(a) of this section is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000), or by both such imprisonment and fine.

(4) The sexual exploitation of a child pursuant to subsections (2)(b), (c) and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and imprisonment.

(5) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

#### CREDITS

S.L. 1983, ch. 256, § 1; S.L. 1987, ch. 177, § 1; S.L. 1992, ch. 145, § 2; S.L. 2006, ch. 178, § 5, eff. March 24, 2006. Amended by S.L. 2012, ch. 269, § 2, eff. July 1, 2012.

### **IDAHO CODE ANN. § 18-1508 (2013). LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN**

Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507, Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party, shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.

#### CREDITS

S.L. 1973, ch. 1, § 1; S.L. 1984, ch. 63, § 2; S.L. 1992, ch. 145, § 3.

## **ILLINOIS**

### **325 ILL. COMP. STAT. ANN. 5/3 (2013). 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<sup>1</sup> 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,<sup>2</sup> 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<sup>3</sup> in violation of Article IV of the Illinois Controlled Substances Act<sup>4</sup> 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<sup>5</sup> 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.<sup>6</sup>

“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,<sup>7</sup> 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.

## CREDITS

P.A. 79-65, § 3, eff. July 1, 1975. Amended by P.A. 81-1077, § 1, eff. July 1, 1980; P.A. 81-1480, § 1, eff. Sept. 15, 1980; P.A. 82-453, § 1, eff. Jan. 1, 1982; P.A. 83-1248, § 4, eff. Aug. 7, 1984; P.A. 84-611, § 1, eff. Jan. 1, 1986; P.A. 84-1318, § 1, eff. Jan. 1, 1987; P.A. 85-205, § 1, eff. Aug. 21, 1987; P.A. 86-274, § 1, eff. Jan. 1, 1990; P.A. 86-601, § 1, eff. Jan. 1, 1990; P.A. 86-659, § 1, eff. Sept. 1, 1989; P.A. 86-1028, Art. II, § 2-11, eff. Feb. 5, 1990; P.A. 88-85, § 80, eff. July 14, 1993; P.A. 89-21, Art. 15, § 15-10, eff. July 1, 1995; P.A. 90-239, § 10, eff. July 28, 1997; P.A. 90-684, § 5, eff. July 31, 1998; P.A. 91-802, § 5, eff. Jan. 1, 2001; P.A. 92-408, § 92, eff. Aug. 17, 2001; P.A. 92-432, § 92, eff. Aug. 17, 2001; P.A. 92-801, § 5, eff. Aug. 16, 2002; P.A. 94-556, § 1025, eff. Sept. 11, 2005; P.A. 95-443, § 5, eff. Jan. 1, 2008; P.A. 96-1196, § 5, eff. Jan. 1, 2011; P.A. 96-1446, § 10, eff. Aug. 20, 2010; P.A. 96-1464, § 5, eff. Aug. 20, 2010; P.A. 97-333, § 465, eff. Aug. 12, 2011; P.A. 97-803, § 5, eff. July 13, 2012; P.A. 97-897, § 5, eff. Jan. 1, 2013; P.A. 97-1063, § 5, eff. Aug. 24, 2012; P.A. 97-1150, § 515, eff. Jan. 25, 2013.

### **325 ILL. COMP. STAT. ANN. 5/7 (2013). TIME AND MANNER OF MAKING REPORTS**

§ 7. Time and manner of making reports. All reports of suspected child abuse or neglect made under this Act shall be made immediately by telephone to the central register established under Section 7.7 on the single, State-wide, toll-free telephone number established in Section 7.6, or in person or by telephone through the nearest Department office. The Department shall, in cooperation with school officials, distribute appropriate materials in school buildings listing the toll-free telephone number established in Section 7.6, including methods of making a report under this Act. The Department may, in cooperation with appropriate members of the clergy, distribute appropriate materials in churches, synagogues, temples, mosques, or other religious buildings listing the toll-free telephone number established in Section 7.6, including methods of making a report under this Act.

Wherever the Statewide number is posted, there shall also be posted the following notice:

“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 2012.1 A violation of this subsection is a Class 4 felony.”

The report required by this Act shall include, if known, the name and address of the child and his parents or other persons having his custody; the child's age; the nature of the child's condition including any evidence of previous injuries or disabilities; and any other information that the person filing the report believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect. Reports made to the central register through the State-wide, toll-free telephone number shall be immediately transmitted by the Department to the appropriate Child Protective Service Unit. All such reports alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural

hematomas, and internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age 12 and under, shall also be immediately transmitted by the Department to the appropriate local law enforcement agency. The Department shall within 24 hours orally notify local law enforcement personnel and the office of the State's Attorney of the involved county of the receipt of any report alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and, internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age twelve and under. All oral reports made by the Department to local law enforcement personnel and the office of the State's Attorney of the involved county shall be confirmed in writing within 24 hours of the oral report. All reports by persons mandated to report under this Act shall be confirmed in writing to the appropriate Child Protective Service Unit, which may be on forms supplied by the Department, within 48 hours of any initial report.

Written confirmation reports from persons not required to report by this Act may be made to the appropriate Child Protective Service Unit. Written reports from persons required by this Act to report shall be admissible in evidence in any judicial proceeding or administrative hearing relating to child abuse or neglect. Reports involving known or suspected child abuse or neglect in public or private residential agencies or institutions shall be made and received in the same manner as all other reports made under this Act.

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

## CREDITS

P.A. 79-65, § 7, eff. July 1, 1975. Amended by P.A. 81-1077, § 1, eff. July 1, 1980; P.A. 82-453, § 1, eff. Jan. 1, 1982; P.A. 84-305, § 1, eff. Jan. 1, 1986; P.A. 84-611, § 1, eff. Jan. 1, 1986; P.A. 84-1308, Art. II, § 22, eff. Aug. 25, 1986; P.A. 84-1318, § 1, eff. Jan. 1, 1987; P.A. 86-659, § 1, eff. Sept. 1, 1989; P.A. 86-1028, Art. III, § 3-7, eff. Feb. 5, 1990; P.A. 86-1357, § 1, eff. Jan. 1, 1991; P.A. 89-187, § 40, eff. July 19, 1995; P.A. 92-801, § 5, eff. Aug. 16, 2002; P.A. 95-57, § 5, eff. Aug. 10, 2007; P.A. 96-1446, § 10, eff. Aug. 20, 2010; P.A. 97-189, § 5, eff. July 22, 2011; P.A. 97-387, § 5, eff. Aug. 15, 2011; P.A. 97-813, § 500, eff. July 13, 2012; P.A. 97-1150, § 515, eff. Jan. 25, 2013.

## **325 ILL. COMP. STAT. ANN. 5/7.14 (2013). CATEGORIES OF CLASSIFICATION; REPORTS**

§ 7.14. All reports in the central register shall be classified in one of three categories: “indicated”, “unfounded” or “undetermined”, as the case may be. After the report is classified, the person making the classification shall determine whether the child named in the report is the subject of an action under Article II of the Juvenile Court Act of 1987.1 If the child is the subject of an action under Article II of the Juvenile Court Act, the Department shall transmit a copy of the report to the guardian ad litem appointed for the child under Section 2-17 of the Juvenile Court Act.2 All information identifying the

subjects of an unfounded report shall be expunged from the register forthwith, except as provided in Section 7.7. Unfounded reports may only be made available to the Child Protective Service Unit when investigating a subsequent report of suspected abuse or maltreatment involving a child named in the unfounded report; and to the subject of the report, provided the Department has not expunged the file in accordance with Section 7.7. The Child Protective Service Unit shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action. Identifying information on all other records shall be removed from the register no later than 5 years after the report is indicated. However, if another report is received involving the same child, his sibling or offspring, or a child in the care of the persons responsible for the child's welfare, or involving the same alleged offender, the identifying information may be maintained in the register until 5 years after the subsequent case or report is closed.

Notwithstanding any other provision of this Section, identifying information in indicated reports involving serious physical injury to a child as defined by the Department in rules, may be retained longer than 5 years after the report is indicated or after the subsequent case or report is closed, and may not be removed from the register except as provided by the Department in rules. Identifying information in indicated reports involving sexual penetration of a child, sexual molestation of a child, sexual exploitation of a child, torture of a child, or the death of a child, as defined by the Department in rules, shall be retained for a period of not less than 50 years after the report is indicated or after the subsequent case or report is closed.

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

#### CREDITS

P.A. 79-65, § 7.14, added by P.A. 81-1077, § 1, eff. July 1, 1980. Amended by P.A. 82-453, § 1, eff. Jan. 1, 1982; P.A. 84-611, § 1, eff. Jan. 1, 1986; P.A. 85-1190, § 2, eff. Jan. 1, 1989; P.A. 85-1394, § 1, eff. Sept. 2, 1988; P.A. 85-1440, Art. II, § 2-54, eff. Feb. 1, 1989; P.A. 86-904, § 1, eff. Sept. 11, 1989; P.A. 87-649, § 2, eff. Jan. 1, 1992; P.A. 90-15, § 13, eff. June 13, 1997; P.A. 92-801, § 5, eff. Aug. 16, 2002; P.A. 94-160, § 5, eff. July 11, 2005; P.A. 96-1164, § 5, eff. July 21, 2010; P.A. 96-1446, § 10, eff. Aug. 20, 2010; P.A. 97-333, § 465, eff. Aug. 12, 2011.

#### **705 ILL. COMP. STAT. ANN. 405/2-3 (2013). NEGLECTED OR ABUSED MINOR**

§ 2-3. Neglected or abused minor.

(1) Those who are neglected include:

(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor'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 parent or parents or other person or persons responsible for the minor's welfare, except that a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act; or

(b) any minor under 18 years of age whose environment is injurious to his or her welfare; or

(c) any 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, as now or hereafter amended,<sup>1</sup> 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 is the result of medical treatment administered to the mother or the newborn infant; or

(d) any minor under the age of 14 years whose parent or other person responsible for the minor's welfare leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of that minor; or

(e) any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act and whose parent, guardian, or custodian refuses to permit the minor to return home unless the minor is an immediate physical danger to himself, herself, or others living in the home.

Whether the minor was left without regard for the mental or physical health, safety, or welfare of that minor or the period of time was unreasonable shall be determined by considering the following factors, including but not limited to:

- (1) the age of the minor;
- (2) the number of minors left at the location;
- (3) special needs of the minor, including whether the minor is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;
- (4) the duration of time in which the minor was left without supervision;
- (5) the condition and location of the place where the minor was left without supervision;

(6) the time of day or night when the minor was left without supervision;

(7) the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;

(8) the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;

(9) whether the minor's movement was restricted, or the minor was otherwise locked within a room or other structure;

(10) whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;

(11) whether there was food and other provision left for the minor;

(12) whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;

(13) the age and physical and mental capabilities of the person or persons who provided supervision for the minor;

(14) whether the minor was left under the supervision of another person;

(15) any other factor that would endanger the health and safety of that particular minor.

A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.<sup>2</sup>

(2) Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

(i) inflicts, causes to be inflicted, or allows to be inflicted upon such minor 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;

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



(iii) commits or allows to be committed any sex offense against such minor, as such sex offenses are defined in the Criminal Code of 1961 or the Criminal Code of 2012,<sup>3</sup> or in the Wrongs to Children Act, and extending those definitions of sex offenses to include minors under 18 years of age;

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

(v) inflicts excessive corporal punishment;

(vi) 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 1961 or the Criminal Code of 2012, upon such minor; or

(vii) allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961 or the Criminal Code of 2012, and extending those definitions to include minors under 18 years of age.

A minor shall not be considered abused for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

(3) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parents, guardian or custodian.

## CREDITS

P.A. 85-601, Art. II, § 2-3, eff. Jan. 1, 1988. Amended by P.A. 85-1209, Art. II, § 2-22, eff. Aug. 30, 1988; P.A. 86-275, § 1, eff. Jan. 1, 1990; P.A. 86-659, § 3, eff. Sept. 1, 1989; P.A. 88-85, § 90, eff. July 14, 1993; P.A. 88-479, § 5, eff. Sept. 9, 1993; P.A. 88-670, Art. 2, § 2-63, eff. Dec. 2, 1994; P.A. 89-21, Art. 15, § 15-15, eff. July 1, 1995; P.A. 90-239, § 15, eff. July 28, 1997; P.A. 92-408, § 95, eff. Aug. 17, 2001; P.A. 92-432, § 95, eff. Aug. 17, 2001; P.A. 95-443, § 10, eff. Jan. 1, 2008; P.A. 96-168, § 5, eff. Aug. 10, 2009; P.A. 96-1464, § 10, eff. Aug. 20, 2010; P.A. 97-897, § 10, eff. Jan. 1, 2013; P.A. 97-1150, § 600, eff. Jan. 25, 2013.

## **720 ILL. COMP. STAT. ANN. 5/12-33 (2013). RITUALIZED ABUSE OF A CHILD**

§ 12-33. Ritualized abuse of a child.

(a) A person commits ritualized abuse of a child when he or she knowingly commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(1) actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being;

(2) forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(3) forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(4) involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(5) places a living child into a coffin or open grave containing a human corpse or remains;

(6) threatens death or serious harm to a child, his or her parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; or

(7) unlawfully dissects, mutilates, or incinerates a human corpse.

(b) The provisions of this Section shall not be construed to apply to:

(1) lawful agricultural, animal husbandry, food preparation, or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(2) the lawful medical practice of male circumcision or any ceremony related to male circumcision;

(3) any state or federally approved, licensed, or funded research project; or

(4) the ingestion of animal flesh or blood in the performance of a religious service or ceremony.

(b-5) For the purposes of this Section, “child” means any person under 18 years of age.

(c) Ritualized abuse of a child is a Class 1 felony for a first offense. A second or subsequent conviction for ritualized abuse of a child is a Class X felony for which the offender may be sentenced to a term of natural life imprisonment.

(d) (Blank).

## CREDITS

Laws 1961, p. 1983, § 12-33, added by P.A. 87-1167, § 1, eff. Jan. 1, 1993. Amended by P.A. 90-88, § 5, eff. Jan. 1, 1998; P.A. 96-1551, Art. 1, § 5, eff. July 1, 2011.

## INDIANA

## IOWA

### IOWA CODE § 726.6 (2013). CHILD ENDANGERMENT

1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

g. Knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.

h. Knowingly allows a person custody or control of, or unsupervised access to a child or a minor after knowing the person is required to register or is on the sex offender

registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent or guardian of a child or a minor, who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

2. A parent or person authorized by the parent shall not be prosecuted for a violation of subsection 1, paragraph “f”, relating to abandonment, if the parent or person authorized by the parent has voluntarily released custody of a newborn infant in accordance with section 233.2.

