

# National District Attorneys Association

## Child Neglect and Termination of Parental Rights

(Last Updated February 2012)

This compilation includes all statutes that allow for the termination of parental rights due to neglect. Also included are definitions of neglect which apply to the relevant title, article, or chapter of code. In addition to definitions are any religious- or poverty-based exemptions that may apply. This compilation is up-to-date as of February 2012, but we recommend checking case law and current statutes for any possible modifications.

<b>ALABAMA</b>	<b>7</b>
ALA. CODE § 12-15-301 (2011). Definitions.	7
ALA. CODE § 12-15-319 (2011). Grounds for termination of parental rights; factors considered; presumption arising from abandonment.	8
<b>ALASKA</b>	<b>9</b>
ALASKA STAT. § 47.10.011 (2011). Children in need of aid	9
ALASKA STAT. § 47.10.014 (2011). Neglect	11
ALASKA STAT. § 47.10.085 (2011). Medical treatment by religious means	11
ALASKA STAT. § 47.10.088 (2011). Involuntary termination of parental rights and responsibilities	11
<b>ARIZONA</b>	<b>14</b>
ARIZ. REV. STAT. § 8-201 (2011). Definitions	14
ARIZ. REV. STAT. § 8-533 (2011). Petition; who may file; grounds	18
<b>ARKANSAS</b>	<b>20</b>
ARK. CODE ANN. § 9-27-303 (2011). Definitions	20
ARK. CODE ANN. § 9-27-335 (2011). Disposition--Dependent-neglected--Limitations	34
ARK. CODE ANN. § 9-27-341 (2011). Termination of parental rights	36
<b>CALIFORNIA</b>	<b>40</b>
CAL. FAM. CODE § 7802 (2012). Proceeding for declaration of freedom from parental custody and control	40
CAL. FAM. CODE § 7803 (2012). Effect of declaration of freedom	40
CAL. FAM. CODE § 7823 (2012). Neglected or cruelly treated children; right to action	41
CAL. FAM. CODE § 7829 (2012). Child found to be dependent child and reunification services not to be provided; right to action	41
CAL. WELF. & INST. CODE § 300 (2012). Children subject to jurisdiction; legislative intent and declarations; guardian defined	41
CAL. WELF. & INST. CODE § 300.5 (2012). Medical care; treatment by spiritual means	43
CAL. WELF. & INST. CODE § 361.5 (2012). Child welfare services; reunification of family; hearing; findings by court; incarcerated parents; adoption assessment	43
CAL. WELF. & INST. CODE § 361.5 (2012). Child welfare services; reunification of family; hearing; findings by court; incarcerated parents; adoption assessment	52
CAL. WELF. & INST. CODE § 366.26 (2012). Hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court	60
CAL. WELF. & INST. CODE § 366.26 (2012). Hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court	70
<b>COLORADO</b>	<b>79</b>
COLO. REV. STAT. ANN. § 19-1-103 (2012). Definitions	79
COLO. REV. STAT. ANN. § 19-3-102 (2012). Neglected or dependent child	96
COLO. REV. STAT. ANN. § 19-3-103 (2012). Child not neglected--when	97
COLO. REV. STAT. ANN. § 19-3-604 (2012). Criteria for termination	98

<b>CONNECTICUT .....</b>	<b>101</b>
CONN. GEN. STAT. ANN. § 17a-101g (2011). Classification and evaluation of reports. Determination of abuse or neglect of child. Investigation. Notice, entry of recommended finding. Referral to local law enforcement authority. Home visit. Removal of child in imminent risk of harm .....	101
CONN. GEN. STAT. ANN. § 17a-104 (2011). Treatment by Christian Science practitioner.....	103
CONN. GEN. STAT. ANN. § 17a-112 (2011). Termination of parental rights of child committed to commissioner. Cooperative postadoption agreements. Placement of child from another state. Interstate Compact on the Placement of Children .....	104
CONN. GEN. STAT. ANN. § 45a-715 (2011). Petition to terminate parental rights. Cooperative postadoption agreements .....	107
CONN. GEN. STAT. ANN. § 45a-717 (2011). Termination of parental rights. Conduct of hearing. Investigation and report. Grounds for termination.....	110
<b>DELAWARE .....</b>	<b>113</b>
DEL. CODE ANN. tit. 13, § 1101 (2011). Definitions.....	113
DEL. CODE ANN. tit. 13, § 1103 (2011). Grounds for termination of parental rights .....	114
<b>DISTRICT OF COLUMBIA.....</b>	<b>118</b>
D.C. CODE § 16-2301 (2012). Definitions .....	118
D.C. CODE § 16-2320 (2012). Disposition of child who is neglected, delinquent, or in need of supervision.....	125
<b>FLORIDA.....</b>	<b>128</b>
FLA. STAT. ANN. § 39.01 (2011). Definitions .....	128
FLA. STAT. ANN. § 39.806 (2011). Grounds for termination of parental rights .....	140
<b>GEORGIA.....</b>	<b>143</b>
GA. CODE ANN. § 15-11-2 (2011). Definitions.....	143
GA. CODE ANN. § 15-11-94 (2011). Conditions and procedures under which parental rights may be terminated .....	146
GA. CODE ANN. § 19-7-4 (2011). Protection of children being reared under immoral, etc., conditions.....	148
GA. CODE ANN. § 19-7-5 (2011). Reports by physicians, treating personnel, institutions and others as to child abuse; failure to report suspected child abuse.....	148
GA. CODE ANN. § 19-8-11 (2011). Termination of rights of remaining parent where termination of rights of other parent or guardian has already been obtained .....	152
<b>HAWAII.....</b>	<b>153</b>
HAW. REV. STAT. ANN. § 587A-4 (2011). Definitions.....	153
HAW. REV. STAT. ANN. § 587A-7 (2011). Safe family home factors .....	158
HAW. REV. STAT. ANN. § 587A-33 (2011). Termination of parental rights hearing .....	160
<b>IDAHO .....</b>	<b>162</b>
IDAHO CODE ANN. § 16-1602 (2012). Definitions .....	162
IDAHO CODE ANN. § 16-2002 (2012). Definitions .....	165
IDAHO CODE ANN. § 16-2005 (2012). Conditions under which termination may be granted .....	168
<b>ILLINOIS.....</b>	<b>170</b>
20 ILL. COMP. STAT. ANN. 505/35.2 (2011). Termination of parental rights .....	170
705 ILL. COMP. STAT. ANN. 405/2-3 (2011). Neglected or abused minor.....	171
705 ILL. COMP. STAT. ANN. 405/2-21 (2011). Findings and adjudication .....	173
705 ILL. COMP. STAT. ANN. 405/2-23 (2011). Kinds of dispositional orders.....	175
<b>INDIANA .....</b>	<b>177</b>
IND. CODE ANN. § 31-34-1-1 (2011). Inability, refusal, or neglect of parent, guardian or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision .....	177
IND. CODE ANN. § 31-34-1-2 (2011). Act or omission of parent, guardian or custodian seriously endangering child's physical or mental health .....	177
IND. CODE ANN. § 31-34-1-14 (2011). Exception for failure of parent, guardian or custodian to provide medical treatment because of religious beliefs; rebuttable presumption; effect of presumption .....	177
IND. CODE ANN. § 31-34-1-16 (2011). Termination of parental rights or transfer of custody may not be required; voluntary placement agreements .....	178

IND. CODE ANN. § 31-34-21-5.6 (2011). Exceptions to requirement to make reasonable efforts to preserve and reunify families.....	178
IND. CODE ANN. § 31-35-2-4 (2011). Petition; contents .....	180
<b>IOWA .....</b>	<b>181</b>
IOWA CODE ANN. § 232.2 (2011). Definitions .....	181
IOWA CODE ANN. § 232.116 (2011). Grounds for termination .....	192
<b>KANSAS.....</b>	<b>196</b>
KAN. STAT. ANN. § 38-2202 (2011). Definitions .....	196
KAN. STAT. ANN. § 38-2269 (2011). Factors to be considered in termination of parental rights; appointment of permanent custodian .....	200
<b>KENTUCKY.....</b>	<b>202</b>
KY. REV. STAT. ANN. § 600.020 (2011). Definitions for KRS Chapters 600 to 645 .....	202
KY. REV. STAT. ANN. § 625.090 (2011). Grounds for termination .....	210
<b>LOUISIANA .....</b>	<b>212</b>
LA. CHILD. CODE ANN. art. 1003 (2011). Definitions.....	212
LA. CHILD. CODE ANN. art. 1015 (2011). Grounds.....	213
<b>MAINE .....</b>	<b>215</b>
ME. REV. STAT. ANN. tit. 19-A, § 1653 (2011). Parental rights and responsibilities .....	215
ME. REV. STAT. ANN. tit. 22, § 4002 (2011). Definitions .....	223
ME. REV. STAT. ANN. tit. 22, § 4010 (2011). Spiritual treatment .....	226
ME. REV. STAT. ANN. tit. 22, § 4035 (2011). Hearing on jeopardy order petition .....	226
ME. REV. STAT. ANN. tit. 22, § 4038 (2011). Mandated review; review on motion .....	227
ME. REV. STAT. ANN. tit. 22, § 4055 (2011). Grounds for termination .....	229
<b>MARYLAND .....</b>	<b>231</b>
MD. CODE ANN., FAM. LAW § 5-323 (2011). Grant of guardianship--Nonconsensual .....	231
MD. CODE ANN., FAM. LAW § 5-701 (2011). Definitions .....	234
<b>MASSACHUSETTS.....</b>	<b>238</b>
MASS. GEN. LAWS ANN. ch. 119, § 26 (2011). Procedure at hearing; order of commitment; petition to dispense with parental consent to adoption; reimbursement of commonwealth; petition for review .....	238
MASS. GEN. LAWS ANN. ch. 210, § 3 (2011). Dispensing with required consent in certain cases .....	240
110 MASS. CODE REGS. 2.00 (2012): Glossary.....	244
<b>MICHIGAN .....</b>	<b>256</b>
MICH. COMP. LAWS ANN. § 712A.2 (2012). Family division of circuit court; authority and jurisdiction .....	256
MICH. COMP. LAWS ANN. § 712A.19b (2012). Termination of parental rights; notice, findings; orders.....	260
<b>MINNESOTA .....</b>	<b>264</b>
MINN. STAT. ANN. § 260C.007 (2011). Definitions.....	264
MINN. STAT. ANN. § 260C.201 (2011). Dispositions; children in need of protection or services or neglected and in foster care .....	271
MINN. STAT. ANN. § 260C.301 (2011). Termination of parental rights.....	284
MINN. STAT. ANN. § 626.556 (2011). Reporting of maltreatment of minors.....	288
<b>MISSISSIPPI .....</b>	<b>315</b>
MISS. CODE ANN. § 43-15-13 (2011). Individualized plans, reviews, training .....	315
MISS. CODE ANN. § 43-21-105 (2011). Definitions .....	320
MISS. CODE ANN. § 93-15-103 (2011). Grounds; relinquishment; alternatives .....	323
<b>MISSOURI.....</b>	<b>325</b>
MO. ANN. STAT. § 210.115 (2011). Reports of abuse, neglect, and under age eighteen deaths--persons required to report--deaths required to report--deaths required to be reported to the division or child fatality review panel, when--report made to another state, when .....	325
MO. ANN. STAT. § 211.447 (2011). Petition to terminate parental rights, preliminary inquiry--juvenile officer to file petition or join as party, when--grounds for termination .....	326
<b>MONTANA.....</b>	<b>330</b>
MONT. CODE ANN. § 41-3-102 (2011). Definitions .....	330