3. For the purposes of subsection 1, “person having control over a child or a minor” means any of the following:

a. A person who has accepted, undertaken, or assumed supervision of a child or such a minor from the parent or guardian of the child or minor.

b. A person who has undertaken or assumed temporary supervision of a child or such a minor without explicit consent from the parent or guardian of the child or minor.

c. A person who operates a motor vehicle with a child or such a minor present in the vehicle.

4. A person who commits child endangerment resulting in the death of a child or minor is guilty of a class “B” felony. Notwithstanding section 902.9, subsection 1, paragraph “b”, a person convicted of a violation of this subsection shall be confined for no more than fifty years.

5. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class “C” felony.

6. A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment in violation of subsection 1, paragraph “g”, that does not result in a serious injury, is guilty of a class “D” felony.

7. A person who commits child endangerment that is not subject to penalty under subsection 4, 5, or 6 is guilty of an aggravated misdemeanor.

## CREDITS

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2606, eff. Jan. 1, 1978. Amended by Acts 1977 (67 G.A.) ch. 147, § 27, eff. Jan. 1, 1978; Acts 1985 (71 G.A.) ch. 180, § 3; Acts 1996 (76 G.A.) ch. 1129, § 109; Acts 2001 (79 G.A.) ch. 3, §§ 2 to 5; Acts 2001 (79 G.A.) ch. 67, § 12, eff. April 24, 2001; Acts 2002 (79 G.A.) ch. 1119, § 104; Acts 2004 (80 G.A.) ch. 1004, § 1; Acts 2004 (80 G.A.) ch. 1151, §§ 3, 4; Acts 2005 (81 G.A.) ch. 158, H.F. 619, § 31; Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 109; Acts 2009 (83 G.A.) ch. 119, S.F. 340, § 65; Acts 2013 (85 G.A.) H.F. 417, § 252.

**IOWA CODE § 726.6A (2013). MULTIPLE ACTS OF CHILD  
ENDANGERMENT—PENALTY**

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2013.]>

A person who engages in a course of conduct including three or more acts of child endangerment as defined in section 726.6 within a period of twelve months involving the same child or a minor with a mental or physical disability, where one or more of the acts results in serious injury to the child or minor or results in a skeletal injury to a child under the age of four years, is guilty of a class “B” felony. Notwithstanding section 902.9, subsection 1, paragraph “b”, a person convicted of a violation of this section shall be confined for no more than fifty years.

**CREDITS**

Added by Acts 1994 (75 G.A.) ch. 1172, § 59. Amended by Acts 1996 (76 G.A.) ch. 1129, § 110; Acts 2013 (85 G.A.) H.F. 417, § 253.

**IOWA CODE § 728.12 (2013). SEXUAL EXPLOITATION OF A MINOR**

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction. A person who commits a violation of this subsection commits a class “C” felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class “D” felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A visual depiction containing pictorial representations of different minors shall be prosecuted and punished as separate offenses for each pictorial representation of a different minor in the visual depiction. However, violations of this subsection involving multiple visual depictions of the same minor shall be prosecuted and punished as one offense. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class “D” felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

## CREDITS

Added by Acts 1978 (67 G.A.) ch. 1188, § 1. Amended by Acts 1983 (70 G.A.) ch. 167, § 4; Acts 1986 (71 G.A.) ch. 1176, §§ 1 to 3; Acts 1989 (73 G.A.) ch. 263, § 3; Acts 2001 (79 G.A.) ch. 17, § 4; Acts 2003 (80 G.A.) ch. 65, §§ 1, 2; Acts 2012 (84 G.A.) ch. 1057, H.F. 2390, §§ 7, 8.

## KANSAS

### **KAN. STAT. ANN. § 21-5110 (2013). SEXUAL EXPLOITATION OF A CHILD**

(a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.

(b) (1) Sexual exploitation of a child as defined in:

(A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).

(2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(c) If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:

(1) Subsection (c) of K.S.A. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

(2) subsection (c) of K.S.A. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

(3) subsection (d) of K.S.A. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) “promoting” means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) “performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any

manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) “nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; and

(5) “visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

#### CREDITS

Laws 2010, ch. 136, § 74, eff. July 1, 2011; Laws 2011, ch. 100, § 16, eff. July 1, 2011

#### **KAN. STAT. ANN. § 21-5602 (2013). ABUSE OF A CHILD**

(a) Abuse of a child is knowingly:

(1) Torturing or cruelly beating any child under the age of 18 years;

(2) Shaking any child under the age of 18 years which results in great bodily harm to the child; or

(3) Inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a severity level 5, person felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

#### CREDITS

Laws 2010, ch. 136, § 79, eff. July 1, 2011; Laws 2011, ch. 30, § 285, eff. July 1, 2011.

#### **KAN. STAT. ANN. § 38-2202 (2013). DEFINITIONS**

*\*New legislation approved on April 22, 2013. This act shall take effect and be in force from and after its publication in the statute book\**

As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) “Abandon” or “abandonment” means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.



(b) “Adult correction facility” means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) “Aggravated circumstances” means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) “Child in need of care” means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 38-2242, and amendments thereto, who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810, subsection (m) or (n) of K.S.A. 79-3321, or subsection (a)(14) of K.S.A. 21-6301, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-5102, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if

the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in subsection (a)(14) of K.S.A. 21-6301, and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) “Citizen review board” is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 38-2207 and 38-2208, and amendments thereto.

(f) “Civil custody case” includes any case filed under chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, article 11, of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, determination of parentage, article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators.

(g) “Court-appointed special advocate” means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(h) “Custody” whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(i) “Extended out of home placement” means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(j) “Educational institution” means all schools at the elementary and secondary levels.

(k) “Educator” means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(l) “Harm” means physical or psychological injury or damage.

(m) “Interested party” means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 38-2241, and amendments thereto, or Indian tribe seeking to intervene that is not a party.

(n) “Jail” means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(o) “Juvenile detention facility” means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(p) “Juvenile intake and assessment worker” means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(q) “Kinship care” means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(r) “Law enforcement officer” means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(s) “Multidisciplinary team” means a group of persons, appointed by the court under K.S.A. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(t) “Neglect” means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-2217, and amendments thereto.

(u) "Parent" when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

(v) "Party" means the state, the petitioner, the child, any parent of the child and an Indian child's tribe intervening pursuant to the Indian child welfare act.

(w) "Permanency goal" means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(x) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 38-2272, and amendments thereto.

(y) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(z) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(aa) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(bb) "Secretary" means the secretary of the department for children and families or the secretary's designee.

(cc) “Secure facility” means a facility, other than a staff secure facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(dd) “Sexual abuse” means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution the sale of sexual relations or commercial sexual exploitation of a child, or to be photographed, filmed or depicted in pornographic material.

(ee) “Shelter facility” means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ff) “Staff secure facility” means a facility described in section 6, and amendments thereto: (1) That does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. No staff secure facility shall be in a city or county jail.

(gg) “Transition plan” means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a disability is eligible including, but not limited to, funding for home and community based services waivers.

(hh) “Youth residential facility” means any home, foster home or structure which provides 24–hour–a–day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

## CREDITS

Laws 2006, ch. 200, § 2; Laws 2008, ch. 169, § 1, eff. July 1, 2008; Laws 2009, ch. 99, § 1, eff. July 1, 2009; Laws 2010, ch. 75, § 5, eff. July 1, 2010; Laws 2011, ch. 30, § 155, eff. July 1, 2011; Laws 2012, ch. 162, § 60, eff. May 31, 2012.

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 508.100 (2013). CRIMINAL ABUSE IN THE FIRST DEGREE**

(1) A person is guilty of criminal abuse in the first degree when he intentionally abuses another person or permits another person of whom he has actual custody to be abused and thereby:

- (a) Causes serious physical injury; or
- (b) Places him in a situation that may cause him serious physical injury; or
- (c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the first degree is a Class C felony.

#### CREDITS

HISTORY: 1982 c 168, § 1, eff. 7-15-82

### **KY. REV. STAT. ANN. § 508.110 (2013). CRIMINAL ABUSE IN THE SECOND DEGREE**

(1) A person is guilty of criminal abuse in the second degree when he wantonly abuses another person or permits another person of whom he has actual custody to be abused and thereby:

- (a) Causes serious physical injury; or
- (b) Places him in a situation that may cause him serious physical injury; or
- (c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the second degree is a Class D felony.

#### CREDITS

HISTORY: 1982 c 168, § 2, eff. 7-15-82

**KY. REV. STAT. ANN. § 508.120 (2013). CRIMINAL ABUSE IN THE THIRD DEGREE**

(1) A person is guilty of criminal abuse in the third degree when he recklessly abuses another person or permits another person of whom he has actual custody to be abused and thereby:

- (a) Causes serious physical injury; or
- (b) Places him in a situation that may cause him serious physical injury; or
- (c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the third degree is a Class A misdemeanor.

CREDITS

HISTORY: 1982 c 168, § 3, eff. 7-15-82

**LOUISIANA**

**MAINE**

**MARYLAND**

**MD. CODE ANN., CTS. & JUD. PROC. § 3-812 (2013). REASONABLE EFFORTS TO REUNIFY CHILD AND PARENT**

**Definitions**

(a)(1) In this section the following words have the meanings indicated, unless the context of their use indicates otherwise.

(2) “Crime of violence”:

- (i) Has the meaning stated in § 14-101 of the Criminal Law Article; or
- (ii) As to a crime committed in another state, means a crime that, if committed in this State, would be a crime of violence as defined in § 14-101 of the Criminal Law Article.

(3) “Torture” means to cause intense pain to body or mind for purposes of punishment or extraction of information or for sadistic purposes.

**Efforts to reunify child and parent not required**

(b) In a petition under this subtitle, a local department may ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the local department concludes that a parent or guardian has:

(1) Subjected the child to:

- (i) Chronic abuse;
- (ii) Chronic and life-threatening neglect;
- (iii) Sexual abuse; or
- (iv) Torture;

(2) Been convicted, in any state or any court of the United States, of:

(i) A crime of violence against:

- 1. A minor offspring of the parent or guardian;
- 2. The child; or
- 3. Another parent or guardian of the child; or

(ii) Aiding or abetting, conspiring, or soliciting to commit a crime described in subitem (i) of this item; or

(3) Involuntarily lost parental rights of a sibling of a child.

**Request of court to find efforts to unify child with parent not required**

(c) If the local department determines after the initial petition is filed that any of the circumstances specified in subsection (b) of this section exists, the local department may immediately request the court to find that reasonable efforts to reunify the child with the child's parent or guardian are not required.

**Waiver of reunification requirement**



(d) If the court finds by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists, the court shall waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian.

### **Request for permanency hearing**

(e) If the court finds that reasonable efforts are not required, the local department shall:

(1) Request that a permanency planning hearing be held in accordance with § 3-823 of this subtitle within 30 days after the court makes the finding; and

(2) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement of the child.

### **Parental consent to guardianship or adoption**

(f) If a parent consents to guardianship or adoption in accordance with § 5-320 or § 5-338 of the Family Law Article, loss of parental rights shall be considered voluntary.

### **CREDITS**

Added by Acts 2001, c. 415, § 3, eff. Oct. 1, 2001. Amended by Acts 2002, c. 213, § 6, eff. Oct. 1, 2002; Acts 2005, c. 464, § 3, eff. Jan. 1, 2006.

## **MASSACHUSETTS**

## **MICHIGAN**

### **MICH. COMP. LAWS SERV. § 722.638 (2013). PETITION FOR AUTHORIZATION UNDER § 712A.2; CONDITIONS; REQUEST FOR TERMINATION OF PARENTAL RIGHTS; CONFERENCE**

Sec. 18. (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

- (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- (iii) Battering, torture, or other severe physical abuse.
- (iv) Loss or serious impairment of an organ or limb.
- (v) Life threatening injury.
- (vi) Murder or attempted murder.

(b) The department determines that there is risk of harm to the child and either of the following is true:

(i) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state and the proceeding involved abuse that included 1 or more of the following:

- (A) Abandonment of a young child.
- (B) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- (C) Battering, torture, or other severe physical abuse.
- (D) Loss or serious impairment of an organ or limb.
- (E) Life-threatening injury.
- (F) Murder or attempted murder.
- (G) Voluntary manslaughter.
- (H) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1), the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.

## CREDITS

P.A.1975, No. 238, § 18, added by P.A.1997, No. 168, Eff. March 31, 1998. Amended by P.A.1998, No. 428, Imd. Eff. Dec. 30, 1998; P.A.2010, No. 12, Eff. Sept. 4, 2010.

## **MICH. COMP. LAWS SERV. § 750.136b (2013). CHILD ABUSE**

Sec. 136b. (1) As used in this section:

(a) “Child” means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) “Cruel” means brutal, inhuman, sadistic, or that which torments.

(c) “Omission” means a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child.

(d) “Person” means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) “Physical harm” means any injury to a child's physical condition.

(f) “Serious physical harm” means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) “Serious mental harm” means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for life or any term of years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

(a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment as follows:

(a) For a first offense, not more than 10 years.

(b) For a second or subsequent offense, not more than 20 years.

(5) A person is guilty of child abuse in the third degree if any of the following apply:

(a) The person knowingly or intentionally causes physical harm to a child.

(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.

(6) Child abuse in the third degree is a felony punishable by imprisonment for not more than 2 years.

(7) A person is guilty of child abuse in the fourth degree if any of the following apply:

(a) The person's omission or reckless act causes physical harm to a child.

(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

(8) Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(9) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

(10) It is an affirmative defense to a prosecution under this section that the defendant's conduct involving the child was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant at that time. The defendant has the burden of establishing the affirmative defense by a preponderance of the evidence. As used in this subsection, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

#### 1. Constitutionality.

The child abuse statute in defining the crime of child abuse in the fourth degree is neither vague nor overbroad in the constitutional sense. People v Gregg (1994) 206 Mich App 208, 520 NW2d 690.

A criminal statute may be challenged for vagueness on three grounds: (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overbroad and impinges on First Amendment freedoms; the statute proscribing child cruelty is not unconstitutionally vague. People v Jackson (1985) 140 Mich App 283, 364 NW2d 310.

The statute pertaining to child torture is not unconstitutionally vague since a reading of the statute would not cause people of common intelligence to speculate as to its meaning; the term "torture" does have a commonly understood meaning giving a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. People v Shelton (1984) 138 Mich App 510, 360 NW2d 234 (among conflicting authorities noted in People v Kelley (1989) 176 Mich App 219, 439 NW2d 315).

Statute providing for posting of bond in exchange for suspended sentence of a defendant convicted for cruelty to children would be held to embody rational and reasonable classification based on temporary as against permanent custodianship of child in compliance with equal protection of laws. People v Leonard (1978) 81 Mich App 86, 264 NW2d 130.

#### 2. Construction.

Word "shelter," as used in this section, does not include medical attention, and deprivation of medical attention does not constitute a crime hereunder. People v Mankel (1964) 373 Mich 509, 129 NW2d 894.

The provisions of former section constituted distinct offenses which could be shown by the same evidence and were not within the rule which allows the prosecution to go to the jury without election on an information charging a combination of offenses in a single count. People v Marks (1931) 255 Mich 271, 238 NW 217.

Word "knowingly," as contained in first-degree child abuse statute, means the same thing as the word "intentionally". People v Gould (1997) 225 Mich App 79, 570 NW2d 140, app den (1999) 459 Mich 955, 590 NW2d 572.

Because crimes of manslaughter and child abuse are not of the same class or category, child abuse cannot be a cognate offense of manslaughter. People v Flowers (1997) 222 Mich App 732, 565 NW2d 12, app den (1998) 456 Mich 953, 577 NW2d 687.

Specific evil intent on the part of a defendant is not required in order to sustain a conviction under Michigan's child cruelty statute. People v Jackson (1985) 140 Mich App 283, 364 NW2d 310.

An unreasonable and severe corporal punishment, irrespective of the defendant's specific intent, will sustain a conviction under Michigan's child cruelty statute. People v Jackson (1985) 140 Mich App 283, 364 NW2d 310.

Child cruelty is a necessarily lesser included offense of child torture. People v Shelton (1984) 138 Mich App 510, 360 NW2d 234 (among conflicting authorities noted in People v Kelley (1989) 176 Mich App 219, 439 NW2d 315).

The term "torture" as used in the child torture statute refers to the intentional infliction of intense or severe pain for various purposes such as sadistic pleasure, coercion, and punishment; the statute requires a showing that the defendant intentionally inflicted extreme, intense, or severe pain or injury upon the victim; such high degree of pain or injury is an additional element which is not contained in the child cruelty statute. People v Shelton (1984) 138 Mich App 510, 360 NW2d 234 (among conflicting authorities noted in People v Kelley (1989) 176 Mich App 219, 439 NW2d 315).

A parent who acts in good faith with an honest belief that a given discipline is done for the benefit of the child will not be subjected to judicial intervention; however, a showing that the punishment was cruel and unreasonably severe will negate any claim of good faith on behalf of the parent. People v Alderete (1984) 132 Mich App 351, 347 NW2d 229.

An unreasonable and severe corporal punishment, irrespective of the defendant's "evil mind" or lack of malice, will sustain a conviction under Michigan's child cruelty statute. People v Alderete (1984) 132 Mich App 351, 347 NW2d 229.

The infliction of torture upon a child is an element of the offense of child torture; "torture", in terms of the statute, refers to the infliction of violent bodily pain upon a child to satisfy sadistic motives; the statute applies to instances of sadism or vileness where the parent or guardian or person under whose protection or control any child may be inflicts pain for purposes other than punishment. People v Biegajski (1982) 122 Mich App 215, 332 NW2d 413.

Failure of a parent to provide necessary medical care for his or her injured minor child is an offense chargeable under the statute proscribing a parent's permitting "the health of such child to be injured." People v Anderson (1982) 119 Mich App 325, 326 NW2d 499.

In prosecution for child abandonment, defense counsel's admission that defendant made anonymous phone call admitting abandonment relieved prosecutor from proving such fact and warranted trial court's refusal to direct verdict for defendant at close of prosecutor's case. People v Clark (1967) 6 Mich App 526, 149 NW2d 919.

### 3. Elements of offense.

The first-degree child abuse statute required the prosecution to establish, and the jury to be instructed, that to convict it must find that defendant intended to cause serious physical harm or knew that serious physical harm would be caused by her act. People v Maynor (2004) 470 Mich 289, 683 NW2d 565.

Where defendant was charged with first-degree child abuse for leaving her children alone in the car for several hours, the prosecution was required to establish, and the jury had to be instructed, that to convict defendant it must find, not only that defendant intended to leave her children in the car; but also that defendant intended to cause serious physical harm or that she knew that serious physical harm would be caused. People v Maynor (2004) 470 Mich 289, 683 NW2d 565.

As used in MCL § 750.136b(2), the phrase "knowingly or intentionally" modifies the phrase "causes serious physical or serious mental harm to a child;" this language requires more from defendant than an intent to commit an act. People v Maynor (2004) 470 Mich 289, 683 NW2d 565.

Need to draw the common-law distinction between "specific" and "general" intent is not required under the plain language of MCL § 750.136b(2), as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. People v Maynor (2004) 470 Mich 289, 683 NW2d 565.

First-degree child abuse is a specific intent crime; second-degree child abuse is a general intent crime. People v Maynor (2003) 256 Mich App 238, 662 NW2d 468.

The elements of first-degree child abuse are (1) the person, (2) knowingly or intentionally, (3) causes serious physical or mental harm to a child; with regard to the second element, a defendant who specifically intended to cause serious physical or mental harm to a child may be convicted of first-degree child abuse. People v Gould (1997) 225 Mich App 79, 570 NW2d 140, app den (1999) 459 Mich 955, 590 NW2d 572.

Malice or evil intent on the part of a defendant is not required in order to sustain a conviction under Michigan's child cruelty statute. People v Alderete (1984) 132 Mich App 351, 347 NW2d 229.

The elements of the offense of cruelty to a child are: (1) the defendant was an individual, such as a parent, guardian, or camp counselor, who was responsible for the protection of a child, and (2) the defendant punished the child in a cruel and unlawful manner. People v Biegajski (1982) 122 Mich App 215, 332 NW2d 413.

#### 4. Child abuse.

A specific intent is an element of first-degree child abuse; specifically, the statute requires the doing of an act with the intent to cause physical or mental harm; in other words, in order to convict a defendant of first-degree child abuse, it must be shown that the defendant intended to harm the child, not merely that the defendant engaged in conduct that caused harm. People v Gould (1997) 225 Mich App 79, 570 NW2d 140, app den (1999) 459 Mich 955, 590 NW2d 572.

Second-degree child abuse is not a specific intent crime; the statute requires a

wilful failure to provide necessary food, clothing, or shelter or a wilful abandonment of a child, but does not require an intent to cause injury. People v Todd (1992) 196 Mich App 357, 492 NW2d 521, vacated on other grounds, remanded (1993) 441 Mich 922, 497 NW2d 188 and adhered to, on remand (1993) 201 Mich App 216, 506 NW2d 9, mod, remanded (1994) 444 Mich 936, 509 NW2d 772 and (criticized in People v Gould (1997) 225 Mich App 79, 570 NW2d 140).

#### 5. Admissibility of evidence.

By refusing to compel an election between charges of torturing and cruelly punishing; depriving of necessary food, clothing and shelter; and habitually permitting the health to be injured by exposure, want or other injury, in a prosecution for cruelty to a child under former section, the court allowed the jury to consider evidence as to each offense which would have been incompetent if separately charged and was prejudicial to defendant's rights. People v Marks (1931) 255 Mich 271, 238 NW 217.

Circuit court did not err in granting a motion to reinstate charges of first-degree felony murder, with the underlying felony being first-degree child abuse, after a district court reduced the charges against a mother who left her two young children in a hot car for over three hours to involuntary manslaughter following a preliminary hearing; the evidence was at least sufficient to bind the defendant over for second degree murder and, further, the question of whether defendant acted with the requisite intent to support a finding of first degree murder was a question that should have been left for a jury to decide. People v Maynor (2003) 256 Mich App 238, 662 NW2d 468.

In prosecution for cruelty to child, black and white photographs showing extent of bruises on child's body were properly introduced in evidence in support of medical testimony that bruises were result of a beating even though there was no direct testimony that defendant punished child. People v Levy (1970) 28 Mich App 339, 184 NW2d 325, cert den (1971) 404 US 827, 30 L Ed 2d 55, 92 S Ct 59.

In prosecution for torturing a child in a state training school, trial court's excluding from evidence transcript of civil service hearing and hearing officer's report concerning defendant's dismissal from job at school after incident was not reversible error, where hearing witnesses appeared and testified at trial, and trial court was not bound to accept findings of hearing officer. People v Lapsley (1970) 26 Mich App 424, 182 NW2d 601.

In prosecution for torturing child in state institution, trial court properly excluded from evidence as irrelevant training school records concerning patient beatings within five years previous to date of crime. People v Lapsley (1970) 26 Mich App 424, 182 NW2d 601.

#### 6. Sufficiency of evidence.

Third-degree child abuse is a specific intent crime; this means that a defendant's conviction requires sufficient evidence to establish that the defendant subjectively desired or knew that the prohibited result would occur; sufficient evidence existed to convict the defendant where the defendant spanked her child with enough force



to actually cause substantial bruising and to dislodge a blood clot from her nose. People v Sherman-Huffman (2000) 241 Mich App 264, 615 NW2d 776, app gr (2001) 463 Mich 978, 623 NW2d 603 and affd (2002) 466 Mich 39, 642 NW2d 339.

The evidence was sufficient to support a conviction of child abuse where there was strong evidence that the child had been intentionally abused and conflicting evidence regarding which person was responsible. People v Daoust (1998) 228 Mich App 1, 577 NW2d 179, app den, motion den (1999) 459 Mich 943, 590 NW2d 64.

Where defendant, a trained EMT, admitted shaking two-month-old victim of bilateral subdural hematomas and admitted that he knew it was improper to shake a baby, and where the victim was shaken on more than one occasion and, as a result of being shaken, suffered serious physical harm, there was sufficient evidence for a rational trier of fact to find that the essential elements of first-degree child abuse were proved beyond a reasonable doubt. People v Gould (1997) 225 Mich App 79, 570 NW2d 140, app den (1999) 459 Mich 955, 590 NW2d 572.

Evidence that child's bruises were result of beating supported conviction on charge of cruelty to child who was left alone with defendant when mother went to work. People v Levy (1970) 28 Mich App 339, 184 NW2d 325, cert den (1971) 404 US 827, 30 L Ed 2d 55, 92 S Ct 59.

In nonjury prosecution for torturing child in state training school, blood tests which pointed toward conclusion that blood found in room where incident allegedly occurred was same type as that of victim supported trial court's affirmative finding on issue, even though minute amount of blood prevented establishment of blood type with absolute certainty. People v Lapsley (1970) 26 Mich App 424, 182 NW2d 601.

In nonjury prosecution for abandonment of child by defendant who claimed she had been without funds and had acted because of child's need for medical treatment, evidence sustained trial court's finding that defendant had intent to abandon her child. People v Clark (1967) 6 Mich App 526, 149 NW2d 919.

## CREDITS

P.A.1931, No. 328, § 136b, added by P.A.1988, No. 251, § 1, Eff. Sept. 1, 1988.  
Amended by P.A.1999, No. 273, Eff. April 3, 2000; P.A.2008, No. 577, Eff. April 1, 2009; P.A.2012, No. 194, Eff. July 1, 2012.

## MINNESOTA

### **MINN. STAT. ANN. § 617.246 (2013). USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED**

*\*Effective August 1, 2013\**

Subdivision 1. Definitions.

(a) For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(b) “Minor” means any person under the age of 18.

(c) “Promote” means to produce, direct, publish, manufacture, issue, or advertise.

(d) “Sexual performance” means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by clause (e).

(e) “Sexual conduct” means any of the following:

(1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(3) masturbation;

(4) lewd exhibitions of the genitals; or

(5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) “Pornographic work” means:

(1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or

(2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:

(i) uses a minor to depict actual or simulated sexual conduct;

(ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or

(iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

For the purposes of this paragraph, an identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.

Subd. 2. Use of minor. It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance or pornographic work if the person knows or has reason to know that the conduct intended is a sexual performance or a pornographic work.

Any person who violates this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 3. Operation or ownership of business. A person who owns or operates a business in which a pornographic work, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the pornographic work disseminated or reproduced, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 4. Dissemination. A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor a pornographic work, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than \$20,000 for the first offense and \$40,000 for a second or subsequent offense, or both.

Subd. 5. Consent; mistake. Neither consent to sexual performance by a minor or the minor's parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

Subd. 6. Affirmative defense. It shall be an affirmative defense to a charge of violating this section that the sexual performance or pornographic work was produced using only persons who were 18 years or older.

Subd. 7. Conditional release term. Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating this section, the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. If the

person has previously been convicted of a violation of this section, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.247, or any similar statute of the United States, this state, or any state, the commissioner shall place the person on conditional release for ten years. The terms of conditional release are governed by section 609.3455, subdivision 8.

## CREDITS

Laws 1977, c. 371, § 1, eff. July 1, 1977. Amended by Laws 1982, c. 604, § 2, eff. May 1, 1982; Laws 1983, c. 204, § 11, eff. May 21, 1983; Laws 1984, c. 628, art. 3, §§ 7 to 9, eff. May 3, 1984; Laws 1986, c. 444; Laws 1999, c. 217, §§ 1 to 5; Laws 2006, c. 260, art. 1, § 38.

## MISSISSIPPI

### **MISS. CODE ANN. § 97-5-39 (2013). CHILD NEGLECT, DELINQUENCY OR ABUSE**

(1)(a) Except as otherwise provided in this section, any parent, guardian or other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been committed by the youth court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.

(b) For the purpose of this section, a child is 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 who is married, is not considered a child for the purposes of this statute.

(c) If a child commits one (1) of the proscribed acts in subsection (2)(a), (b) or (c) of this section upon another child, then original jurisdiction of all such offenses shall be in youth court.

(d) If the child's deprivation of necessary clothing, shelter, health care or supervision appropriate to the child's age results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment in custody of the Department of Corrections for not more than five (5) years or to payment of a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(e) A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment in the custody of the Department of Corrections for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) Any person shall be guilty of felonious child abuse in the following circumstances:

(a) Whether bodily harm results or not, if the person shall intentionally, knowingly or recklessly:

(i) Burn any child;

(ii) Physically torture any child;

(iii) Strangle, choke, smother or in any way interfere with any child's breathing;

(iv) Poison a child;

(v) Starve a child of nourishments needed to sustain life or growth;

(vi) Use any type of deadly weapon upon any child;

(b) If some bodily harm to any child actually occurs, and if the person shall intentionally, knowingly, or recklessly:

(i) Throw, kick, bite, or cut any child;

(ii) Strike a child under the age of fourteen (14) about the face or head with a closed fist;

(iii) Strike a child under the age of five (5) in the face or head;

(iv) Kick, bite, cut or strike a child's genitals; circumcision of a male child is not a violation under this subparagraph (iv);

(c) If serious bodily harm to any child actually occurs, and if the person shall intentionally, knowingly or recklessly:

(i) Strike any child on the face or head;

(ii) Disfigure or scar any child;

(iii) Whip, strike, or otherwise abuse any child;

(d) Any person, upon conviction under paragraph (a) or (c) of this subsection, shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than five (5) years and up to life, as determined by the court. Any person, upon conviction under paragraph (b) of this subsection shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than two (2) years nor more than ten (10) years, as determined by the court. For any second or subsequent conviction under this subsection (2), the person shall be sentenced to imprisonment for life.