MONT. CODE ANN. § 41-3-609 (2011). Criteria for termination.....	336
<b>NEBRASKA.....</b>	<b>337</b>
NEB. REV. STAT. ANN. § 43-292 (2011). Termination of parental rights; grounds.....	337
<b>NEVADA.....</b>	<b>338</b>
NEV. REV. STAT. ANN. § 128.014 (2010). “Neglected child” defined.....	338
NEV. REV. STAT. ANN. § 128.018 (2010). “Unfit parent” defined.....	339
NEV. REV. STAT. ANN. § 128.105 (2010). Grounds for terminating parental rights: Considerations; required findings.....	339
NEV. REV. STAT. ANN. § 128.106 (2010). Specific considerations in determining neglect by or unfitness of parent.....	339
<b>NEW HAMPSHIRE.....</b>	<b>340</b>
N.H. REV. STAT. ANN. § 169-C:3 (2011). Definitions.....	340
N.H. REV. STAT. ANN. § 170-C:5 (2011). Grounds for Termination of the Parent-Child Relationship.....	344
<b>NEW JERSEY.....</b>	<b>345</b>
N.J. STAT. ANN. § 30:4C-15 (2011). Guardianship; petition.....	345
N.J. STAT. ANN. § 30:4C-15.1 (2011). Termination of parental rights; standards to be met.....	346
<b>NEW MEXICO.....</b>	<b>348</b>
N.M. STAT. ANN. § 32A-4-2 (2011). Definitions.....	348
N.M. STAT. ANN. § 32A-4-28 (2011). Termination of parental rights; adoption decree.....	350
<b>NEW YORK.....</b>	<b>351</b>
N.Y. FAM. CT. ACT § 614 (2011). Originating proceeding for the commitment of the guardianship and custody of a permanently neglected child.....	351
N.Y. SOC. SERV. LAW § 384-b (2011). Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights.....	352
<b>NORTH CAROLINA.....</b>	<b>364</b>
N.C. GEN. STAT. ANN. § 7B-101 (2011). Definitions.....	364
N.C. GEN. STAT. ANN. § 7B-1111 (2011). Grounds for terminating parental rights.....	367
<b>NORTH DAKOTA.....</b>	<b>369</b>
N.D. CENT. CODE § 27-20-02 (2011). Definitions.....	369
N.D. CENT. CODE § 27-20-44 (2011). Termination of parental rights.....	373
<b>OHIO.....</b>	<b>373</b>
OHIO REV. CODE ANN. § 2151.03 (2011). “Neglected child” defined.....	373
OHIO REV. CODE ANN. § 2151.04 (2011). “Dependent child” defined.....	374
OHIO REV. CODE ANN. § 2151.05 (2011). Child without proper parental care.....	374
OHIO REV. CODE ANN. § 2151.353 (2011). Disposition of abused, neglected, or dependent child.....	375
<b>OKLAHOMA.....</b>	<b>379</b>
OKLA. STAT. ANN. tit. 10A, § 1-1-105 (2011). Definitions.....	379
OKLA. STAT. ANN. tit. 10A, § 1-4-904 (2011). Termination of parental rights in certain situations.....	388
<b>OREGON.....</b>	<b>391</b>
OR. REV. STAT. ANN. § 419B.502 (2011). Termination for extreme conduct; considerations.....	391
OR. REV. STAT. ANN. § 419B.504 (2011). Termination for conduct seriously detrimental to child; considerations.....	392
OR. REV. STAT. ANN. § 419B.506 (2011). Termination for failure to provide for basic physical and psychological needs of child; considerations.....	392
<b>PENNSYLVANIA.....</b>	<b>393</b>
23 PA. CONS. STAT. ANN. § 2511 (2011). Grounds for involuntary termination.....	393
23 PA. CONS. STAT. ANN. § 6303 (2011). Definitions.....	394
<b>RHODE ISLAND.....</b>	<b>399</b>
R.I. GEN. LAWS § 15-7-7 (2011). Termination of parental rights.....	399
<b>SOUTH CAROLINA.....</b>	<b>402</b>
S.C. CODE ANN. § 63-7-20 (2011). Definitions.....	402
S.C. CODE ANN. § 63-7-1660 (2011). Services with removal.....	405

S.C. CODE ANN. § 63-7-2570 (2011). Grounds .....	407
<b>SOUTH DAKOTA .....</b>	<b>409</b>
S.D. CODIFIED LAWS § 26-8A-2 (2011). Abused or neglected child defined .....	409
S.D. Codified Laws § 26-8A-26 (2011). Termination of parental rights--Return of child to parents or continued placement--Annual permanency hearing for child in foster care .....	409
S.D. CODIFIED LAWS § 26-8A-26.1 (2011). Additional reasons for termination of parental rights .....	410
<b>TENNESSEE .....</b>	<b>411</b>
TENN. CODE ANN. § 36-1-102 (2011). Definitions .....	411
TENN. CODE ANN. § 36-1-113 (2011). Termination of parental rights .....	423
TENN. CODE ANN. § 37-1-102 (2011). Definitions .....	431
TENN. CODE ANN. § 37-1-147 (2011). Termination of parental rights .....	435
<b>TEXAS.....</b>	<b>436</b>
TEX. FAM. CODE ANN. § 161.001 (2011). Involuntary Termination of Parent-Child Relationship .....	436
<b>UTAH .....</b>	<b>439</b>
UTAH CODE ANN. § 78A-6-105 (2011). Definitions.....	439
UTAH CODE ANN. § 78A-6-507 (2011). Grounds for termination of parental rights--Findings regarding reasonable efforts.....	445
<b>VERMONT .....</b>	<b>446</b>
VT. STAT. ANN. tit. 15A, § 3-504 (2011). Grounds for terminating relationship of parent and child .....	446
VT. STAT. ANN. tit. 33, § 5102 (2011). Definitions and provisions of general application .....	448
VT. STAT. ANN. tit. 33, § 5318 (2011). Disposition order .....	452
<b>VIRGINIA.....</b>	<b>453</b>
VA. CODE ANN. § 16.1-228 (2011). Definitions .....	453
VA. CODE ANN. § 16.1-278.2 (2011). Abused, neglected, or abandoned children or children without parental care.....	458
VA. CODE ANN. § 16.1-283 (2011). Termination of residual parental rights.....	460
<b>WASHINGTON.....</b>	<b>463</b>
WASH. REV. CODE ANN. § 13.34.030 (2012). Definitions .....	463
WASH. REV. CODE ANN. § 13.34.180 (2012). Order terminating parent and child relationship--Petition--Filing--Allegations (as amended by 2009 c 477).....	466
WASH. REV. CODE ANN. § 13.34.180 (2011). Order terminating parent and child relationship--Petition--Filing--Allegations(as amended by 2009 c 520).....	468
WASH. REV. CODE ANN. § 26.44.020. Definitions .....	470
<b>WEST VIRGINIA .....</b>	<b>472</b>
W.VA. CODE ANN. § 49-1-3 (2011). Definitions relating to abuse and neglect.....	472
W.VA. CODE ANN. § 49-6-5 (2011). Disposition of neglected or abused children .....	477
<b>WISCONSIN.....</b>	<b>481</b>
WIS. STAT. ANN. § 48.02 (2011). Definitions .....	481
WIS. STAT. ANN. § 48.13 (2011). Jurisdiction over children alleged to be in need of protection or services .....	486
WIS. STAT. ANN. § 48.415 (2011). Grounds for involuntary termination of parental rights .....	487
<b>WYOMING.....</b>	<b>491</b>
WYO. STAT. ANN. § 14-2-308 (2011). Definitions.....	491
WYO. STAT. ANN. § 14-2-309 (2011). Grounds for termination of parent-child relationship; clear and convincing evidence .....	492
WYO. STAT. ANN. § 14-3-202 (2011). Definitions.....	493
<b>FEDERAL LEGISLATION .....</b>	<b>495</b>
42 U.S.C.S. § 5106i (2012). Rule of construction .....	495
<b>AMERICAN SAMOA.....</b>	<b>495</b>
AM. SAMOA CODE ANN. § 45.0103 (2011). Definitions. ....	495
AM. SAMOA CODE ANN. § 45.0355 (2011). Neglected or dependent child-Termination of parental rights. ....	499
<b>GUAM .....</b>	<b>499</b>

GUAM CODE ANN. tit. 19, § 4302 (2011). Definitions. ....	499
GUAM CODE ANN. tit. 19, § 4303 (2011). Petition, Grounds. ....	500
<b>PUERTO RICO .....</b>	<b>500</b>
P.R. LAWS ANN. tit. 31, § 634a (2009). Grounds on which a person is deprived, restricted or suspended from exercising patria potestas .....	500
<b>VIRGIN ISLANDS .....</b>	<b>502</b>
V.I. CODE ANN. tit. 5, § 2502 (2011). Definitions .....	502
V.I. CODE ANN. tit. 5, § 2550 (2011). Termination of parental rights .....	506

# **ALABAMA**

## **ALA. CODE § 12-15-301 (2011). Definitions.**

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

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

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

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

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

(5) Eligible child. In addition to the definition of child in subdivision (3) of Section 12-15-102, an individual under 18 years of age who has been residing with the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

(6) Kinship guardian. A caregiver who is willing to assume care of a child because of parental incapacity of a parent, legal guardian, or legal custodian, or other dependency reasons, with the intent to raise the child to adulthood, and who is appointed the kinship guardian of the child by a juvenile court. A kinship guardian shall be responsible for the care and protection of the child and for providing for the health, education, and maintenance of the child.

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

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

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

(10) Reasonable efforts. Efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from his or her home, and to make it possible for a child to return safely to his or her home. Reasonable efforts also refers to

efforts made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanency placement of the child. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern.

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

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

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

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

**ALA. CODE § 12-15-319 (2011). 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.

## **ALASKA**

### **ALASKA STAT. § 47.10.011 (2011). Children in need of aid**

Subject to AS 47.10.019, the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

(1) a parent or guardian has abandoned the child as described in AS 47.10.013, and the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid

under this chapter;

(2) a parent, guardian, or custodian is incarcerated, the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid under this chapter, and the incarcerated parent has not made adequate arrangements for the child;

(3) a custodian with whom the child has been left is unwilling or unable to provide care, supervision, or support for the child, and the whereabouts of the parent or guardian is unknown;

(4) the child is in need of medical treatment to cure, alleviate, or prevent substantial physical harm or is in need of treatment for mental injury and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(5) the child is habitually absent from home or refuses to accept available care and the child's conduct places the child at substantial risk of physical or mental injury;

(6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately;

(7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused;

(8) conduct by or conditions created by the parent, guardian, or custodian have

(A) resulted in mental injury to the child; or

(B) placed the child at substantial risk of mental injury as a result of

(i) a pattern of rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury; or

(ii) exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.100--11.41.220, 11.41.230(a)(1) or (2), or 11.41.410--11.41.432, an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100--11.41.220, 11.41.230(a)(1) or (2), or 11.41.410--11.41.432, an attempt to commit an offense that is a crime under AS 11.41.100--11.41.220 or 11.41.410--11.41.432, or an attempt to commit an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100--11.41.220 or 11.41.410--11.41.432; or

(iii) repeated exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.230(a)(3) or 11.41.250--11.41.270 or an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.230(a)(3) or 11.41.250--11.41.270;

(9) conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect;

(10) the parent, guardian, or custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child; if a court has previously found that a child is a child in need of aid under this paragraph, the resumption of use of an intoxicant by a parent, guardian, or custodian within one year after rehabilitation is prima facie evidence that the ability to parent is substantially impaired and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child as described in this paragraph;

(11) the parent, guardian, or custodian has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury;

(12) the child has committed an illegal act as a result of pressure, guidance, or approval from the child's parent, guardian, or custodian.

**ALASKA STAT. § 47.10.014 (2011). Neglect**

For purposes of this chapter, the court may find neglect of a child if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.

**ALASKA STAT. § 47.10.085 (2011). Medical treatment by religious means**

In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a).

**ALASKA STAT. § 47.10.088 (2011). Involuntary termination of parental rights and responsibilities**

(a) Except as provided in AS 47.10.080(o), the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court finds by clear and convincing evidence that

(1) the child has been subjected to conduct or conditions described in AS 47.10.011;

(2) the parent

(A) has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or

(B) has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; and

(3) the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

(b) In making a determination under (a)(2) of this section, the court may consider any fact relating to the best interests of the child, including

(1) the likelihood of returning the child to the parent within a reasonable time based on the child's age or needs;

(2) the amount of effort by the parent to remedy the conduct or the conditions in the home;

(3) the harm caused to the child;

(4) the likelihood that the harmful conduct will continue; and

(5) the history of conduct by or conditions created by the parent.

(c) In a proceeding under this chapter involving termination of the parental right of a parent, the court shall consider the best interests of the child.

(d) Except as provided in (e) of this section, the department shall petition for termination of a parent's rights to a child, without making further reasonable efforts, when a child is under the jurisdiction of the court under AS 47.10.010 and 47.10.011, and

(1) the child has been in foster care for at least 15 of the most recent 22 months;

(2) the court has determined that the child is abandoned under AS 47.10.013 and the child is younger than six years of age;

(3) the court has made a finding under AS 47.10.086(b) or a determination under AS 47.10.086(c) that the best interests of the child do not require further reasonable efforts by the department;

(4) a parent has made three or more attempts within a 15-month period to remedy the parent's conduct or conditions in the home without lasting change; or

(5) a parent has made no effort to remedy the parent's conduct or the conditions in the home by the time of the permanency hearing under AS 47.10.080(l).

(e) If one or more of the conditions listed in (d) of this section are present, the department shall petition for termination of the parental rights to a child unless the department

(1) has documented a compelling reason for determining that filing the petition would not be in the best interests of the child; a compelling reason under this paragraph may include care by a relative

for the child; or

(2) is required to make reasonable efforts under AS 47.10.086 and the department has not provided to the parent, consistent with the time period in the department's case plan, the family support services that the department has determined are necessary for the safe return of the child to the home.

(f) A child is considered to have entered foster care under this chapter on the earlier of

(1) the date of the first judicial finding of child abuse or neglect; or

(2) 60 days after the date of removal of the child from the child's home under this chapter.

(g) This section does not preclude the department from filing a petition to terminate the parental rights and responsibilities to a child for other reasons, or at an earlier time than those specified in (d) of this section, if the department determines that filing a petition is in the best interests of the child.

(h) The court may order the termination of parental rights and responsibilities of one or both parents under AS 47.10.080(c)(3) and commit the child to the custody of the department. The rights of one parent may be terminated without affecting the rights of the other parent.

(i) The department shall concurrently identify, recruit, process, and approve a qualified person or family for an adoption whenever a petition to terminate a parent's rights to a child is filed. Before identifying a placement of the child in an adoptive home, the department shall attempt to locate all living adult family members of the child and, if an adult family member expresses an interest in adopting the child, investigate the adult family member's ability to care for the child. The department shall provide to all adult family members of the child located by the department written notice of the adult family members' rights under this chapter and of the procedures necessary to gain custody of the child, but the department's obligation to provide written notice under this subsection does not apply to a parent of the child whose parental rights are being or have been terminated or to an adult family member who is known by the department to be ineligible for a foster care license under AS 47.32 and regulations adopted under AS 47.32. If an adult family member of the child requests that the department approve the adult family member for an adoption, the department shall approve the request unless there is good cause not to approve the adoption. If the court issues an order to terminate under (j) of this section, the department shall report within 30 days on the efforts being made to recruit a permanent placement for the child if a permanent placement was not approved at the time of the trial under (j) of this section. The report must document recruitment efforts made for the child.

(j) No later than six months after the date on which the petition to terminate parental rights is filed, the court before which the petition is pending shall hold a trial on the petition unless the court finds that good cause is shown for a continuance. When determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child. The court shall make written findings when granting a continuance.

(k) The court shall issue an order on the petition to terminate within 90 days after the last day of the trial on the petition to terminate parental rights.

# **ARIZONA**

## **ARIZ. REV. STAT. § 8-201 (2011). Definitions**

In this title, unless the context otherwise requires:

1. “Abandoned” means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandoned includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

2. “Abuse” means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:

(a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.

(b) Physical injury that results from permitting a child 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 as defined in § 13-3401.

(c) Unreasonable confinement of a child.

3. “Adult” means a person who is eighteen years of age or older.

4. “Adult court” means the appropriate justice court, municipal court or criminal division of the superior court that has jurisdiction to hear proceedings concerning offenses committed by juveniles as provided in §§ 8-327 and 13-501.

5. “Award” or “commit” means to assign legal custody.

6. “Child”, “youth” or “juvenile” means an individual who is under the age of eighteen years.

7. “Complaint” means a written statement of the essential facts constituting a public offense that is any of the following:

(a) Made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer.

(b) Made pursuant to § 13-3903.

(c) Accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint pursuant to § 13-4261.

8. “Custodian” means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.

9. “Delinquency hearing” means a proceeding in the juvenile court to determine whether a juvenile has committed a specific delinquent act as set forth in a petition.

10. “Delinquent act” means an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under § 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.

11. “Delinquent juvenile” means a child who is adjudicated to have committed a delinquent act.

12. “Department” means the department of economic security.

13. “Dependent child”:

(a) Means a child who is adjudicated to be:

(i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

(ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

(iv) Under eight years of age and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child.

(v) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in § 13-706.

(b) Does not include a child who in good faith is being furnished Christian Science treatment by a duly accredited practitioner if none of the circumstances described in subdivision (a) of this paragraph exists.

14. “Detention” means the temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier

with restricted ingress and egress for the protection of the juvenile or the community pending court disposition or as a condition of probation.

15. “Health professional” has the same meaning prescribed in § 32-3201.

16. “Incorrigible child” means a child who:

(a) Is adjudicated as a child who refuses to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who is beyond the control of that person.

(b) Is habitually truant from school as defined in § 15-803, subsection C.

(c) Is a runaway from the child's home or parent, guardian or custodian.

(d) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others.

(e) Commits any act constituting an offense that can only be committed by a minor and that is not designated as a delinquent act.

(f) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.

17. “Independent living program” includes a residential program with supervision of less than twenty-four hours a day.

18. “Juvenile court” means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

19. “Law enforcement officer” means a peace officer, sheriff, deputy sheriff, municipal police officer or constable.