(e) For the purposes of this subsection (2), “bodily harm” means any bodily injury to a child and includes, but is not limited to, bruising, bleeding, lacerations, soft tissue swelling, and external or internal swelling of any body organ.

(f) For the purposes of this subsection (2), “serious bodily harm” means any serious bodily injury to a child and includes, but is not limited to, the fracture of a bone, permanent disfigurement, permanent scarring, or any internal bleeding or internal trauma to any organ, any brain damage, any injury to the eye or ear of a child or other vital organ, and impairment of any bodily function.

(g) Nothing contained in paragraph (c) of this subsection shall preclude a parent or guardian from disciplining a child of that parent or guardian, or shall preclude a person in loco parentis to a child from disciplining that child, if done in a reasonable manner, and reasonable corporal punishment or reasonable discipline as to that parent or guardian's child or child to whom a person stands in loco parentis shall be a defense to any violation charged under paragraph (c) of this subsection.

(h) Reasonable discipline and reasonable corporal punishment shall not be a defense to acts described in paragraphs (a) and (b) of this subsection or if a child suffers serious bodily harm as a result of any act prohibited under paragraph (c) of this subsection.

(3) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(4)(a) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(b) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(5) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(6) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.

(7) In any proceeding resulting from a report made pursuant to Section 43-21-353 of the Youth Court Law, the testimony of the physician making the report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that the physician's testimony violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

(8) Any criminal prosecution arising from a violation of this section shall be tried in the circuit, county, justice or municipal court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

## CREDITS

Laws 1979, Ch. 506, § 75; Laws 1980, Ch. 550, § 28; Laws 1986, Ch. 383, § 1; Laws 1989, Ch. 566, § 3, eff. from and after passage (approved April 21, 1989); Laws 2005, Ch. 467, § 3, eff. July 1, 2005; Laws 2005, Ch. 491, § 3, eff. July 1, 2005. Amended by Laws 2013, Ch. 483 (H.B. 1259), § 1, eff. July 1, 2013.

## MISSOURI

### **MO. ANN. STAT. § 566.030 (2013). FORCIBLE RAPE AND ATTEMPTED FORCIBLE RAPE, PENALTIES--SUSPENDED SENTENCES NOT GRANTED, WHEN**

*\*Approved July 2, 2013\**  
*Effective 90 days after adjournment*

566.030. 1. A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. The offense of rape in the first degree or an attempt to commit rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than fifteen years;

(2) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such rape in the first degree is described under subdivision (3) of this subsection; or

(3) The victim is a child less than twelve years of age and such rape in the first degree or attempt to commit rape in the first degree was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.

3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of rape in the first degree or attempt to commit rape in the first degree when the victim is less than twelve years of age, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

4. No person found guilty of rape in the first degree or an attempt to commit forcible rape in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

#### CREDITS

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1980, H.B. No. 1138, § 1; L.1990, H.B. Nos. 1370, 1037 & 1084, § A; L.1993, S.B. No. 180, § A; L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995; L.1998, H.B. No. 1779, § A; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006; L.2009, S.B. Nos. 36 & 112, § A.)



***Current Mo. Ann. Stat. § 566.030: Has been replaced by statute above and is only effective until 90 after adjournment:***

1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than fifteen years;

(2) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than thirty years of such sentence or unless the defendant has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such forcible rape is described under subdivision (3) of this subsection; or

(3) The victim is a child less than twelve years of age and such forcible rape was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.

3. Subsection 4 of section 558.019, shall not apply to the sentence of a person who has pleaded guilty to or has been found guilty of forcible rape when the victim is under the age of twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

4. No person found guilty of or pleading guilty to forcible rape or an attempt to commit forcible rape shall be granted a suspended imposition of sentence or suspended execution of sentence.

**MO. ANN. STAT. § 566.060 (2013). FORCIBLE SODOMY, PENALTIES--  
SUSPENDED SENTENCE NOT GRANTED, WHEN**

*\*Approved July 2, 2013\**  
*Effective 90 days after adjournment*

566.060. 1. A person commits the offense of sodomy in the first degree if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. The offense of sodomy in the first degree or an attempt to commit sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years; or

(2) The victim is a child less than twelve years old, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such sodomy in the first degree is described under subdivision (3) of this subsection; or

(3) The victim is a child less than twelve years of age and such sodomy in the first degree or attempt to commit sodomy in the first degree was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.

3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree when the victim is less than twelve years of age, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

4. No person found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

#### CREDITS

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1980, H.B. No. 1138, § 1; L.1990, H.B.Nos. 1370, 1037 & 1084, § A; L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995; L.1998, H.B. No. 1779, § A; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006; L.2009, S.B. No. 36, § A.)

***Current Mo. Ann. Stat. § 566.060: Has been replaced by statute above and is only effective until 90 after adjournment:***

1. A person commits the crime of forcible sodomy if such person has deviate sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years; or

(2) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than thirty years of such sentence or unless the defendant has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such forcible sodomy is described under subdivision (3) of this subsection; or

(3) The victim is a child less than twelve years of age and such forcible sodomy was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.

3. Subsection 4 of section 558.019, shall not apply to the sentence of a person who has pleaded guilty to or has been found guilty of forcible sodomy when the victim is under the age of twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

4. No person found guilty of or pleading guilty to forcible sodomy or an attempt to commit forcible sodomy shall be granted a suspended imposition of sentence or suspended execution of sentence.

## **MONTANA**

### **MONT. CODE ANN. § 45-5-627 (2013). RITUAL ABUSE OF MINOR-- EXCEPTIONS--PENALTY**

(1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, assault on a minor, or assault with a weapon against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

## CREDITS

Enacted by Laws 1993, ch. 560, § 1. Amended by Laws 1995, ch. 482, § 10; amended by Laws 1999, ch. 432, § 9.

## **NEBRASKA**

### **NEB. REV. STAT. ANN. § 43-283.01 (2013). PRESERVE AND REUNIFY THE FAMILY; REASONABLE EFFORTS; REQUIREMENTS**

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the

determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

## CREDITS

Laws 1998, LB 1041, § 24; Laws 2009, LB 517, § 1, eff. Aug. 30, 2009.

## NEVADA

### **NEV. REV. STAT. ANN. § 200.508 (2013). ABUSE, NEGLECT OR ENDANGERMENT OF CHILD: PENALTIES; DEFINITIONS.**

1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

2. A person who is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that the person delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.

4. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070; , 432B.100; ,

432B.110; , 432B.140; and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

- (1) Permanent or temporary disfigurement; or
- (2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.

## CREDITS

1971, p. 772; 1975, p. 1141; 1977, pp. 738, 1629; 1985, p. 1399; 1989, ch. 408, § 2, p. 866; 1989, ch. 659, §§ 5, 7, pp. 1510, 1512; 1995, ch. 443, § 71, p. 1193; 1997, ch. 240, § 3, p. 850; 1997, ch. 455, § 2, p. 1720; 1999, ch. 105, § 49, p. 470; 2001, ch. 258, § 1, p. 1138; 2001, ch. 276, § 14, p. 1264; 2003, ch. 2, § 23, p. 22.

## NEW HAMPSHIRE

## NEW JERSEY

### **N.J. STAT. ANN. § 2C:24-4 (2013). ENDANGERING WELFARE OF CHILDREN**

*\*Effective July 1, 2013\**

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and section 1 of P.L.1974, c. 119 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person



who engages in conduct or who causes harm as described in this subsection to a child under the age of 18 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

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

“Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

“Prohibited sexual act” means

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus; or
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

“Reproduction” means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c. 291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5) (a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the third degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 18 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 18. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 18, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 18, nor shall it be a defense that the actor believed that the child was 18 years of age or older, even if such a mistaken belief was reasonable.

## CREDITS

L.1978, c. 95, § 2C:24-4, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 46, eff. Sept. 1, 1979; L.1983, c. 494, § 1, eff. Jan. 17, 1984; L.1992, c. 2, § 1, eff. April 2, 1992; L.1992, c. 6, § 1, eff. May 13, 1992; L.1995, c. 109, § 1, eff. June 1, 1995; L.1998, c. 126, § 1, eff. May 1, 1999; L.2001, c. 291, § 1, eff. Dec. 28, 2001, retroactive to May 1, 1999; L.2013, c. 51, § 13, eff. July 1, 2013.

## NEW MEXICO

### **N.M. STAT. ANN. § 30-6-1 (2013). ABANDONMENT OR ABUSE OF A CHILD**

A. As used in this section:

(1) “child” means a person who is less than eighteen years of age;

(2) “neglect” means that a child is without proper parental care and control of 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 parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) “negligently” refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case the person is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

E. A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony.

F. A person who commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. A person who commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. A person who commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

K. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

#### CREDITS

L. 1973, Ch. 360, § 10; L. 1977, Ch. 131, § 1; L. 1978, Ch. 103, § 1; L. 1984, Ch. 77, § 1; L. 1984, Ch. 92, § 5; L. 1989, Ch. 351, § 1; L. 1997, Ch. 163, § 1, eff. July 1, 1997; L. 2001, Ch. 31, § 9, eff. March 14, 2001; L. 2001, Ch. 132, § 9, eff. April 2, 2001; L. 2004, Ch. 10, § 1, eff. July 1, 2004; L. 2004, Ch. 11, § 1, eff. July 1, 2004; L. 2005, Ch. 59, § 1, eff. June 17, 2005; L. 2009, Ch. 259, § 1, eff. June 19, 2009.

#### **N.M. STAT. ANN. § 30-6-4 (2013). SEXUAL EXPLOITATION OF CHILDREN BY PROSTITUTION**

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person hiring or offering to hire a child over the age of thirteen and under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.

C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

#### CREDITS

L. 1984, Ch. 92, § 4; L. 1989, Ch. 170, § 2.

#### **N.M. STAT. ANN. § 32A-4-2 (2013). 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

## NORTH CAROLINA

### N.C. Gen. Stat. § 7B-101 (2013). DEFINITIONS

*\*Effective October 1, 2013\**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles.--Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A;

second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances.--Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker.--Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk.--Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(6) Court.--The district court division of the General Court of Justice.



(7) Court of competent jurisdiction.--A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. -- A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian.--The person or agency that has been awarded legal custody of a juvenile by a court.

(9) Dependent juvenile.--A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director.--The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District.--Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. -- A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. -- A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge.--Any district court judge.

(13) Judicial district.--Any district court district as established by G.S. 7A-133.

(14) Juvenile.--A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.

(15) Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a

home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner.--The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor.--The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts.--The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(18a) Responsible individual.--A parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile.

(18b) Return home or reunification.—Placement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order. (19) Safe home.--A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(19a) Serious neglect.--Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

(21) Substantial evidence. -- Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. -- Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

## CREDITS

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998-229, §§ 1, 18, eff. July 1, 1999; S.L. 1999-190, § 1, eff. June 18, 1999; S.L. 1999-318, § 1, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2005-55, § 1, eff. Oct. 1, 2005; S.L. 2005-399, § 1, eff. Oct. 1, 2005; S.L. 2009-38, § 1, eff. May 27, 2009; S.L. 2010-90, §§ 1, 2,

eff. July 11, 2010; S.L. 2011-183, § 2, eff. June 20, 2011; S.L. 2012-153, § 2, eff. Dec. 1, 2012.

***Current N.C. Gen. Stat. § 7B-101: Has been replaced by statute above and is only effective until October 1, 2013:***

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles.--Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances.--Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker.--Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk.--Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program.--A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court.--The district court division of the General Court of Justice.

(7) Court of competent jurisdiction.--A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. -- A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian.--The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile.--A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director.--The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District.--Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. -- A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. -- A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge.--Any district court judge.

(13) Judicial district.--Any district court district as established by G.S. 7A-133.

(14) Juvenile.--A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.

(15) Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner.--The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor.--The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts.--The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(18a) Responsible individual.--A parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile.

(19a) Serious neglect.--Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

(20) Shelter care.--The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(21) Substantial evidence. -- Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. -- Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

#### **N.C. GEN. STAT. § 14-27.2A (2013). RAPE OF A CHILD; ADULT OFFENDER**

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the deprived

torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(e) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section.

#### CREDITS

Added by S.L. 2008-117, § 1, eff. Dec. 1, 2008.

### **N.C. Gen. Stat. § 14-27.4A (2013). SEXUAL OFFENSE WITH A CHILD; ADULT OFFENDER**

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section.

#### CREDITS

Added by S.L. 2008-117, § 2, eff. Dec. 1, 2008.

## **NORTH DAKOTA**

## **OHIO**

### **OHIO REV. CODE ANN. § 2919.22 (2013). ENDANGERING CHILDREN**

(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 in 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 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 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;

(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**

### **OKLA. STAT. ANN. tit. 10A, § 1-1-105 (2013). DEFINITIONS**

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 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,
- g. 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:

(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:
- 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

LAWS 1968, C. 282, § 101, EFF. JAN. 13, 1969; LAWS 1970, C. 86, § 1, EMERG. EFF. MARCH 27, 1970; LAWS 1972, C. 122, § 1, EMERG. EFF. APRIL 4, 1972; LAWS 1977, C. 79, § 1; LAWS 1979, C. 257, § 1, EFF. OCT. 1, 1979; LAWS 1980, C. 242, § 1, EFF. OCT. 1, 1980; LAWS 1982, C. 312, § 13, OPERATIVE OCT. 1, 1982; LAWS 1984, C. 120, § 1, EMERG. EFF. APRIL 10, 1984; LAWS 1987, C. 88, § 1, OPERATIVE JULY 1, 1987; LAWS 1988, C. 76, § 1, EMERG. EFF. MARCH 25, 1988; LAWS 1988, C. 238, § 1, EMERG. EFF. JUNE 24, 1988; LAWS 1990, C. 238, § 1, EMERG. EFF. MAY 21, 1990; LAWS 1990, C. 337, § 1; LAWS 1991, C. 335, § 1, EMERG. EFF. JUNE 15, 1991; LAWS 1992, C. 298, § 14, EFF. JULY 1, 1993; LAWS 1993, C. 342, § 1, EFF. JULY 1, 1993; LAWS 1994, C. 2, § 1, EMERG. EFF. MARCH 2, 1994; LAWS 1994, C. 290, § 3, EFF. JULY 1, 1994. RENUMBERED FROM TITLE 10, § 1101 AND AMENDED BY LAWS 1995, C. 352, §§ 3, 199, EFF. JULY 1, 1995. LAWS 1996, C. 47, § 1, EMERG. EFF. APRIL 8, 1996; LAWS 1996, C. 200, § 3, EFF. NOV. 1, 1996; LAWS 1996, C. 353, § 15, EFF. NOV. 1, 1996; LAWS 1997, C. 386, § 19, EMERG. EFF. JUNE 10, 1997; LAWS 1998, C. 5, § 2, EMERG. EFF. MARCH 4, 1998; LAWS 1998, C. 421, § 2, EMERG. EFF. JUNE 11, 1998; LAWS 2000, C. 374, § 5, EFF. JULY 1, 2000; LAWS 2001, C. 434, § 4, EMERG. EFF. JUNE 8, 2001; LAWS 2002, C. 327, § 15, EFF. JULY 1, 2002; LAWS 2004, C. 422, § 3, EFF. JULY 1, 2004; LAWS 2006, C. 258, § 1, EMERG. EFF. JUNE 7, 2006. RENUMBERED FROM TITLE 10, § 7001-1.3 AND AMENDED BY LAWS 2009, C. 233, §§ 11, 211, EMERG. EFF. MAY 21, 2009. LAWS 2009, C. 338, § 3, EFF. JULY 1, 2009; LAWS 2012, C. 91, § 1, EFF. NOV. 1, 2012; LAWS 2012, C. 353, § 3, EMERG. EFF. JUNE 8, 2012.