20. “Medical director of a mental health agency” means a psychiatrist, or licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency, or a psychiatrist designated by the governing body to act for the director. The term includes the superintendent of the state hospital.

21. “Mental health agency” means any private or public facility that is licensed by this state as a mental health treatment agency, a psychiatric hospital, a psychiatric unit of a general hospital or a residential treatment center for emotionally disturbed children and that uses secure settings or mechanical restraints.

22. “Neglect” or “neglected” means:

(a) The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.



(b) Permitting a child 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 purposes of manufacturing a dangerous drug as defined in § 13-3401.

(c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in § 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in § 13-3401 beyond the requirements prescribed pursuant to § 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:

(i) Clinical indicators in the prenatal period including maternal and newborn presentation.

(ii) History of substance use or abuse.

(iii) Medical history.

(iv) Results of a toxicology or other laboratory test on the mother or the newborn infant.

(d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.

(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in § 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in § 13-1401, bestiality as prescribed in § 13-1411 or explicit sexual materials as defined in § 13-3507.

(f) Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present:

(i) Sexual contact as defined in § 13-1401.

(ii) Oral sexual contact as defined in § 13-1401.

(iii) Sexual intercourse as defined in § 13-1401.

(iv) Bestiality as prescribed in § 13-1411.

23. "Newborn infant" means a child who is under thirty days of age.

24. "Petition" means a written statement of the essential facts that allege delinquency, incorrigibility or dependency.

25. "Prevention" means the creation of conditions, opportunities and experiences that encourage and develop healthy, self-sufficient children and that occur before the onset of problems.

26. "Protective supervision" means supervision that is ordered by the juvenile court of children who are found to be dependent or incorrigible.

27. “Referral” means a report that is submitted to the juvenile court and that alleges that a child is dependent or incorrigible or that a juvenile has committed a delinquent or criminal act.

28. “Secure care” means confinement in a facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress.

29. “Serious emotional injury” means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

(a) Seriously impairs mental faculties.

(b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.

(c) Is the result of sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, child prostitution pursuant to § 13-3212, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553 or incest pursuant to § 13-3608.

30. “Serious physical injury” means an injury that is diagnosed by a medical doctor and that does any one or a combination of the following:

(a) Creates a reasonable risk of death.

(b) Causes serious or permanent disfigurement.

(c) Causes significant physical pain.

(d) Causes serious impairment of health.

(e) Causes the loss or protracted impairment of an organ or limb.

(f) Is the result of sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, child prostitution pursuant to § 13-3212, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553 or incest pursuant to § 13-3608.

31. “Shelter care” means the temporary care of a child in any public or private facility or home that is licensed by this state and that offers a physically nonsecure environment that is characterized by the absence of physically restricting construction or hardware and that provides the child access to the surrounding community.

**ARIZ. REV. STAT. § 8-533 (2011). Petition; who may file; grounds**

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, a foster parent, a physician, the department of economic security or a private licensed child welfare agency, may file a petition for the termination of the parent-child relationship alleging grounds contained in subsection B of this section.

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the parent has abandoned the child.
2. That the parent has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.
3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
4. That the parent is deprived of civil liberties due to the conviction of a felony if the felony of which that parent was convicted is of such nature as to prove the unfitness of that parent to have future custody and control of the child, including murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.
5. That the potential father failed to file a paternity action within thirty days of completion of service of notice as prescribed in § 8-106, subsection G.
6. That the putative father failed to file a notice of claim of paternity as prescribed in § 8-106.01.
7. That the parents have relinquished their rights to a child to an agency or have consented to the adoption.
8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:
  - (a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to § 8-806 and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.
  - (b) The child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department.
  - (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home

placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

9. That the identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.

10. That the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

(a) The child was cared for in an out-of-home placement pursuant to court order.

(b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.

(c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.

(d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that parent's legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

C. Evidence considered by the court pursuant to subsection B of this section shall include any substantiated allegations of abuse or neglect committed in another jurisdiction.

D. In considering the grounds for termination prescribed in subsection B, paragraph 8 or 11 of this section, the court shall consider the availability of reunification services to the parent and the participation of the parent in these services.

E. In considering the grounds for termination prescribed in subsection B, paragraph 8 of this section, the court shall not consider the first sixty days of the initial out-of-home placement pursuant to § 8-806 in the cumulative total period.

F. The failure of an alleged parent who is not the child's legal parent to take a test requested by the department or ordered by the court to determine if the person is the child's natural parent is prima facie evidence of abandonment unless good cause is shown by the alleged parent for that failure.

## **ARKANSAS**

### **ARK. CODE ANN. § 9-27-303 (2011). Definitions**

As used in this subchapter:

(1) “Abandoned infant” means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant;

(2) “Abandonment” means:

(A) Failure of the parent to provide reasonable support and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and support or maintain regular contact with a juvenile without just cause; or

(B) An articulated intent to forego parental responsibility;

(3)(A) “Abuse” means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

- (b) Shaking a child three (3) years of age or younger;
  - (c) Interfering with a child's breathing;
  - (d) Urinating or defecating on a child;
  - (e) Pinching, biting, or striking a child in the genital area;
  - (f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
  - (g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
  - (h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
    - (1) Marijuana;
    - (2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;
    - (3) Narcotics; or
    - (4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;
  - (i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or
  - (j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.
- (B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.
- (ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.
- (C) "Abuse" shall not include:
- (i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(ii) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of a residential child care facility licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The person exercising the restraint is acting in his or her official capacity while on duty at a residential child care facility or the residential child care facility is exempt from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(c) The agency has policies and procedures regarding restraints;

(d) Other alternatives do not exist to control the child except for a restraint;

(e) The child is in danger of hurting himself or herself or others;

(f) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(g) The restraint is:

(1) For a reasonable period of time; and

(2) In conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) “Adjudication hearing” means a hearing to determine whether the allegations in a petition are substantiated by the proof;

(5) “Adult sentence” means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) “Aggravated circumstances” means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, or sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;

- (7) “Attorney ad litem” means an attorney appointed to represent the best interest of a juvenile;
- (8) “Caretaker” means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;
- (9) “Case plan” means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;
- (10)(A) “Cash assistance” means short-term financial assistance.
- (B) “Cash assistance” does not include:
- (i) Long-term financial assistance or financial assistance that is the equivalent of the board payment or adoption subsidy; or
  - (ii) Financial assistance for car insurance;
- (11) “Commitment” means an order of the court that places a juvenile in the physical custody of the Division of Youth Services of the Department of Human Services for placement in a youth services facility;
- (12) “Court” means the juvenile division of circuit court;
- (13) “Court-appointed special advocate” means a volunteer appointed by the court to advocate for the best interest of juveniles in dependency-neglect proceedings;
- (14) “Custodian” means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order;
- (15) “Delinquent juvenile” means any juvenile:
- (A) Ten (10) years old or older who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state or who has violated § 5-73-119; or
  - (B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;
- (16)(A) “Department” means the Department of Human Services and its divisions and programs.
- (B) Unless otherwise stated in this subchapter, any reference to the department shall include all of its divisions and programs;
- (17) “Dependent juvenile” means:



(A) A child of a parent who is in the custody of the department;

(B)(i) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child.

(ii) If the reason for the incarceration is related to the health, safety, or welfare of the child, the child is not a dependent juvenile but may be dependent-neglected;

(C) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(D) A child whose custodial parent dies and no appropriate relative or friend is willing or able to provide care for the child;

(E) A child who is an infant relinquished to the custody of the department for the sole purpose of adoption;

(F) A safe haven baby, § 9-34-201 et seq.; or

(G) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them;

(18)(A) “Dependent-neglected juvenile” means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

(i) Abandonment;

(ii) Abuse;

(iii) Sexual abuse;

(iv) Sexual exploitation;

(v) Neglect;

(vi) Parental unfitness; or

(vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) “Dependent-neglected juvenile” includes dependent juveniles;

(19) “Detention” means the temporary care of a juvenile in a physically restricting facility other than a jail or lock-up used for the detention of adults prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(20) “Detention hearing” means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or

disposition;

(21) “Deviant sexual activity” means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(22) “Disposition hearing” means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependency-neglect cases;

(23) “Extended juvenile jurisdiction offender” means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

(24) “Family in need of services” means any family whose juvenile evidences behavior that includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(25)(A) “Family services” means relevant services provided to a juvenile or his or her family, including, but not limited to:

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling; or

(ix) Treatment.

(B) Family services are provided in order to:

- (i) Prevent a juvenile from being removed from a parent, guardian, or custodian;
- (ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed; or
- (iii) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile;

(26) “Fast track” means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(27)(A) “Forcible compulsion” means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then “forcible compulsion” has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) “Guardian” means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) “Home study” means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and that shall conform to regulations established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received.

(C)(i) The person or agency conducting the home study shall have the right to obtain a criminal background check on any person in the household sixteen (16) years of age and older, including a fingerprint-based check of national crime information databases.

(ii) Upon request, local law enforcement shall provide the person or agency conducting the home study with criminal background information on any person in the household sixteen (16) years of age and older;

(30) “Indecent exposure” means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(31) “Independence” means a permanency planning hearing disposition known as Another Planned Permanent Living Arrangement (APPLA) for the juvenile who will not be reunited with his or her family and because another permanent plan is not in the juvenile's best interest;

(32) “Juvenile” means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

(33) “Juvenile detention facility” means any facility for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(34) “Law enforcement officer” means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(35) “Miranda rights” means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(36)(A) “Neglect” means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

(i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(ii) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding failure to follow an individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk

to the health or safety of the juvenile;

(v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) For the purposes of this subdivision (36)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(b) of this section;

(37)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel, if indigent, or a uniform notice as developed and prescribed by the Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(38) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(39)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) “Out-of-home placement” shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(40) “Parent” means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(41) “Paternity hearing” means a proceeding brought pursuant to bastardy jurisdiction to determine the biological father of a juvenile;

(42) “Pornography” means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(43)(A) “Predisposition report” means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

(44) “Prosecuting attorney” means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(45) “Protection plan” means a written plan developed by the department in conjunction with the family and support network to protect the juvenile from harm and which allows the juvenile to remain safely in the home;

(46) “Putative father” means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims or is alleged to be the biological father of the juvenile;

(47)(A)(i) “Reasonable efforts” means efforts to preserve the family prior to the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a family made after a child is placed out of his or her home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed manslaughter of any child;

(iv) Aided or abetted, attempted, conspired, or solicited to commit the murder or the manslaughter;

(v) Committed a felony battery that results in serious bodily injury to any child;

(vi) Had the parental rights involuntarily terminated as to a sibling of the child;

(vii) Abandoned an infant as defined in subdivision (1) of this section; or

(viii) Registered with a sex offender registry under the 2006 Adam Walsh Child Protection and Safety Act.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(48) “Residence” means:

(A) The place where the juvenile is domiciled; or

(B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(49)(A) “Restitution” means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(50) “Safety plan” means a plan ordered by the court to be developed for an adjudicated delinquent sex offender under § 9-27-356 who is at moderate or high risk of reoffending for the purposes of § 9-27-309;

(51) “Sexual abuse” means:

(A) By a person thirteen (13) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B)(i) By a person eighteen (18) years of age or older to a person who is younger than fifteen (15) years of age and is not his or her spouse:

(a) Sexual intercourse, deviant sexual activity, or sexual contact;

(b) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(c) Solicitation of sexual intercourse, solicitation of deviate sexual activity, or solicitation of sexual contact.

(ii) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:

(a) Sexual intercourse, deviant sexual activity, or sexual contact;

(b) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or



(c) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(C) By a caretaker to a person younger than eighteen (18) years of age:

- (i) Sexual intercourse, deviant sexual activity, or sexual contact;
- (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact;
- (iii) Forcing or encouraging the watching of pornography;
- (iv) Forcing, permitting, or encouraging the watching of live sexual activity;
- (v) Forcing listening to a phone sex line; or
- (vi) An act of voyeurism;

(D) By a person younger than thirteen (13) years of age to a person younger than eighteen (18) years of age:

- (i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or
- (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(52)(A) “Sexual contact” means any act of sexual gratification involving:

- (i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;
- (ii) Encouraging the juvenile to touch the offender in a sexual manner; or
- (iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) This section shall not permit normal, affectionate hugging to be construed as sexual contact;

(53) “Sexual exploitation” includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

- (i) Prostitution;
- (ii) Obscene photographing; or
- (iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

(54) “Shelter care” means the temporary care of a juvenile in physically unrestricting facilities pursuant to an order for placement pending or pursuant to an adjudication of dependency-neglect or family in need of services;

(55) “Trial placement” means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent or the person from whom custody was removed for a period not to exceed sixty (60) days;

(56) “UCCJEA” means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(57) “UIFSA” means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(58) “Victim” means any person or entity entitled to restitution as defined in subdivision (49) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(59)(A) “Voyeurism” means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile may reasonably be expected to be nude or partially nude.

(B) This definition does not apply to delinquency actions;

(60) “Youth services center” means a youth services facility operated by the state or a contract provider;

(61) “Youth services facility” means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

(62) “Temporary custody” means custody that is transferred to a person during the pendency of the juvenile court case when services are being provided to achieve the goal of the case plan; and

(63) “Permanent custody” means custody that is transferred to a person as a permanency disposition in a juvenile case when the court has ordered that:

(A) Reunification services are no longer required; and

(B) Six-month reviews are not required.

**ARK. CODE ANN. § 9-27-335 (2011). Disposition--Dependent-neglected--Limitations**

(a)(1) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services in any case in which the department is not a party, the circuit court shall fax a written notice of intent to the Director of the Department of Human Services and to the attorney of the local office of chief counsel of the department.

(2) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(3) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(b)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services if the department is the payor or provider.

(2)(A) The court may order a child to be placed or to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties.

(B) A court may also order a child into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties.

(c)(1) In all cases in which family services are ordered, the court shall determine the ability of the parent, guardian, or custodian to pay, in whole or in part, for these services.

(2) The determination of ability to pay and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian is able to pay for the family services ordered and order the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(d) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or by a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(e)(1)(A) The court shall enter an order transferring custody of a juvenile in a dependency-neglect case only after determining that reasonable efforts have been made by the department to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

(B) The juvenile's health and safety shall be the paramount concern of the court in determining if the department could have made reasonable efforts to prevent the juvenile's removal.

(2) If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

(A) Dismiss the petition;

(B) Order family services reasonably calculated to prevent the need for out-of-home placement;  
or

(C) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement if the transfer is necessary:

(i) To protect the juvenile's health and safety; or

(ii) To prevent the removal of the juvenile from the jurisdiction of the court.

(f) In a case of medical neglect involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) Preventing or remedying serious harm to the child; or

(2) Preventing the withholding of medically indicated treatment from a child with a life-threatening condition.

(g) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Human Services.

(h) For purposes of this section, the court shall not order the department to expend or forward social security benefits for which the department is payee.

**ARK. CODE ANN. § 9-27-341 (2011). Termination of parental rights**

(a)(1)(A) This section shall be a remedy available only to the Department of Human Services or a court-appointed attorney ad litem.

(B) This section shall not be available for private litigants or other agencies.

(2) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4)(A) A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the permanency planning hearing and preceding the termination of parental rights hearing is an insufficient reason to not terminate parental rights.

(B) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a

petition to terminate parental rights.

(2)(A) The petitioner shall serve the petition to terminate parental rights as required under Rule 5 of the Arkansas Rules of Civil Procedure, except:

(i) Service shall be made as required under Rule 4 of the Arkansas Rules of Civil Procedure if the:

(a) Parent was not served under Rule 4 of the Arkansas Rules of Civil Procedure at the initiation of the proceeding;

(b) Parent is not represented by an attorney; or

(c) Initiation of the proceeding was more than two (2) years ago; or

(ii) When the court orders service of the petition to terminate parental rights as required under Rule 4 of the Arkansas Rules of Civil Procedure.

(B) The petitioner shall check with the Putative Father Registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's

custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father;

(iv) A parent has abandoned the juvenile;

(v)(a) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval.

(b) If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law or federal regulations;

(vi)(a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or step-parent or step-parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life; or

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

(1) Have committed murder or manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter;

(2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;

(4) Have had his or her parental rights involuntarily terminated as to a sibling of the child; or

(5) Have abandoned an infant, as defined at § 9-27-303(2).

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section.

(c)(1) An order terminating the relationship between parent and juvenile divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption.

(2)(A)(i) Termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(ii) If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.

(iii) A court may terminate the rights of one (1) parent and not the other parent if the court finds that it is in the best interest of the child.

(B)(i) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights.

(ii) The notice shall identify the rights sought to be terminated and those that may be terminated.

(iii) The notice shall further specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach.

(3) An order terminating parental rights under this section may authorize the department to consent to adoption of the juvenile.

(d) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(e) A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

## **CALIFORNIA**

### **CAL. FAM. CODE § 7802 (2012). Proceeding for declaration of freedom from parental custody and control**

A proceeding may be brought under this part for the purpose of having a minor child declared free from the custody and control of either or both parents.

### **CAL. FAM. CODE § 7803 (2012). Effect of declaration of freedom**

A declaration of freedom from parental custody and control pursuant to this part terminates all parental rights and responsibilities with regard to the child.



**CAL. FAM. CODE § 7823 (2012). Neglected or cruelly treated children; right to action**

(a) A proceeding under this part may be brought where all of the following requirements are satisfied:

- (1) The child has been neglected or cruelly treated by either or both parents.
- (2) The child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year before the filing of a petition pursuant to this part.

(b) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

**CAL. FAM. CODE § 7829 (2012). Child found to be dependent child and reunification services not to be provided; right to action**

A proceeding under this part may be brought where both of the following requirements are satisfied:

- (a) The child has been found to be a dependent child of the juvenile court.
- (b) The juvenile court has determined, pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the child's parent or guardian.

**CAL. WELF. & INST. CODE § 300 (2012). Children subject to jurisdiction; legislative intent and declarations; guardian defined**

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment

through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

**CAL. WELF. & INST. CODE § 300.5 (2012). Medical care; treatment by spiritual means**

In any case in which a child is alleged to come within the provisions of Section 300 on the basis that he or she is in need of medical care, the court, in making that finding, shall give consideration to any treatment being provided to the child by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof.

**CAL. WELF. & INST. CODE § 361.5 (2012). Child welfare services; reunification of family; hearing; findings by court; incarcerated parents; adoption assessment**

<Section operative until Jan. 1, 2014. See, also, section operative Jan. 1, 2014.>

(a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child

and the biological father, if the court determines that the services will benefit the child.

(1) Family reunification services, when provided, shall be provided as follows:

(A) Except as otherwise provided in subparagraph (C), for a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care as defined in Section 361.49, unless the child is returned to the home of the parent or guardian.

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.

(C) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited as set forth in subparagraph (B). For the purposes of this paragraph, “a sibling group” shall mean two or more children who are related to each other as full or half siblings.

(2) Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by subparagraph (A) of paragraph (1), or prior to the hearing set pursuant to subdivision (e) of Section 366.21 for a child described by subparagraph (B) or (C) of paragraph (1), shall be made pursuant to the requirements set forth in subdivision (c) of Section 388. A motion to terminate court-ordered reunification services shall not be required at the hearing set pursuant to subdivision (e) of Section 366.21 if the court finds by clear and convincing evidence one of the following:

(A) That the child was removed initially under subdivision (g) of Section 300 and the whereabouts of the parent are still unknown.

(B) That the parent has failed to contact and visit the child.

(C) That the parent has been convicted of a felony indicating parental unfitness.

(3) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-

ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in subparagraph (C) of paragraph (1), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in subparagraph (C) of paragraph (1).

(4) Notwithstanding paragraph (3), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the child cannot be safely returned to the care and custody of a parent or

guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of

another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300; that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, “serious danger” means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, “willful abandonment” shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification

services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half sibling from his or her placement and refused to disclose the child's or child's sibling's or half sibling's whereabouts, refused to return physical custody of the child or child's sibling or half sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.