## **OKLA. STAT. ANN. tit. 10A, § 1-4-809 (2013). FINDINGS ESTABLISHING THAT REASONABLE EFFORTS TO REUNIFY CHILD ARE NOT REQUIRED**

A. At any time prior to or following the adjudicatory hearing the court, on its own motion or upon the motion of a party, may find that reasonable efforts to prevent the removal of a

child from home or to reunify the child and family are not required if the court determines, based upon a preponderance of the evidence, that:

1. The parent or legal guardian of the child, who is an infant age twelve (12) months or younger, has abandoned the child;
2. The parent or legal guardian of the child has:
  - a. committed murder or manslaughter of any child,
  - b. aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter of any child,
  - c. committed a felony assault upon any child that resulted in the child receiving serious bodily injury, or
  - d. subjected any child to aggravated circumstances including, but not limited to, heinous and shocking abuse or heinous and shocking neglect;
3. The parental rights of a parent to the child's sibling have been terminated involuntarily;
4. The parent has been found by a court of competent jurisdiction to have committed sexual abuse against the child or another child of the parent; or
5. The parent is required to register with a sex offender registry pursuant to Section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C., Section 16913(a).

B. The court shall conduct a permanency hearing within thirty (30) days of a determination by the court that any of the conditions specified in subsection A of this section exist. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan.

#### CREDITS

Laws 1998, c. 421, § 14, emerg. eff. June 11, 1998; Laws 2000, c. 374, § 15, eff. July 1, 2000. Renumbered from Title 10, § 7003-4.6 and amended by Laws 2009, c. 233, §§ 32, 255, emerg. eff. May 21, 2009; Laws 2012, c. 353, § 5, emerg. eff. June 8, 2012.

#### **OKLA. STAT. ANN. tit. 10A, § 2-2-104 (2013). PRELIMINARY INQUIRY— PETITION**

*\*Effective November 1, 2013\**

A. A preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Oklahoma Juvenile Code require that further court action be taken. If it is determined by the preliminary inquiry that no further action be taken and if agreed to by the district attorney, the intake worker may make such informal adjustment without a petition.

B. In the course of the preliminary inquiry, the intake worker shall:

1. Hold conferences with the child and the parents, guardian or custodian of the child for the purpose of discussing the disposition of the referral made;
2. Interview such persons as necessary to determine whether the filing of a petition would be in the best interests of the child and the community;
3. Check existing records of any district court or tribal court, law enforcement agencies, Office of Juvenile Affairs, and Department of Human Services;
4. Obtain existing mental health, medical and educational records of the child with the consent of the parents, guardian or custodian of the child or by court order; and
5. Administer any screening and assessment instruments or refer for necessary screening and assessments to assist in the determination of any immediate needs of the child as well as the immediate risks to the community. All screening and assessment instruments shall be uniformly used by all intake workers, including those employed by juvenile bureaus, and shall be instruments specifically prescribed by the Office of Juvenile Affairs.

C. Upon review of any information presented in the preliminary inquiry, the district attorney may consult with the intake worker to determine whether the interests of the child and the public will be best served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

D. Informal adjustment may be provided to the child by the intake worker only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where consent is obtained from the district attorney, the parent of the child, legal guardian, legal custodian, or legal counsel, if any, and the child. The informal adjustment is an agreement whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child. The informal adjustment shall be completed within a period of time not to exceed six (6) months and shall:

1. Be voluntarily entered into by all parties;
2. Be revocable by the child at any time by a written revocation;

3. Be revocable by the intake worker in the event there is reasonable cause to believe the child has failed to carry out the terms of the informal adjustment or has committed a subsequent offense;
4. Not be used as evidence against the child at any adjudication hearing;
5. Be executed in writing and expressed in language understandable to the persons involved; and
6. Become part of the juvenile record of the child.

E. The informal adjustment agreement under this section may include, among other suitable methods, programs and procedures, the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion of the intake officer would be beneficial to the child and family of the child;
2. Require the child to undergo a behavioral health evaluation and, if warranted, undergo appropriate care or treatment;
3. Restitution providing for monetary payment by the parents or child to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the intake officer shall consult with the victim concerning the amount of damages; or
4. Informal adjustment projects, programs and services may be provided through public or private agencies.

If the intake worker has reasonable cause to believe that the child has failed to carry out the terms of the adjustment agreement or has committed a subsequent offense, in lieu of revoking the agreement, the intake worker may modify the terms of the agreement and extend the period of the agreement for an additional six (6) months from the date on which the modification was made with the consent of the child or counsel of the child, if any.

F. If an informal adjustment is agreed to pursuant to subsection D of this section, the informal adjustment agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The child shall remit the fee directly to the agency responsible for the monitoring and supervision of the child. If the supervising agency is a juvenile bureau, then the fee shall be remitted to a revolving fund of the county in which the juvenile bureau is located to be designated the “Juvenile Deferral Fee Revolving Fund” and shall be used by the juvenile bureau to defray costs for the operation of the juvenile bureau. In those counties without juvenile bureaus and in which the Office of Juvenile Affairs or one of their contracting agencies provides the

monitoring and supervision of the juvenile, the fee shall be paid directly to the Office of Juvenile Affairs and shall be used to defray the costs for the operation of the Office of Juvenile Affairs.

## CREDITS

Laws 1995, c. 352, § 116, eff. July 1, 1995; Laws 1998, c. 268, § 6, eff. July 1, 1998; Laws 2002, c. 473, § 2, eff. Nov. 1, 2002; Laws 2003, c. 3, § 7, emerg. eff. March 19, 2003; Laws 2007, c. 176, § 1, eff. Nov. 1, 2007. Renumbered from Title 10, § 7303-1.3 and amended by Laws 2009, c. 234, §§ 42, 178, emerg. eff. May 21, 2009.

***Current Okla. Stat. Ann. tit. 10A, § 2-2-104: Has been replaced by statute above and is only effective until November 1, 2013:***

A. A preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Oklahoma Juvenile Code require that further court action be taken. If it is determined by the preliminary inquiry that no further action be taken and if agreed to by the district attorney, the intake worker may make such informal adjustment without a petition.

B. Informal adjustment may be provided to the child by the intake worker only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where consent is obtained from the district attorney, the parent of the child, legal guardian, legal custodian, or legal counsel, if any, and the child. The informal adjustment is an agreement whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child. The informal adjustment shall be completed within a period of time not to exceed six (6) months and shall:

1. Be voluntarily entered into by all parties;
2. Be revocable by the child at any time by a written revocation;
3. Be revocable by the intake worker in the event there is reasonable cause to believe the child has failed to carry out the terms of the informal adjustment or has committed a subsequent offense;
4. Not be used as evidence against the child at any adjudication hearing;
5. Be executed in writing and expressed in language understandable to the persons involved; and
6. Become part of the juvenile record of the child.

C. The informal adjustment agreement under this section may include, among other suitable methods, programs and procedures, the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion of the intake officer would be beneficial to the child and family of the child;

2. Require the child to undergo a behavioral health evaluation and, if warranted, undergo appropriate care or treatment;

3. Restitution providing for monetary payment by the parents or child to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the intake officer shall consult with the victim concerning the amount of damages; or

4. Informal adjustment projects, programs and services may be provided through public or private agencies.

If the intake worker has reasonable cause to believe that the child has failed to carry out the terms of the adjustment agreement or has committed a subsequent offense, in lieu of revoking the agreement, the intake worker may modify the terms of the agreement and extend the period of the agreement for an additional six (6) months from the date on which the modification was made with the consent of the child or counsel of the child, if any.

D. If an informal adjustment is agreed to pursuant to subsection B of this section, the informal adjustment agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The child shall remit the fee directly to the agency responsible for the monitoring and supervision of the child. If the supervising agency is a juvenile bureau, then the fee shall be remitted to a revolving fund of the county in which the juvenile bureau is located to be designated the "Juvenile Deferral Fee Revolving Fund" and shall be used by the juvenile bureau to defray costs for the operation of the juvenile bureau. In those counties without juvenile bureaus and in which the Office of Juvenile Affairs or one of their contracting agencies provides the monitoring and supervision of the juvenile, the fee shall be paid directly to the Office of Juvenile Affairs and shall be used to defray the costs for the operation of the Office of Juvenile Affairs.

**OKLA. STAT. ANN. tit. 10A, § 2-2-105 (2013). ORDER REMOVING CHILD FROM HOME PROHIBITED ABSENT CERTAIN DETERMINATIONS**

No order of the court providing for the initial or continued removal of a child alleged or adjudicated delinquent or in need of supervision from the child's home shall be entered unless the court finds that the continuation of the child in the home of the child is contrary to the welfare of the child. The order shall include either:

1. A determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from the home or, as appropriate, reasonable efforts have been made to provide for the return of the child to the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of the child from the home is reasonable upon consideration of the family circumstances, the safety of the child and the protection of the public; or

3. A determination that reasonable efforts to prevent the removal of the child from the home or to reunify the child and family are not required because:

a. a court of competent jurisdiction has determined that the parent has subjected the child to one of the following aggravated circumstances: abandonment, torture, chronic abuse, sexual abuse or chronic, life-threatening neglect of the child,

b. a court of competent jurisdiction has determined that the parent has been convicted of one of the following:

(1) murder of another child of the parent,

(2) voluntary manslaughter of another child of the parent,

(3) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(4) a felony assault that results in serious bodily injury to the child or another child of the parent, or

c. the parental rights of the parent with respect to a sibling have been terminated involuntarily.

#### CREDITS

Laws 1995, c. 352, § 117, eff. July 1, 1995; Laws 2002, c. 473, § 3, eff. Nov. 1, 2002. Renumbered from Title 10, § 7303-1.4 and amended by Laws 2009, c. 234, §§ 43, 178, emerg. eff. May 21, 2009.

#### **OKLA. STAT. ANN. tit. 10A, § 2-2-106 (2013). PETITION--SUBSEQUENT PLEADINGS--AMENDED PETITIONS**

A. If a child has been taken into custody pursuant to the provisions of the Oklahoma Juvenile Code before a petition has been filed, a petition shall be filed and summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to the parent of the child, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Oklahoma Juvenile Code.

B. No pleading subsequent to the petition is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing.



C. A petition may be amended by order of the court at any time before an order of adjudication has been made, provided that the court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the court shall not amend the adjudicatory category prayed for in the petition.

D. A petition in a juvenile proceeding may be filed by the district attorney to determine if further action is necessary. The proceeding shall be entitled “In the matter of \_\_\_\_\_, an alleged (delinquent) or (a child alleged to be in need of supervision)”. The petition shall be verified and may be upon information and belief. It shall set forth:

1. With particularity facts which bring the child within the purview of the Oklahoma Juvenile Code;
2. The name, age and residence of the child;
3. The names and residences of the parents of the child;
4. The name and residence of the legal guardian of the child, if applicable;
5. The name and residence of the person or persons having custody or control of the child;
6. The name and residence of the nearest known relative, if no parent or guardian can be found;
7. The relief requested; and
8. The specific law under which the child is charged and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child.

E. A copy of the petition shall be attached to and served with the summons.

#### CREDITS

Laws 1995, c. 352, § 118, eff. July 1, 1995. Renumbered from Title 10, § 7303-1.5 and amended by Laws 2009, c. 234, §§ 44, 178, emerg. eff. May 21, 2009.

#### **OKLA. STAT. ANN. tit. 10A, § 2-2-107 (2013). SUMMONS--WARRANT— SERVICE**

*\*Effective November 1, 2013\**

Section 2-2-107. A. After a petition shall have been filed, unless the parties provided for in this section shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase “as described more fully in the attached petition” and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years, a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate.

Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has not entered an appearance, the court shall immediately order the issuance of a summons which shall be served on said person.

D. Service of summons shall be made as provided for service in civil actions.

1. The court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian of the child.

2. If the parent of the child is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.

E. If after a petition has been filed, it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the judge may immediately issue a detention order or warrant authorizing the taking of said child into emergency custody. Any such child shall not be considered to be in the custody of the Office of Juvenile Affairs.

F. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

G. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian or against the child. Nothing in this section shall be construed to authorize placement of a child in secure detention who is not eligible for secure detention pursuant to Section 2–3–101 of this title.

## CREDITS

Laws 1995, c. 352, § 119, eff. July 1, 1995; Laws 1998, c. 268, § 7, eff. July 1, 1998. Renumbered from Title 10, § 7303-1.6 and amended by Laws 2009, c. 234, §§ 45, 178, emerg. eff. May 21, 2009.

***Current Okla. Stat. Ann. tit. 10A, § 2-2-107: Has been replaced by statute above and is only effective until November 1, 2013:***

A. After a petition shall have been filed, unless the parties provided for in this section shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase “as described more fully in the attached petition” and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years, a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate.

Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has not entered an appearance, the court shall immediately order the issuance of a summons which shall be served on said person.

D. Service of summons shall be made as provided for service in civil actions.

1. The court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian of the child.

2. If the parent of the child is not served within the state, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.

E. If after a petition has been filed, it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the judge may immediately issue a detention order or warrant authorizing the taking of said child into emergency custody. Any such child shall not be considered to be in the custody of the Office of Juvenile Affairs.

F. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed; in a child in need of supervision proceeding, whenever a warrant for detention of a child shall issue, it shall state the reason for detention. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

G. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian or against the child.

**OKLA. STAT. ANN. tit. 10A, § 2-2-108 (2013). EXAMINATION BY HEALTH CARE PROFESSIONALS--INVESTIGATION OF CHILD'S HOME AND CUSTODIAN'S EARNING CAPACITY**

A. After a petition under the provisions of this article has been filed, the court may order the child to be examined and evaluated for medical issues, including behavioral health diagnoses, by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child.

B. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the court may, after due notice, enter an order therefor, and the expense thereof, when approved by the court, shall be a charge upon the county, but the court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

**CREDITS**

Laws 1995, c. 352, § 120, eff. July 1, 1995; Laws 2002, c. 327, § 26, eff. July 1, 2002. Renumbered from Title 10, § 7303-1.7 and amended by Laws 2009, c. 234, §§ 46, 178, emerg. eff. May 21, 2009.

**OKLA. STAT. ANN. TIT. 21, § 701.7 (2013). MURDER IN THE FIRST DEGREE**

A. A person commits murder in the first degree when that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, intentional discharge of a firearm or other deadly weapon into any dwelling or building as provided in Section 1289.17A of this title, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, eluding an officer, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances or synthetic controlled substances, trafficking in illegal drugs, or manufacturing or attempting to manufacture a controlled dangerous substance.

1. Except as provided in paragraph 3 of this subsection, the term “synthetic controlled substance” means a substance:

- a. the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II,
- b. which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II, or
- c. with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

2. The designation of gamma butyrolactone does not preclude a finding pursuant to paragraph 1 of this subsection that the chemical is a synthetic controlled substance.

3. Such term does not include:

- a. a controlled substance,

b. any substance for which there is an approved new drug application,

c. with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption, or

d. any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843. 5 of this title. It is sufficient for the crime of murder in the first degree that the person either willfully tortured or used unreasonable force upon the child or maliciously injured or maimed the child.

D. A person commits murder in the first degree when that person unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act,<sup>1</sup> unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

E. A person commits murder in the first degree when that person intentionally causes the death of a law enforcement officer, correctional officer, or corrections employee while the officer or employee is in the performance of official duties.

#### CREDITS

Laws 1976, 1st Ex.Sess., c. 1, § 1, eff. July 24, 1976; Laws 1982, c. 279, § 1, operative Oct. 1, 1982; ; Laws 1989, c. 259, § 1, emerg. eff. May 19, 1989; Laws 1996, c. 161, § 1, eff. Nov. 1, 1996; Laws 1997, c. 386, § 23, emerg. eff. June 10, 1997; Laws 1998, c. 5, § 11, emerg. eff. March 4, 1998; Laws 2004, c. 520, § 2, eff. Nov. 1, 2004; Laws 2006, c. 186, § 2, eff. July 1, 2006; Laws 2009, c. 234, § 120, emerg. eff. May 21, 2009; Laws 2012, c. 128, § 1, eff. Nov. 1, 2012; Laws 2012, c. 208, § 1, eff. Nov. 1, 2012.

#### **OKLA. STAT. ANN. TIT. 21, § 843.5 (2013). CHILD ABUSE--CHILD NEGLECT--CHILD SEXUAL ABUSE--CHILD SEXUAL EXPLOITATION--ENABLING—PENALTIES.**

A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in

a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “child abuse” means the willful or malicious abuse, as defined by paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment. As used in this subsection, “enabling child abuse” means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

C. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “child neglect” means the willful or malicious neglect, as defined by paragraph 46 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another.

D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “enabling child neglect” means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 46 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a

county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of this title or as otherwise provided in subsection F of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this section, “child sexual abuse” means the willful or malicious sexual abuse, as defined by subparagraph b of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

G. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “enabling child sexual abuse” means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by subparagraph b of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under the age of eighteen (18) by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

H. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment except as provided in subsection I of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this subsection, “child sexual



exploitation” means the willful or malicious sexual exploitation, as defined by subparagraph c of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another.

I. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

J. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “enabling child sexual exploitation” means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by subparagraph c of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

K. Notwithstanding any other provision of law, any parent or other person convicted of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction for any offense of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age shall be punished by death or by imprisonment for life without parole.

## CREDITS

Laws 1963, c. 53, § 1, emerg. eff. May 8, 1963; Laws 1975, c. 250, § 2, emerg. eff. June 2, 1975; Laws 1977, c. 172, § 1, eff. Oct. 1, 1977; Laws 1982, c. 7, § 1, operative Oct. 1, 1982; Laws 1989, c. 348, § 12, eff. Nov. 1, 1989; Laws 1990, c. 224, § 5, eff. Sept. 1, 1990. Renumbered from Title 21, § 843 and amended by Laws 1995, c. 353, §§ 15, 20, eff. Nov. 1, 1995. Laws 1996, c. 200, § 15, eff. Nov. 1, 1996; Laws 1997, c. 133, § 127, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 57, eff. July 1, 1999; Laws 2000, c. 291, § 1, eff. Nov. 1, 2000; Laws 2002, c. 455, § 7, emerg. eff. June 5, 2002; Laws 2006, c. 326, § 1, eff. July 1, 2006; Laws 2007, c. 325, § 1, eff. Nov. 1, 2007; Laws 2008, c. 3, § 5, emerg. eff. Feb. 28, 2008. Renumbered from Title 10, § 7115 by Laws 2009, c. 233, § 207, emerg. eff. May 21, 2009; Laws 2010, c. 278, § 18, eff. Nov. 1, 2010.

## **OKLA. STAT. ANN. tit. 21, § 1024.1 (2013). DEFINITIONS**

A. As used in Sections 1021, 1021.1 through 1021.4, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, “child pornography” means and includes any visual depiction or individual image stored or contained in any format on any medium including, but not limited to, film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals, buttocks or, if such minor is a female, the breast, has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

B. As used in Sections 1021 through 1024.4 and Sections 1040.8 through 1040.24 of this title:

1. “Obscene material” means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or on any medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, optical, magnetic or solid-state storage, CD or DVD, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, if said items contain the following elements:

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards, and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography;

2. “Performance” means and includes any display, live or recorded, in any form or medium;

3. “Sexual conduct” means and includes any of the following:

- a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,
- b. acts of deviate sexual conduct, including oral and anal sodomy,
- c. acts of masturbation,
- d. acts of sadomasochistic abuse including but not limited to:
  - (1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or
  - (2) the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed,
- e. acts of excretion in a sexual context, or
- f. acts of exhibiting human genitals or pubic areas; and

4. “Explicit child pornography” means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

The types of sexual conduct described in paragraph 3 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

## CREDITS

Laws 1981, c. 146, § 1; Laws 1984, c. 91, § 4, eff. Nov. 1, 1984; Laws 1996, c. 37, § 7, eff. Nov. 1, 1996; Laws 2000, c. 208, § 8, eff. Nov. 1, 2000; Laws 2009, c. 210, § 1, emerg. eff. May 19, 2009; Laws 2009, c. 457, § 2, eff. July 1, 2009; Laws 2012, c. 115, § 1, eff. Nov. 1, 2012.

## OREGON

### **OR. REV. STAT. § 163.115 (2013). MURDER, AFFIRMATIVE DEFENSES; FELONY MURDER; SENTENCE**

(1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

- (A) Arson in the first degree as defined in ORS 164.325;
- (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;
- (C) Burglary in the first degree as defined in ORS 164.225;
- (D) Escape in the first degree as defined in ORS 162.165;
- (E) Kidnapping in the second degree as defined in ORS 163.225;
- (F) Kidnapping in the first degree as defined in ORS 163.235;
- (G) Robbery in the first degree as defined in ORS 164.415;
- (H) Any felony sexual offense in the first degree defined in this chapter;
- (I) Compelling prostitution as defined in ORS 167.017; or
- (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

- (a) Was not the only participant in the underlying crime;
- (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;
- (c) Was not armed with a dangerous or deadly weapon;
- (d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and
- (e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

(5)(a) Except as otherwise provided in ORS 163.155, a person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS 144.285.

(f) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

(6) As used in this section:

(a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another person. "Assault" does not include the causing of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

#### CREDITS

Laws 1971, c. 743, § 88; Laws 1975, c. 577, § 1; Laws 1979, c. 2, § 1; Laws 1981, c. 873, § 5; Laws 1985, c. 763, § 1; Laws 1989, c. 985, § 1; Laws 1993, c. 664, § 1; Laws 1995, c. 421, § 3; Laws 1995, c. 657, § 1; Laws 1997, c. 850, § 2; Laws 1999, c. 782, § 4; Laws 2007, c. 717, § 2, eff. June 28, 2007; Laws 2009, c. 660, § 7, eff. July 1, 2009; Laws 2009, c. 785, § 1, eff. Jan. 1, 2010; Laws 2011, c. 291, § 1, eff. June 9, 2011.

#### **OR. REV. STAT. § 163.118 (2013). FIRST DEGREE MANSLAUGHTER**

(1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution;

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

(d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B) (i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

(a) Assault in the first degree under ORS 163.185;

(b) Assault in the second degree under ORS 163.175; or

(c) Assault in the third degree under ORS 163.165.

(3) Manslaughter in the first degree is a Class A felony.

(4) It is an affirmative defense to a charge of violating:

(a) Subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

(b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

#### CREDITS

Laws 1975, c. 577, § 2; Laws 1981, c. 873, § 6; Laws 1997, c. 850, § 3; Laws 2007, c. 867, § 2, eff. Jan. 1, 2008; Laws 2011, c. 291, § 2, eff. June 9, 2011.

### **OR. REV. STAT. § 163.125 (2013). SECOND DEGREE MANSLAUGHTER**

(1) Criminal homicide constitutes manslaughter in the second degree when:

(a) It is committed recklessly;

(b) A person intentionally causes or aids another person to commit suicide; or

(c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.

(2) Manslaughter in the second degree is a Class B felony.

#### CREDITS

Laws 1971, c. 743, § 89; Laws 1975, c. 577, § 3; Laws 1997, c. 850, § 4; Laws 1999, c. 954, § 1.

### **OR. REV. STAT. § 419B.502 (2013). TERMINATION FOR EXTREME CONDUCT; CONSIDERATIONS**

The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child. In such case, no efforts need to be made by available social agencies to help the parent adjust the conduct in order to make it possible



for the child or ward to safely return home within a reasonable amount of time. In determining extreme conduct, the court shall consider the following:

- (1) Rape, sodomy or sex abuse of any child by the parent.
- (2) Intentional starvation or torture of any child by the parent.
- (3) Abuse or neglect by the parent of any child resulting in death or serious physical injury.
- (4) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child.
- (5) Conduct by the parent to attempt, solicit or conspire, as described in ORS 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to cause the death of any child.
- (6) Previous involuntary terminations of the parent's rights to another child if the conditions giving rise to the previous action have not been ameliorated.
- (7) Conduct by the parent that knowingly exposes any child of the parent to the storage or production of methamphetamines from precursors. In determining whether extreme conduct exists under this subsection, the court shall consider the extent of the child or ward's exposure and the potential harm to the physical health of the child or ward.

#### CREDITS

Added by Laws 1993, c. 33, § 139. Amended by Laws 1995, c. 767, § 1; Laws 1997, c. 873, § 5; Laws 1999, c. 859, § 16; Laws 2001, c. 575, § 1; Laws 2001, c. 686, § 23; Laws 2003, c. 396, § 84.

## PENNSYLVANIA

## RHODE ISLAND

### **R.I. GEN. LAWS § 11-37-8.2.1 (2013). PENALTY FOR FIRST DEGREE CHILD MOLESTATION SEXUAL ASSAULT -- JESSICA LUNSFORD CHILD PREDATOR ACT OF 2006**

(a) Title and Legislative Intent. The title of this section shall be "The Jessica Lunsford Child Predator Act of 2006". In enacting this section the general assembly intends that in order to ensure the safety of victims the most dangerous child predators be electronically monitored via an active global positioning system in order to ensure that their

whereabouts can be easily ascertained by law enforcement and other responsible authorities at all times while providing treatment to offenders.

(b) Every person who shall violate the provisions of subdivisions 11-37-8.2.1(b)(1) -- 11-37-8.2.1(b)(2) listed herein shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior, as determined by the department of probation and parole. The persons subject to this condition of parole shall include:

(1) Persons who commit first degree child molestation sexual assault on or after January 1, 2007 and the victim of the sexual assault is twelve (12) years of age or younger; or

(2) Persons who shall violate the conditions of § 11-37-8.1 on or after January 1, 2007 and be determined a high-risk of re-offense (level 3) offender under the conditions of § 11-37.1-12, and the person is deemed a child predator as defined in subsection 11-37-8.2.1(g) or have committed the offense in conjunction with circumstances involving kidnapping, torture or aggravated battery, and provided further that the victim to the offense is fourteen (14) years of age or younger.

(3) Any person who violates the terms of the global position monitoring conditions shall be guilty of a misdemeanor.

(c) Any costs associated with the requirements of this section shall be borne by the offender and the court is hereby authorized and empowered to utilize all resources available to collect the funds for these costs unless the court finds that the defendant is indigent. In such cases costs shall be waived in order to promote this section's legislative intent.

(d) Harboring.

(1) Any person who has reason to know that a person convicted of first degree child molestation as defined by § 11-37-8.1 or 11-37-8.2.1 is not complying or has not complied with the requirements of this section where applicable and who with the intent to assist the child molester in eluding a law enforcement agency that is seeking to find the child molester to question the child molester about or to arrest the child molester for his or her non-compliance with the requirements of this section and who:

(i) knowingly withholds information from or willfully fails to notify the law enforcement agency about the child molester's non-compliance with the requirements of this section; or

(ii) harbors or attempts to harbor or assists another person in harboring or attempting to harbor the child molester; or

(iii) knowingly conceals or attempts to conceal or assists another person in concealing or attempting to conceal the child molester; or

(iv) provides information to the law enforcement agency regarding the child molester that the person knows to be false information commits a felony and shall be subject to imprisonment for a period of five (5) years. Nothing in this subsection shall be construed as limiting the discretion of the judges to impose additional sanctions authorized in sentencing.

(2) Any person who permits a child predator as defined by this section to reside with them knowing that the child predator has failed to comply with the requirements of subsection 11-37-8.2.1(b) commits a felony punishable by up to five (5) years imprisonment and/or a five thousand dollar (\$ 5,000) fine.

(e) Any person who intentionally tampers with damages or destroys any electronic monitoring equipment required by this section pursuant to a court order or parole board order unless such person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs commits a felony and shall be imprisoned for not less than one nor more than five (5) years.