(e)(1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections and Rehabilitation pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term

foster care, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g)(1) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents and notification of a noncustodial parent in the manner provided for in Section 291.

(B) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history, including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4. As used in this subparagraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(E) The relationship of the child to any identified prospective adoptive parent or guardian, including a prospective tribal customary parent, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child over 12 years of age has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

- (i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.
- (ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2)(A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(h) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) of Chapter 2, as applicable.

(i) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

- (1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling.
- (2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling.
- (3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling.
- (4) Any history of abuse of other children by the offending parent or guardian.
- (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.
- (6) Whether or not the child desires to be reunified with the offending parent or guardian.

(j) When the court determines that reunification services will not be ordered, it shall order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court determines that reunification services will not be ordered, it shall order,

when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

(k) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(l) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

**CAL. WELF. & INST. CODE § 361.5 (2012). Child welfare services; reunification of family; hearing; findings by court; incarcerated parents; adoption assessment**

<Section operative Jan. 1, 2014. See, also, section operative until Jan. 1, 2014.>

(a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child.

(1) Family reunification services, when provided, shall be provided as follows:

(A) Except as otherwise provided in subparagraph (C), for a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care as defined in Section 361.49, unless the child is returned to the home of the parent or guardian.

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.

(C) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited as set forth in subparagraph (B). For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half siblings.

(2) Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by subparagraph (A) of paragraph (1), or prior to the hearing set pursuant to subdivision (e) of Section 366.21 for a child described by subparagraph (B) or (C) of paragraph (1), shall be made pursuant to the requirements set forth in

subdivision (c) of Section 388. A motion to terminate court-ordered reunification services shall not be required at the hearing set pursuant to subdivision (e) of Section 366.21 if the court finds by clear and convincing evidence one of the following:

(A) That the child was removed initially under subdivision (g) of Section 300 and the whereabouts of the parent are still unknown.

(B) That the parent has failed to contact and visit the child.

(C) That the parent has been convicted of a felony indicating parental unfitness.

(3) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in subparagraph (C) of paragraph (1), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in

subparagraph (C) of paragraph (1).

(4) Notwithstanding paragraph (3), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child

from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half sibling from his or her placement and refused to disclose the child's or child's sibling's or half sibling's whereabouts, refused to return physical custody of the child or child's sibling or half sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent



reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e)(1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections and Rehabilitation pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g)(1) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents and notification of a noncustodial parent in the manner provided for in Section 291.

(B) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history, including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4. As used in this subparagraph, "relative" means an adult who is related

to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(E) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child over 12 years of age has been consulted about the proposed relative guardianship arrangements unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2)(A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(h) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) of Chapter 2, as applicable.

(i) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(j) When the court determines that reunification services will not be ordered, it shall order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court determines that reunification services will not be ordered, it shall order, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

(k) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(l) This section shall become operative on January 1, 2014.

**CAL. WELF. & INST. CODE § 366.26 (2012). Hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court**

<Section operative until Jan. 1, 2014. See, also, section operative Jan. 1, 2014.>

(a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8616.5 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Order, without termination of parental rights, the plan of tribal customary adoption, as described in Section 366.24, through tribal custom, traditions, or law of the Indian child's tribe, and upon the court affording the tribal customary adoption order full faith and credit at the continued selection and implementation hearing, order that a hearing be set pursuant to paragraph (2) of subdivision (e).

(3) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(4) On making a finding under paragraph (3) of subdivision (c), identify adoption or tribal customary adoption as the permanent placement goal and order that efforts be made to locate an

appropriate adoptive family for the child within a period not to exceed 180 days.

(5) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(6) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c)(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months, or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(iv) The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her foster parent or Indian custodian would be detrimental to the

emotional well-being of the child. This clause does not apply to any child who is either (I) under six years of age or (II) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(v) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another planned permanent living arrangement for the child.

(C) For purposes of subparagraph (B), in the case of tribal customary adoptions, Section 366.24 shall apply.

(D) If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) At each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(iii) The court has ordered tribal customary adoption pursuant to Section 366.24.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may

identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child, within the state or out of the state, within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age or more.

(4)(A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child order that the child remain in long-term foster care, or, in the case of an Indian child, consider a tribal customary adoption pursuant to Section 366.24. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians or, in the case of an Indian child, prospective tribal customary adoptive parents. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child,

including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e)(1) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(2) In the case of an Indian child, if the Indian child's tribe has elected a permanent plan of tribal customary adoption, the court, upon receiving the tribal customary adoption order will afford the tribal customary adoption order full faith and credit to the same extent that the court would afford full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity. Upon a determination that the tribal customary adoption order may be afforded full faith and credit, consistent with Section 224.5, the court shall thereafter order a hearing to finalize the adoption be set upon the filing of the adoption petition. The prospective tribal customary adoptive parents and the child who is the subject of the tribal customary adoption petition shall appear before the court for the finalization hearing. The court shall thereafter issue an order of adoption pursuant to Section 366.24.

(3) If a child who is the subject of a finalized tribal customary adoption shows evidence of a developmental disability or mental illness as a result of conditions existing before the tribal customary adoption to the extent that the child cannot be relinquished to a licensed adoption agency on the grounds that the child is considered unadoptable, and of which condition the tribal customary adoptive parent or parents had no knowledge or notice before the entry of the tribal customary adoption order, a petition setting forth those facts may be filed by the tribal customary adoptive parent or parents with the juvenile court that granted the tribal customary adoption petition. If these facts are proved to the satisfaction of the juvenile court, it may make an order setting aside the tribal customary adoption order. The set aside petition shall be filed within five years of the issuance of the tribal customary adoption order. The court clerk shall immediately notify the child's tribe and



the department in Sacramento of the petition within 60 days after the notice of filing of the petition. The department shall file a full report with the court and shall appear before the court for the purpose of representing the child. Whenever a final decree of tribal customary adoption has been vacated or set aside, the child shall be returned to the custody of the county in which the proceeding for tribal customary adoption was finalized. The biological parent or parents of the child may petition for return of custody. The disposition of the child after the court has entered an order to set aside a tribal customary adoption shall include consultation with the child's tribe.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h)(1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3)(A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i)(1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A tribal customary adoption order evidencing that the Indian child has been the subject of a tribal customary adoption shall be afforded full faith and credit and shall have the same force and effect as an order of adoption authorized by this section. The rights and obligations of the parties as to the matters determined by the Indian child's tribe shall be binding on all parties. A court shall not order compliance with the order absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith, in family mediation services of the court or dispute resolution through the tribe regarding the conflict, prior to the filing of the enforcement action.

(3) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, or declares the child eligible for tribal customary adoption, the court shall at the same time order the child referred to the State

Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, except in the case of a tribal customary adoption where there is no termination of parental rights, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption or tribal customary adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l)(1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21, 366.22, and 366.25 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n)(1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption home study.

(B) Cooperating with an adoption home study.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the

agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(p) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

**CAL. WELF. & INST. CODE § 366.26 (2012). Hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court**

<Section operative Jan. 1, 2014. See, also, section operative until Jan. 1, 2014.>

(a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8616.5 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court

shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(3) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(4) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(5) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c)(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months, or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family

placement if the parents cannot resume custody when residential care is no longer needed.

(iv) The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either (I) under six years of age or (II) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(v) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) At each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place



for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child, within the state or out of the state, within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age or more.

(4)(A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in

and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h)(1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3)(A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i)(1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best

interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l)(1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21, 366.22, and 366.25 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n)(1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption home study.

(B) Cooperating with an adoption home study.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(p) This section shall become operative on January 1, 2014.

## **COLORADO**

### **COLO. REV. STAT. ANN. § 19-1-103 (2012). Definitions**

As used in this title or in the specified portion of this title, unless the context otherwise requires:

(1)(a) “Abuse” or “child abuse or neglect”, as used in part 3 of article 3 of this title, means an act or omission in one of the following categories that threatens the health or welfare of a child:

(I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence;

(II) Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102(9), C.R.S.;

(III) Any case in which a child is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. The requirements of this subparagraph (III) shall be subject to the provisions of section 19-3-103.

(IV) Any case in which a child is subjected to emotional abuse. As used in this subparagraph (IV), "emotional abuse" means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

(V) Any act or omission described in section 19-3-102(1)(a), (1)(b), or (1)(c);

(VI) Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance, as defined in section 18-18-102(5), C.R.S., is manufactured or attempted to be manufactured;

(VII) Any case in which a child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates including, but not limited to, accepted work-related practices of agricultural communities. Nothing in this subsection (1) shall refer to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2-502 that are performed by a peace officer, as described in section 16-2.5-101, C.R.S., acting in the good faith performance of the officer's duties.

(2) "Adjudication" means a determination by the court that it has been proven beyond a reasonable doubt to the trier of fact that the juvenile has committed a delinquent act or that a juvenile has pled guilty to committing a delinquent act. In addition, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, "adjudication" means conviction.

(3) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition in dependency and neglect are supported by the evidence.

(4) "Adjudicatory trial" means a trial to determine whether the allegations of a petition in delinquency are supported by the evidence.

(5) "Administrative review" means a review conducted by the state department of human services that is open to the participation of the parents of the child and conducted by an administrative reviewer who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.



(6) “Adoptee”, as used in part 3 of article 5 of this title, means a person who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(6.5)(a) “Adoption record”, as used in part 3 of article 5 of this title, means the following documents and information:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Nonidentifying information, as defined in section 19-1-103(80);

(IV) The final order of relinquishment; and

(V) The order of termination of parental rights.

(b) “Adoption record” shall not include pre-relinquishment counseling records, which records shall remain confidential.

(6.7) “Adoption triad” means the three parties involved in an adoption: The adoptee, the birth parent, and the adoptive parent.

(7) “Adoptive parent”, as used in parts 3 and 4 of article 5 of this title, means an adult who has become a parent of a minor through the legal process of adoption.