(f) The department of corrections, prior to the release from incarceration of any child predator, shall ensure that the child predator's fingerprints are taken and forwarded to the bureau of criminal identification (BCI) division within the department of attorney general within forty-eight (48) hours after release from incarceration. The fingerprint card shall be clearly marked "Child Predator Registration Card".

(g) For the purposes of this section "child predator" shall be defined as any person convicted of any violation of § 11-37-8.1, and who on a prior occasion has been convicted of a violation of § 11-37-8.1 or § 11-37-8.3.

## CREDITS

P.L. 2006, ch. 206, § 1, eff. June 28, 2006; P.L. 2006, ch. 207, § 1, eff. June 28, 2006.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 63-7-1640 (2013). FAMILY PRESERVATION.**

(A) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child's health and safety must be the paramount concern.

(B) The family court may rule on whether reasonable efforts to preserve or reunify a family should be required in hearings regarding removal of custody, review of amendments to a placement plan, review of the status of a child in foster care, or

permanency planning or in a separate proceeding for this purpose. The court may consider this issue on the motion of a named party, the child's guardian ad litem, or the foster care review board, provided that the foster care review board has reviewed the case pursuant to Section 63-11-720 or the child has previous entry into foster care.

(C) The family court may authorize the department to terminate or forego reasonable efforts to preserve or reunify a family when the records of a court of competent jurisdiction show or when the family court determines that one or more of the following conditions exist:

(1) the parent has subjected the child or another child while residing in the parent's domicile to one or more of the following aggravated circumstances:

- (a) severe or repeated abuse;
- (b) severe or repeated neglect;
- (c) sexual abuse;
- (d) acts the judge finds constitute torture; or
- (e) abandonment;

(2) the parent has been convicted of or pled guilty or nolo contendere to murder of another child, or an equivalent offense, in this jurisdiction or another;

(3) the parent has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child, or an equivalent offense, in this jurisdiction or another;

(4) the parent has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter of the child or another child while residing in the parent's domicile, or an equivalent offense, in this jurisdiction or another;

(5) physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting:

- (a) an offense against the person, as provided for in Title 16, Chapter 3;
- (b) criminal domestic violence, as defined in Section 16-25-20;

(c) criminal domestic violence of a high and aggravated nature, as defined in Section 16-25-65; or

(d) the common law offense of assault and battery of a high and aggravated nature, or an equivalent offense in another jurisdiction;

(6) the parental rights of the parent to another child of the parent have been terminated involuntarily;

(7) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child;

(8) other circumstances exist that the court finds make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the permanent plan for the child.

(D) The department may proceed with efforts to place a child for adoption or with a legal guardian concurrently with making efforts to prevent removal or to make it possible for the child to return safely to the home.

(E) If the family court's decision that reasonable efforts to preserve or reunify a family are not required results from a hearing other than a permanency planning hearing, the court's order shall require that a permanency planning hearing be held within thirty days of the date of the order.

(F) In determining whether to authorize the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must consider whether initiation or continuation of reasonable efforts to preserve or reunify the family is in the best interests of the child. If the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must make specific written findings in support of its conclusion that one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, and why continuation of reasonable efforts is not in the best interest of the child. If the court does not authorize the department to terminate or forego reasonable efforts where one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, the court must make specific written findings in support of its conclusion that continuation of reasonable efforts is in the best interest of the child. The court must not consider the availability or lack of an adoptive resource as a reason to deny the request to terminate or forego reasonable efforts.

(G) In any case in which the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the department shall file a petition for termination of parental rights within sixty days, unless there are compelling reasons why termination of parental rights would be contrary to the best interests of the child.

## CREDITS

HISTORY: 2008 Act No. 361, § 2; 2010 Act No. 160, § 1, eff May 12, 2010.

## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 22-24A-2 (2013). DEFINITIONS**

Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," any person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) Deleted by SL 2005, ch 120, § 408.
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
  - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors. This term does not include a mother's breast-feeding of her baby;
- (8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;

(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

(13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

(14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

(15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

(16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

#### CREDITS

Source: SL 2002, ch 109, § 6; SDCL § 22-22-24.1; SL 2005, ch 120, §§ 407, 408; SL 2006, ch 122, § 1.

#### **S.D. CODIFIED LAWS § 26-8A-21.1 (2013). EXCEPTIONS TO § 26-8A-21**

Nothing in § 26-8A-21 requires reunification of a child with a parent who:

(1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-15, 22-16-20, 22-22-1, 22-22-24.3, 22-22A-2, 22-22A-3, 26-10-1, or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(2) Aided or abetted, attempted, conspired, or solicited to commit a crime defined in § 22-16-4, 22-16-7, 22-16-15, or 22-16-20 or the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(3) Committed a crime defined in § 22-18-1.1, 22-22-7, or subdivision 22-23-2(2) against the child or another child of such parent, or committed conduct described by those sections that violated the law or ordinance of another jurisdiction having elements similar to the offense described by those sections;



- (4) Has been determined by a court by clear and convincing evidence to have subjected the child or another child to torture, sexual abuse, abandonment for at least six months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect was a serious threat to the safety of the child or another child;
- (5) Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult;
- (6) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;
- (7) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;
- (8) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion;
- (9) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, the child has been removed from the parent's custody on two separate occasions, and the Department of Social Services offered or provided family services on each of the two separate occasions the child was removed;
- (10) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or risk of harm resulting from a crime, act, or omission as specified in subdivision (1), (2), or (3) of this section; or
- (11) Is required to register as a sex offender pursuant to chapter 22-24B.

## CREDITS

SL 1998, ch 161, § 2; SL 1999, ch 136, § 1; SL 2001, ch 141, § 1; SL 2007, ch 167, § 1; SL 2012, ch 147, § 1.

## **S.D. CODIFIED LAWS § 26-8A-26.1 (2013). ADDITIONAL REASONS FOR TERMINATION OF PARENTAL RIGHTS**

In addition to the provisions of § 26-8A-26, the court may find that good cause exists for termination of parental rights of a parent who:

- (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-15, 22-16-20, 22-22-1, 22-22-24.3, 22-22A-2, 22-22A-3, 26-10-1, or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

- (2) Aided or abetted, attempted, conspired, or solicited to commit a crime defined in § 22-16-4, 22-16-7, 22-16-15, or 22-16-20 or the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;
- (3) Committed a crime defined in § 22-18-1.1, 22-22-7, or subdivision 22-23-2(2) against the child or another child of such parent, or committed conduct described by those sections that violated the law or ordinance of another jurisdiction having elements similar to the offense described by those sections;
- (4) Has been determined by a court by clear and convincing evidence to have subjected the child or another child to torture, sexual abuse, abandonment for at least six months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect was a serious threat to the safety of the child or another child;
- (5) Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult;
- (6) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;
- (7) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;
- (8) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion;
- (9) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, the child has been removed from the parent's custody on two separate occasions, and the Department of Social Services offered or provided family services on each of the two separate occasions the child was removed;
- (10) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or risk of harm resulting from a crime, act, or omission as specified in subdivision (1), (2), or (3) of this section; or
- (11) Is required to register as a sex offender pursuant to chapter 22-24B.

#### CREDITS

SL 1998, ch 161, § 4; SL 1999, ch 136, § 2; SL 2001, ch 141, § 2; SL 2007, ch 167, § 2; SL 2012, ch 147, § 2.

**S.D. CODIFIED LAWS § 26-10-1 (2013). ABUSE OF OR CRUELTY TO MINOR AS FELONY--REASONABLE FORCE AS DEFENSE--LIMITATION OF ACTION**

Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony. The use of reasonable force, as provided in § 22-18-5, is a defense to an offense under this section. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five.

If any person convicted of this offense is the minor's parent, guardian, or custodian, the court shall include as part of the sentence, or conditions required as part of suspended execution or imposition of such sentence, that the person receive instruction on parenting approved or provided by the Department of Social Services.

**CREDITS**

Source: SDC 1939, §§ 13.3301, 13.3303; SDCL § 26-10-5; SL 1969, ch 32; SL 1975, ch 179, § 1; SL 1977, ch 189, § 96; SL 1983, ch 211, § 2; SL 1998, ch 162, § 3; SL 2001, ch 145, § 1; SL 2008, ch 140, § 1.

**TENNESSEE**

**TENN. CODE ANN. § 39-15-402 (2013). AGGRAVATED CHILD ABUSE AND NEGLECT; AGGRAVATED CHILD ENDANGERMENT**

(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 web sites; provided, that the person has no parental rights to such victim at the time of the court's order.

## CREDITS

1989 Pub.Acts, c. 591, § 1; 1994 Pub.Acts, c. 978, §§ 2, 8, eff. July 1, 1994; 1996 Pub.Acts, c. 1069, § 1, eff. May 15, 1996; 1998 Pub.Acts, c. 1040, § 1, eff. May 18, 1998; 2005 Pub.Acts, c. 487, § 2, eff. July 1, 2005; 2009 Pub.Acts, c. 88, § 1, eff. July 1, 2009; 2009 Pub.Acts, c. 89, § 1, eff. July 1, 2009; 2009 Pub.Acts, c. 418, § 2, eff. July 1, 2009; 2011 Pub.Acts, c. 292, §§ 5 to 7, eff. July 1, 2011; 2011 Pub.Acts, c. 313, § 2, eff. July 1, 2011; 2012 Pub.Acts, c. 848, § 14, eff. May 15, 2012.

## TEXAS

### **TEX. PENAL CODE ANN. § 22.04 (2013). INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL**

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3) is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

(1) “Child” means a person 14 years of age or younger.

(2) “Elderly individual” means a person 65 years of age or older.

(3) “Disabled individual” means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(4) Repealed by Acts 2011, 82nd Leg., ch. 620 (S.B. 688), § 11.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has

accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), or (3), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), or (3).

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); or

(3) notified in writing the Department of Protective and Regulatory Services that he would no longer provide any of the care set forth in Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k) It is a defense to prosecution under this section that the act or omission consisted of:

(1) reasonable medical care occurring under the direction of or by a licensed physician; or

(2) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(l) It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a child at the time of the offense.

Note 295. Sufficient evidence supported defendant's conviction of causing bodily injury by omission under Tex. Penal Code Ann. § 22.04; there was no question that defendant, the child victim's stepmother, had assumed the care, custody, and control of the child and had the duty to act, and there was no question that death, as what happened in this case, was included in the definition of serious bodily injury under Tex. Penal Code Ann. § 1.07(a)(46), and the evidence showed that the stepmother and the child's father took turns beating the child and the child had to endure various punishments that simply amounted to torture. Fisher v. State, 220 S.W.3d 599, 2007 Tex. App. LEXIS 2759 (Tex. App. Texarkana 2007).

## CREDITS

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 365, ch. 162, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 472, ch. 202, § 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2397, ch. 604, § 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 357, § 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 497, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, § 8.139, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, § 15.02(b), eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 268, § 1.125(a), eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 949, § 46, eff. Sept. 1, 2005; Acts 2009, 81st Leg., ch. 284, § 38, eff. June 11, 2009; Acts 2011, 82nd Leg., ch. 620 (S.B. 688), §§ 5, 11, eff. Sept. 1, 2011.

## UTAH

### **UTAH CODE ANN. § 76-5-109 (2013). CHILD ABUSE -- CHILD ABANDONMENT**

(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

Laws 1981, c. 64, § 1; Laws 1992, c. 192, § 1; Laws 1997, c. 289, § 5, eff. May 5, 1997; Laws 1997, c. 303, § 2, eff. May 5, 1997; Laws 1998, c. 81, § 1, eff. May 4, 1998; Laws 1999, c. 67, § 1, eff. March 17, 1999; Laws 2000, c. 125, § 1, eff. May 1, 2000; Laws 2005, c. 95, § 4, eff. May 2, 2005; Laws 2006, c. 75, § 14, eff. May 1, 2006; Laws 2008, c. 45, § 2, eff. May 5, 2008; Laws 2011, c. 366, § 161, eff. May 10, 2011.

#### **UTAH CODE ANN. § 76-5-208 (2013). CHILD ABUSE HOMICIDE**

- (1) Criminal homicide constitutes child abuse homicide if, under circumstances not amounting to aggravated murder, as described in Section 76-5-202, the actor causes the death of a person under 18 years of age and the death results from child abuse, as defined in Subsection 76-5-109(1):
  - (a) if the child abuse is done recklessly under Subsection 76-5-109(2)(b);
  - (b) if the child abuse is done with criminal negligence under Subsection 76-5-109(2)(c); or
  - (c) if, under circumstances not amounting to the type of child abuse homicide described in Subsection (1)(a), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).
- (2) Child abuse homicide as described in Subsection (1)(a) is a first degree felony.
- (3) Child abuse homicide as described in Subsections (1)(b) and (c) is a second degree felony.

#### CREDITS

Laws 1994, c. 65, § 1; Laws 1997, c. 303, § 4, eff. May 5, 1997; Laws 2000, c. 125, § 4, eff. May 1, 2000; Laws 2008, c. 152, § 1, eff. May 5, 2008.

## VERMONT

## VIRGINIA

### VA. CODE ANN. § 16.1-281 (2013). FOSTER CARE PLAN

*Effective July 1, 2011 to June 30, 2014*

A. In any case in which (i) a local board of social services places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of social services or a child welfare agency, the local department of social services or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section.

The representatives of such department or agency shall involve the child's parent(s) in the development of the plan, except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 60 days following the transfer of custody or the board's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within 60 days following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other

prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child; (v) for school-age children, the school placement of the child; and (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in a separate section of the plan the department, child welfare agency or team shall (a) include a full description of the reasons for this conclusion; (b) provide information on the opportunities for placing the child with a relative or in an adoptive home; (c) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible; (d) explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living. "Independent living" as used in this section has the meaning set forth in § 63.2-100.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (1) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (2) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (3) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (4) based on clear and convincing evidence, the parent has subjected any

child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

“Aggravated circumstances” means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

“Chronic abuse” or “chronic sexual abuse” means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

“Serious bodily injury” means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

“Severe abuse” or “severe sexual abuse” may include an act or omission that occurred only once, but otherwise meets the definition of “aggravated circumstances.”

Within 30 days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan, excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within 75 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If

the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the United States as a refugee or asylee and is over 16 years of age and independent living has been identified as the permanency goal for the child, by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board placed the child.