(8)(a) “Adult” means a person eighteen years of age or older; except that any person eighteen years of age or older who is under the continuing jurisdiction of the court, who is before the court for an alleged delinquent act committed prior to the person's eighteenth birthday, or concerning whom a petition has been filed for the person's adoption other than under this title shall be referred to as a juvenile.

(b) Deleted by Laws 1997, S.B.97-83, § 14, eff. July 1, 1997.

(9) “Adult adoptee”, as used in parts 3 and 4 of article 5 of this title, means an individual who is eighteen years of age or older and who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(10) “Appropriate treatment plan”, as used in section 19-3-508(1)(e), means a treatment plan approved by the court that is reasonably calculated to render the particular respondent fit to provide adequate parenting to the child within a reasonable time and that relates to the child's needs.

(10.5) “Assessment center for children”, as used in sections 19-1-303 and 19-1-304, means a multi-disciplinary, community-based center that provides services to children and their families, including, but not limited to, detention screening, case management, and therapeutic intervention relating to delinquency, abuse or neglect, family conflict, and truancy.

(11) “Assessment instrument” means an objective tool used to collect pertinent information regarding a juvenile taken into temporary custody in order to determine the appropriate level of security,

supervision, and services pending adjudication.

(12) “Basic identification information”, as used in article 2 of this title, means the name, place and date of birth, last-known address, social security number, occupation and address of employment, last school attended, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(13) “Biological parent” or “birth parent”, as used in part 3 of article 5 of this title, means a parent, by birth, of an adopted person.

(14) “Biological sibling”, as used in part 3 of article 5 of this title, means a sibling, by birth, of an adopted person. “Biological sibling”, as used in article 3 and article 5 of this title, for purposes of the definition of sibling group, as defined in subsection (98.5) of this section, means a brother, sister, or half-sibling of a child who is being placed in foster care or being placed for adoption.

(15) “Birth parents”, as used in part 4 of article 5 of this title, means genetic, biological, or natural parents whose rights were voluntarily or involuntarily terminated by a court or otherwise. “Birth parents” includes a man who is the parent of a child as established in accordance with the provisions of the “Uniform Parentage Act”, article 4 of this title, prior to the termination of parental rights.

(16) “Board”, as used in article 3.5 of this title, means the Colorado children's trust fund board created in section 19-3.5-104.

(16.5) “Case management purposes”, as used in section 19-1-303, means assessments, evaluations, treatment, education, proper disposition or placement of the child, interagency coordination, and other services that are incidental to the administration of the program and in the best interests of the child.

(17) “Chief justice”, as used in part 3 of article 5 of this title, means the chief justice of the Colorado supreme court.

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

(19) “Child abuse”, as used in article 3.5 of this title, means any act that reasonably may be construed to fall under the definition of abuse or child abuse or neglect in subsection (1) of this section.

(19.5) “Child advocacy center”, as used in part 3 of article 3 of this title, means a center that provides a comprehensive multi-disciplinary team response to allegations of child abuse or neglect in a dedicated, child-friendly setting. The team response to allegations of child abuse or neglect includes, but is not limited to, technical assistance for forensic interviews, forensic medical examinations, mental health and related support services, consultation, training, and education.

(20) “Child care center” means a child care center licensed and approved pursuant to article 6 of title 26, C.R.S. If such facility is located in another state, it shall be designated by the department of human services upon certification that no appropriate available space exists in a child care facility in this state and shall be licensed or approved as required by law in that state.

(21) “Child placement agency” means an agency licensed or approved pursuant to law. If such agency is located in another state, it shall be licensed or approved as required by law in that state.

(22) “Child protection team”, as used in part 3 of article 3 of this title, means a multidisciplinary team consisting, where possible, of a physician, a representative of the juvenile court or the district court with juvenile jurisdiction, a representative of a local law enforcement agency, a representative of the county department, a representative of a mental health clinic, a representative of a county, district, or municipal public health agency, an attorney, a representative of a public school district, and one or more representatives of the lay community, at least one of whom shall be a person who serves as a foster parent in the county. Each public agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each public agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian ad litem for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. When any racial, ethnic, or linguistic minority group constitutes a significant portion of the population of the jurisdiction of the child protection team, a member of each such minority group shall serve as an additional lay member of the child protection team. At least one of the preceding members of the team shall be chosen on the basis of representing low-income families. The role of the child protection team shall be advisory only.

(23) “Citizen review panel”, as used in section 19-3-211, means the panel created in a county by the board of county commissioners or in a city and county by the city council that shall review and make recommendations regarding grievances referred to the panel by the county director pursuant to the conflict resolution process.

(24) “Commit”, as used in article 2 of this title, means to transfer legal custody.

(24.5) “Community placement” means the placement of a child for whom the state department of human services or a county department has placement and care responsibility pursuant to article 2 or 3 of this title in any licensed or certified twenty-four-hour, non-secure, care and treatment facility away from the child's parent or guardian. “Community placement” includes, but is not limited to, placement in a foster care home, group home, residential child care facility, or residential treatment facility.

(25) “Complainant”, as used in section 19-3-211, means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department in accordance with the provisions of section 19-3-211.

(26) “Confidential intermediary”, as used in part 3 of article 5 of this title, means a person twenty-one years of age or older who has completed a training program for confidential intermediaries that meets the standards set forth by the commission pursuant to section 19-5-303 and who is authorized to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, or biological sibling.

(27) “Confirmed”, as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is found by a county department, law enforcement agency, or entity authorized to investigate institutional abuse to be supported by a preponderance of the evidence.

(28) “Consent”, as used in part 3 of article 5 of this title, means voluntary, informed, written consent. When used in the context of confidential intermediaries, “consent” always shall be preceded by an explanation that consent permits the confidential intermediary to arrange a personal contact among biological relatives. “Consent” may also mean the agreement for contact or disclosure of records by

any of the parties identified in section 19-5-304(2) as a result of an inquiry by a confidential intermediary pursuant to section 19-5-304.

(28.5) “Consent form”, as used in section 19-5-305(3), means a verified written statement signed by an adult adoptee or an adult adoptee's consenting birth parent or an adoptive parent of a minor adoptee that has been notarized and that authorizes the release of adoption records or identifying information, to the extent available, by a licensed child placement agency.

(28.6) “Contact information” means information supplied voluntarily by a birth parent on a contact preference form, including the name of the birth parent at the time of relinquishment of the adoptee; the alias, if any, used at the time of relinquishment of the adoptee; and the current name, current address, and current telephone number of the birth parent.

(28.7) “Contact preference form” means a written statement signed by a birth parent indicating whether the birth parent prefers future contact with an adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or the descendant and, if contact is preferred, whether the contact should be through a confidential intermediary or a designated employee of a child placement agency. A contact preference form includes an option for a birth parent to authorize the release of an original birth certificate.

(29) “Continuously available”, as used in section 19-3-308(4), means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the county department or to have such arrangements made through agreements with local law enforcement agencies.

(29.5) Repealed by Laws 2003, Ch. 196, § 5, eff. Jan. 1, 2004.

(30) “Cost of care” means the cost to the department or the county for a child placed out of the home or charged with the custody of the juvenile for providing room, board, clothing, education, medical care, and other normal living expenses for a child placed out of the home or to a juvenile sentenced to a placement out of the home, as determined by the court. As used in this title, “cost of care” also includes any costs associated with maintenance of a juvenile in a home detention program, supervision of probation when the juvenile is granted probation, or supervision of parole when the juvenile is placed on parole.

(31) “Counsel” means an attorney-at-law who acts as a person's legal advisor or who represents a person in court.

(31.5) “County attorney” means the office of the county attorney or city attorney representing a county or a city and county and includes the attorneys employed or retained by such county or city and county.

(32)(a) “County department”, as used in this article and part 2, part 3, and part 7 of article 3 of this title and part 2 of article 5 of this title, means the county or district department of social services.

(b) “County department”, as used in section 19-3-211 and in article 3.3 of this title, means a county or a city and county department of social services.

(33) “County director”, as used in section 19-3-211 and part 3 of article 3 of this title, means the county director or district director appointed pursuant to section 26-1-117, C.R.S.

(34) “Court”, as used in part 3 of article 5 of this title, means any court of record with jurisdiction over the matter at issue.

(34.3) “Court-appointed special advocate” or “CASA volunteer” means a volunteer appointed by a court pursuant to the provisions of part 2 of this article to assist in advocacy for children.

(34.5) “Court-appointed special advocate program” or “CASA program” means a program established pursuant to the provisions of part 2 of this article.

(34.6) “Criminal justice agency”, as used in section 19-1-303, shall have the same meaning as set forth in section 24-72-302(3), C.R.S.

(34.7) “Custodial adoption”, as used in part 2 of article 5 of this title, means an adoption of a child by any person and such person's spouse, as required under section 19-5-202(3), who:

- (a) Has been awarded custody or allocated parental responsibilities by a court of law in a dissolution of marriage, custody or allocation of parental responsibilities proceeding, or has been awarded guardianship of the child by a court of law in a probate action, such as pursuant to part 2 of article 14 of title 15; and

- (b) Has had physical custody of the child for a period of one year or more.

(35) “Custodian” means a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.

(36) “Delinquent act”, as used in article 2 of this title, means a violation of any statute, ordinance, or order enumerated in section 19-2-104(1)(a). If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense shall be determined by the statute, ordinance, or order that the petition alleges was violated.

(37) “Department”, as used in article 5 of this title, means the department of human services.

(38) “Deprivation of custody” means the transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

(39) “Designated adoption” means an adoption in which:

- (a) The birth parent or parents designate a specific applicant with whom they wish to place their child for purposes of adoption; and

- (b) The anonymity requirements of section 19-1-309 are waived.

(40) “Detention” means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(40.5) “Determinate period”, as used in article 2 of this title, means that the department of human services may not transfer legal or physical custody of a juvenile until the juvenile has completed the period of commitment imposed by the court, unless otherwise ordered by the court; except that the department may release the juvenile on parole prior to completion of the determinate period, as provided in section 19-2-1002.

(41) “Diagnostic and evaluation center”, as used in article 2 of this title, means a facility for the examination and study of persons committed to the custody of the department of human services.