E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

F. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of social services or placed by local boards of social services on its own



motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

## CREDITS

Acts 1977, c. 559; Acts 1978, c. 732; Acts 1978, c. 740; Acts 1982, c. 171; Acts 1984, c. 373; Acts 1985, c. 210; Acts 1991, c. 98; Acts 1994, c. 604; Acts 1994, c. 865; Acts 1997, c. 790; Acts 1998, c. 550; Acts 2000, c. 385; Acts 2002, c. 397; Acts 2002, c. 512; Acts 2002, c. 664; Acts 2002, c. 729; Acts 2002, c. 747, eff. Oct. 1, 2002; Acts 2005, c. 653; Acts 2008, c. 397; Acts 2008, c. 475; Acts 2008, c. 483; Acts 2008, c. 678; Acts 2009, c. 80; Acts 2011, c. 154; Acts 2011, c. 730.

## **VA. CODE ANN. § 16.1-283 (2013). TERMINATION OF RESIDUAL PARENTAL RIGHTS**

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual, subject to the provisions of subsection A1. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2:

a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

“Aggravated circumstances” means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

“Chronic abuse” or “chronic sexual abuse” means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

“Serious bodily injury” means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

“Severe abuse” or “severe sexual abuse” may include an act or omission that occurred only once, but otherwise meets the definition of “aggravated circumstances.”

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child 14 years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

#### CREDITS

Acts 1977, c. 559; Acts 1978, c. 340; Acts 1979, c. 281; Acts 1980, c. 295; Acts 1985, c. 584; Acts 1987, c. 6; Acts 1988, c. 791; Acts 1998, c. 550; Acts 1999, c. 889; Acts 2000, c. 385; Acts 2002, c. 664; Acts 2002, c. 729; Acts 2012, c. 476; Acts 2012, c. 507.

### **VA. CODE ANN. § 40.1-103 (2013). CRUELTY AND INJURIES TO CHILDREN; PENALTY; ABANDONED INFANT**

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a Class 6 felony.

B. If a prosecution under this section 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 section 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.

#### CREDITS

Acts 1970, c. 321; Acts 1991, c. 511; Acts 2003, c. 816; Acts 2003, c. 822. Amended by Acts 2006, c. 935.

## **WASHINGTON**

### **WASH. REV. CODE ANN. § 9A.32.055 (2013). HOMICIDE BY ABUSE**

(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony.

#### **CREDITS**

[1987 c 187 § 1.]

### **WASH. REV. CODE ANN. § 9A.36.120 (2013). ASSAULT OF A CHILD IN THE FIRST DEGREE**

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in [RCW 9A.36.011](#), against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a class A felony.

#### **CREDITS**

[1992 c 145 § 1.]

**WASH. REV. CODE ANN. § 9A.36.130 (2013). ASSAULT OF A CHILD IN THE SECOND DEGREE**

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child; or

(b) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the second degree is a class B felony.

**CREDITS**

[1992 c 145 § 2.]

**WEST VIRGINIA**

**W. VA. CODE ANN. § 49-6-3 (2013). PETITION TO COURT WHEN CHILD BELIEVED NEGLECTED OR ABUSED -- TEMPORARY CUSTODY.**

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that:

(1) There exists imminent danger to the physical well being of the child; and

(2) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were

not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why; and

(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, That the court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and

(4) What efforts should be made by the department, if any, to facilitate the child's return home: Provided, however, That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well being of the child or children, as that phrase is defined in section three, article one of this



chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(F) Has been required by state or federal law to register with a sex offender registry; or

(3) The parental rights of the parent to another child have been terminated involuntarily.

#### CREDITS

Acts 1941, c. 73; Acts 1970, c. 79; Acts 1977, c. 65; Acts 1984, c. 27; Acts 1988, c. 14; Acts 1990, c. 42; Acts 1992, c. 52; Acts 1996, c. 83, eff. 90 days after March 9, 1996; Acts 1998, c. 81, eff. July 1, 1998; Acts 2006, c. 30, eff. 90 days after March 11, 2006; Acts 2011, c. 22, eff. June 7, 2011; Acts 2012, c. 26, eff. June 7, 2012.

#### **W. VA. CODE ANN. § 49-6-5 (2013). DISPOSITION OF NEGLECTED OR ABUSED CHILDREN**

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement

and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

- (1) Dismiss the petition;
- (2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
- (3) Return the child to his or her own home under supervision of the department;
- (4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
- (5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state:
  - (A) That continuation in the home is contrary to the best interests of the child and why;
  - (B) Whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for

removing the child from the child's home and to make it possible for the child to safely return home;

(C) What efforts were made or that the emergency situation made such efforts unreasonable or impossible; and

(D) The specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should:

(i) Be continued in foster care for a specified period;

(ii) Be considered for adoption;

(iii) Be considered for legal guardianship;

(iv) Be considered for permanent placement with a fit and willing relative; or

(v) Be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vi) Has been required by state or federal law to register with a sex offender registry; or

(C) The parental rights of the parent to another child have been terminated involuntarily; or

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(b) As used in this section, “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

#### CREDITS

Acts 1941, c. 73; Acts 1953, c. 17; Acts 1970, c. 79; Acts 1977, c. 65; Acts 1984, c. 27; Acts 1988, c. 14; Acts 1992, c. 52; Acts 1996, c. 83, eff. 90 days after March 9, 1996; Acts 1998, c. 81, eff. July 1, 1998; Acts 2002, c. 55, eff. 90 days after March 9, 2002; Acts 2006, c. 30, eff. 90 days after March 11, 2006; Acts 2011, c. 22, eff. June 7, 2011; Acts 2012, c. 26, eff. June 7, 2012.

## WISCONSIN

## WYOMING

### WYO. STAT. ANN. § 14-2-309 (2013). GROUNDS FOR TERMINATION OF PARENT-CHILD RELATIONSHIP; CLEAR AND CONVINCING EVIDENCE

(a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:

(i) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one (1) year. In making the above determination, the court may disregard occasional contributions, or incidental contacts and communications. For purposes of this paragraph, a court order of custody shall not preclude a finding that a child has been left in the care of another person;

(ii) The child has been abandoned with no means of identification for at least three (3) months and efforts to locate the parent have been unsuccessful;

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

(v) The child has been in foster care under the responsibility of the state of Wyoming for fifteen (15) of the most recent twenty-two (22) months, and a showing that the parent is unfit to have custody and control of the child;

(vi) The child is abandoned at less than one (1) year of age and has been abandoned for at least six (6) months;

(vii) The child was relinquished to a safe haven provider in accordance with W.S. 14-11-101 through 14-11-109, and neither parent has affirmatively sought the return of the child within three (3) months from the date of relinquishment.

(viii) The parent is convicted of murder or homicide of the other parent of the child under W.S. 6-2-101 through 6-2-104.

(b) Proof by clear and convincing evidence that the parent has been convicted of any of the following crimes may constitute grounds that the parent is unfit to have custody or control of any child and may be grounds for terminating the parent-child relationship as to any child with no requirement that reasonable efforts be made to reunify the family:



(i) Murder or voluntary manslaughter of another child of the parent or aiding and abetting, attempting, conspiring to commit or soliciting such a crime; or

(ii) Commission of a felony assault which results in serious bodily injury to a child of the parent. As used in this paragraph “serious bodily injury” means as defined by W.S. 6-1-104.

(c) Notwithstanding any other provision of this section, evidence that reasonable efforts have been made to preserve and reunify the family is not required in any case in which the court determines any one (1) or more of the following by clear and convincing evidence:

(i) The parental rights of the parent to any other child have been terminated involuntarily;

(ii) The parent abandoned, chronically abused or sexually abused the child;

(iii) The parent has been convicted of committing one (1) or more of the following crimes against the child or another child of that parent:

(A) Sexual assault under W.S. 6-2-302 through 6-2-304;

(B) Sexual battery under W.S. 6-2-313;

(C) Sexual abuse of a minor under 6-2-314 through 6-2-317.

(iv) The parent is required to register as a sex offender pursuant to W.S. 7-19-302 if the offense involved the child or another child of that parent. This shall not apply if the parent is only required to register for conviction under W.S. 6-2-201;

(v) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

## CREDITS

Laws 1981, ch. 102, § 1; Laws 1998, Sp. & Bud. Sess., ch. 111, § 1, eff. March 20, 1998; Laws 1999, ch. 156, § 1, eff. March 2, 1999; Laws 2003, ch. 167, § 2, eff. July 1, 2003; Laws 2010, ch. 55, § 1, eff. July 1, 2010; Laws 2011, ch. 131, § 1, eff. March 2, 2011; Laws 2013, ch. 145, § 1, eff. July 1, 2013.

## FEDERAL LEGISLATION

### 18 U.S.C.A. § 1111 (2013). MURDER

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate,

malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section--

(1) the term “assault” has the same meaning as given that term in section 113;

(2) the term “child” means a person who has not attained the age of 18 years and is--

(A) under the perpetrator's care or control; or

(B) at least six years younger than the perpetrator;

(3) the term “child abuse” means intentionally or knowingly causing death or serious bodily injury to a child;

(4) the term “pattern or practice of assault or torture” means assault or torture engaged in on at least two occasions;

(5) the term “serious bodily injury” has the meaning set forth in section 1365; and

(6) the term “torture” means conduct, whether or not committed under the color of law, that otherwise satisfies the definition set forth in section 2340(1).

## CREDITS

(June 25, 1948, c. 645, 62 Stat. 756; Oct. 12, 1984, Pub.L. 98-473, Title II, § 1004, 98 Stat. 2138; Nov. 10, 1986, Pub.L. 99-646, § 87(c)(4), 100 Stat. 3623; Nov. 14, 1986, Pub.L. 99-654, § 3(a)(4), 100 Stat. 3663; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7025, 102 Stat. 4397; Sept. 13, 1994, Pub.L. 103-322, Title VI, § 60003(a)(4), 108 Stat. 1969; Apr. 30, 2003, Pub.L. 108-21, Title I, § 102, 117 Stat. 652.)

**42 U.S.C.S. § 671 (2013). STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE**

**HELD UNCONSTITUTIONAL BY SUPREME COURT OF NEBRASKA IN 2011  
– SEE IN RE MERIDIAN H., 798 N.W.2d 96 (Neb. 2011)**

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under division A1 of subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the “State agency”) will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) subject to subsection (c) of this section, provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter

or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will--

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter, and provides that a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that--

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has--

(I) committed murder (which would have been an offense under section 1111(a) of Title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--

(i) a permanency hearing (as described in section 675(5)(C) of this title), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be 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 permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements<sup>2</sup> may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of Title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that--

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a

court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) provides that the State shall--

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases; and

(C) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of Title 28), on any relative guardian, and for checks described in subparagraph (B) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX of this chapter) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage--

(A) such coverage may be provided through 1 or more State medical assistance programs;



(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX of this chapter;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX of this chapter, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not--

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness;

(24) include<sup>4</sup> a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that—

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract--

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A);

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B of this subchapter and without regard to whether foster care maintenance payments are made under section 672 of this title on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child;

(28) at the option of the State, provides for the State to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments

on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis, as provided in section 673(d) of this title;

(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that--

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 673(d) of this title to receive the payments;

(30) provides assurances that each child who has attained the minimum age for compulsory school attendance under state law and with respect to whom there is eligibility for a payment under the state plan is a full-time elementary or secondary school student or has completed secondary school, and for purposes of this paragraph, the term “elementary or secondary school student” means, with respect to a child, that the child is--

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child;

(31) provides that reasonable efforts shall be made--

(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(32) provides that the State will negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the State that requests to develop an agreement with the State to administer all or part of the program under this part on behalf of Indian children who are under the authority of the tribe, organization, or consortium, including foster care maintenance payments on behalf of children who are placed in State or tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, kinship guardianship assistance payments under section 673(d) of this title, and tribal access to resources for administration, training, and data collection under this part; and

(33) provides that the State will inform any individual who is adopting, or whom the State is made aware is considering adopting, a child who is in foster care under the responsibility of the State of the potential eligibility of the individual for a Federal tax credit under section 23 of the Internal Revenue Code of 1986.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of child welfare records in State court proceedings

Subsection (a)(8) of this section shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B of this subchapter or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

## CREDITS

(Aug. 14, 1935, c. 531, Title IV, § 471, as added June 17, 1980, Pub.L. 96-272, Title I, § 101(a)(1), 94 Stat. 501; amended Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2353(r), 95 Stat. 874; Sept. 3, 1982, Pub.L. 97-248, Title I, § 160(d), 96 Stat. 400; Aug. 16, 1984, Pub.L. 98-378, § 11(c), 98 Stat. 1318; Oct. 22, 1986, Pub.L. 99-514, Title XVII, § 1711(c)(2), 100 Stat. 2784; Oct. 13, 1988, Pub.L. 100-485, Title II, § 202(c)(1), 102 Stat. 2378; Nov. 5, 1990, Pub.L. 101-508, Title V, § 5054(b), 104 Stat. 1388-229; Aug. 10, 1993, Pub.L. 103-66, Title XIII, § 13711(b)(4), 107 Stat. 655; Oct. 31, 1994, Pub.L. 103-432, Title II, § 203(b), 108 Stat. 4456; Aug. 20, 1996, Pub.L. 104-188, Title I, § 1808(a), 110 Stat. 1903; Aug. 22, 1996, Pub.L. 104-193, Title I, § 108(d)(2), Title V, § 505, 110 Stat. 2166, 2278; Aug. 5, 1997, Pub.L. 105-33, Title V, § 5591(b), 111 Stat. 643; Nov. 19, 1997, Pub.L. 105-89, Title I, §§ 101(a), 106, Title III, §§ 306, 308, 111 Stat. 2116, 2120, 2132, 2133; July 16, 1998, Pub.L. 105-200, Title III, § 301(a), 112 Stat. 658; Dec. 14, 1999, Pub.L. 106-169, Title I, § 112(a), Title IV, § 401(o), 113 Stat. 1829, 1859; Feb. 8, 2006, Pub.L. 109-171, Title VII, § 7401(c), 120 Stat. 150; July 3, 2006, Pub.L. 109-239, §§ 3, 4(a)(1), 10, 120 Stat. 508, 513; July 27, 2006, Pub.L. 109-248, Title I, § 152(a), (b), 120 Stat. 608, 609; Dec. 20, 2006, Pub.L. 109-432, Div. B, Title IV, § 405(c)(1)(B)(i), 120 Stat. 2999; Oct. 7, 2008, Pub.L. 110-351, Title I, §§ 101(a), (c)(2)(A), (B)(i), 103, 104(a), Title II, §§ 204(b), 206, Title III, § 301(c)(1)(A), Title IV, § 403, 122 Stat. 3950, 3951, 3956, 3960, 3962, 3969, 3979; Mar. 23, 2010, Pub.L. 111-148, Title VI, § 6703(d)(2)(B), 124 Stat. 803.)

## AMERICAN SAMOA

## GUAM

## PUERTO RICO

## U.S. VIRGIN ISLANDS