(42) “Director”, as used in section 19-2-303, means the executive director of the department of public safety.

(43) “Dispositional hearing” means a hearing to determine what order of disposition should be made concerning a child who is neglected or dependent. Such hearing may be part of the proceeding that includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.

(44) “Diversion” means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 or a disposition as a part of sentencing pursuant to section 19-2-907. “Services”, as used in this subsection (44), includes but is not limited to diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling and counseling during a crisis situation, and follow-up activities. Services may include restorative justice practices as defined in section 18-1-901(3)(o.5), C.R.S., as requested by the victim, after being informed about restorative justice practices pursuant to section 24-4.1-303(11)(g), C.R.S., and as deemed suitable by the probation department or a designated restorative justice practices facilitator. Such practices may include victim-offender conferences, if requested by the victim. Restorative justice practices shall be conducted by facilitators recommended by the district attorney.

(44.5) “Donor”, as used in section 19-4-106, means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. “Donor” does not include a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife.

(45) “Emancipated juvenile”, as used in section 19-2-511, means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters of care, custody, and earnings. The term may include, but shall not be limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

(46) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(47)(a) “Estate”, as used in section 19-2-114, means any tangible or intangible properties, real or personal, belonging to or due to a person, including income or payments to such person from previously earned salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source

whatsoever except federal benefits of any kind.

(b)(I) Real property that is held in joint ownership or ownership in common with the juvenile's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the estate of the juvenile for the purposes of section 19-2-114.

(II) Real property that is held by the juvenile's parent, while being used and occupied by such parent as a place of residence, shall not be considered a part of the estate of the parent for the purposes of section 19-2-114.

(47.5) "Executive director", as used in article 3.3 of this title, means the executive director of the department of human services.

(48) "Expungement", as used in section 19-1-306, means the designation of juvenile delinquency records whereby such records are deemed never to have existed.

(49) "Family child care home" means a family child care home licensed and approved pursuant to article 6 of title 26, C.R.S. If such facility is located in another state, it shall be designated by the department of human services upon certification that no appropriate available space exists in a facility in this state and shall be licensed or approved as required by law in that state.

(50) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(51) "Fire investigator" means a person who:

(a) Is an officer or member of a fire department, fire protection district, or fire fighting agency of the state or any of its political subdivisions;

(b) Is engaged in conducting or is present for the purpose of engaging in the conduct of a fire investigation; and

(c) Is either a volunteer or is compensated for services rendered by the person.

(51.3) "Foster care" means the placement of a child into the legal custody or legal authority of a county department of social services for physical placement of the child in a kinship care placement or certified or licensed facility or the physical placement of a juvenile committed to the custody of the state department of human services into a community placement.

(51.5) "Foster care home" means a foster care home certified pursuant to article 6 of title 26, C.R.S.

(52) "Gang", as used in sections 19-2-205 and 19-2-508, means a group of three or more individuals with a common interest, bond, or activity, characterized by criminal or delinquent conduct, engaged in either collectively or individually.

(53) "Good faith mistake", as used in section 19-2-803, means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause.

(54) “Governing body”, as used in section 19-3-211, means the board of county commissioners of a county or the city council of a city and county.

(55) “Governmental unit”, as used in section 19-2-303, means any county, city and county, city, town, judicial district attorney office, or school district.

(56)(a) “Grandparent” means a person who is the parent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage.

(b) “Grandparent”, as used in sections 19-1-117 and 19-1-117.5, has the same meaning as set forth in paragraph (a) of this subsection (56); except that “grandparent” does not include the parent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104(1)(d).

(57) “Grievance”, as used in section 19-3-211, means a dispute between a complainant and a county department concerning the conduct of county department personnel in performing their duties pursuant to article 3 of this title.

(58) “Group care facilities and homes” means places other than foster family care homes providing care for small groups of children that are licensed as provided in article 6 of title 26, C.R.S., or meet the requirements of section 27-10.5-109, C.R.S.

(59) “Guardian ad litem” means a person appointed by a court to act in the best interests of a person whom the person appointed is representing in proceedings under this title and who, if appointed to represent a person in a dependency and neglect proceeding under article 3 of this title, shall be an attorney-at-law licensed to practice in Colorado.

(60) “Guardianship of the person” means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(61) “Habitual juvenile offender”, as used in section 19-2-517, means a juvenile offender who has previously been twice adjudicated a juvenile delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes, that constitute felonies.

(61.5) “Half-sibling” shall have the same meaning as biological sibling provided in subsection (14) of this section.



(62) “Halfway house”, as used in article 2 of this title, means a group care facility for juveniles who have been placed on probation or parole under the terms of this title.

(63) “Identifying” means giving, sharing, or obtaining information.

(63.5) “Identifying information”, as used in section 19-5-305(3), means copies of any adoption records, as that term is defined in subsection (6.5) of this section, that are in the possession of the child placement agency. “Identifying information” also includes the name of the adoptee before placement in adoption; the name and address of each consenting birth parent as they appear in the birth records; the current name, address, and telephone number of the adult adoptee; and the current name, address, and telephone number of each consenting birth parent to the extent such information is available to the child placement agency.

(64) “Imminent placement out of the home”, as used in section 19-1-116(2), means that without intercession the child will be placed out of the home immediately.

(65) “Independent living” means a form of placement out of the home arranged and supervised by the county department of social services wherein the child is established in a living situation designed to promote and lead to the child's emancipation. Independent living shall only follow some other form of placement out of the home.

(65.3) “Indian child” means an unmarried person who is younger than eighteen years of age and who is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

(65.5) “Indian child's tribe” means:

(a) The Indian tribe in which an Indian child is a member or eligible for membership; or

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(65.7) “Indian tribe” means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the federal governmental services provided to Indians because of their status as Indians.

(66) “Institutional abuse”, as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs in any public or private facility in the state that provides child care out of the home, supervision, or maintenance. “Facility” includes, but is not limited to, family child care homes, foster care homes, and any other facility subject to the Colorado “Child Care Licensing Act” and described in section 26-6-102, C.R.S. “Institutional abuse” shall not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day services, abuse that occurs while such services are provided shall be institutional abuse.

(67) “Intrafamilial abuse”, as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, as defined in subsection (101) of this section, or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child; except that “intrafamilial abuse” shall not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

(68) “Juvenile”, as used in article 2 of this title, means a child as defined in subsection (18) of this section.

(69) “Juvenile community review board”, as used in article 2 of this title, means any board appointed by a board of county commissioners for the purpose of reviewing community placements under article 2 of this title. The board, if practicable, shall include but not be limited to a representative from a county department of social services, a local school district, a local law enforcement agency, a local probation department, a local bar association, the division of youth corrections, and private citizens.

(70) “Juvenile court” or “court” means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(71) “Juvenile delinquent”, as used in article 2 of this title, means a juvenile who has been found guilty of a delinquent act.

(71.5) “Kinship adoption”, as used in part 2 of article 5 of this title, means an adoption of a child by a relative of the child and such relative's spouse, as required under section 19-5-202(3), who:

(a) Is either a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin; and

(b) Has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title.

(72) “Law enforcement officer” means a peace officer, as described in section 16-2.5-101, C.R.S.

(73)(a) “Legal custody” means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. “Legal custody” may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in section 22-1-102(2)(b), C.R.S., guardianship shall be in the person to whom legal custody has been granted by the court.

(73.5)(a) “Legal representative”, as used in sections 19-5-304 and 19-5-305, means the person designated by a court to act on behalf of any person described in section 19-5-304(1)(b)(I) or 19-5-305(2).

(b) For purposes of the term “legal representative”, as used in section 19-5-304 and 19-5-305 and as defined in paragraph (a) of this subsection (73.5), “legal guardian” shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such

governmental entity.

(74) “Local law enforcement agency”, as used in part 3 of article 3 of this title, means a police department in incorporated municipalities or the office of the county sheriff.

(75) “Locating” means engaging in the process of searching for or seeking out.

(76) “Mental health hospital placement prescreening” means a face-to-face mental health examination, conducted by a mental health professional, to determine whether a child should be placed in a facility for evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S., and may include consultation with other mental health professionals and review of all available records on the child.

(77) “Mental health professional” means a person licensed to practice medicine or psychology in this state or any person on the staff of a facility designated by the executive director of the department of human services for seventy-two-hour treatment and evaluation authorized by the facility to do mental health hospital placement prescreenings and under the supervision of a person licensed to practice medicine or psychology in this state.

(77.5) “Need to know”, as used in section 19-1-303, means agencies or individuals who need access to certain information for the care, treatment, supervision, or protection of a child.

(78) “Neglect”, as used in part 3 of article 3 of this title, means acts that can reasonably be construed to fall under the definition of child abuse or neglect as defined in subsection (1) of this section.

(78.5) “Newborn child” means a child who is less than seventy-two hours old.

(79) “Nongovernmental agency”, as used in section 19-2-303, means any person, private nonprofit agency, corporation, association, or other nongovernmental agency.

(80) “Nonidentifying information”, as used in part 4 of article 5 of this title, means information that does not disclose the name, address, place of employment, or any other material information that would lead to the identification of the birth parents and that includes, but is not limited to, the following:

- (a) The physical description of the birth parents;
- (b) The educational background of the birth parents;
- (c) The occupation of the birth parents;
- (d) Genetic information about the birth family;
- (e) Medical information about the adult adoptee's birth;
- (f) Social information about the birth parents;
- (g) The placement history of the adoptee.

(81) “Nonpublic agency interstate and foreign adoption”, as used in section 19-5-205.5, means an interstate or foreign adoption that is handled by a private, licensed child placement agency.

(82)(a) “Parent” means either a natural parent of a child, as may be established pursuant to article 4 of this title, or a parent by adoption.

(b) “Parent”, as used in sections 19-1-114, 19-2-514, and 19-2-515, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, “parent” does not include a person whose parental rights have been terminated pursuant to the provisions of this title or the parent of an emancipated minor.

(83) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(83.5) “Permanency hearing” means a hearing in which the permanency plan for a child in foster care is determined by the court.

(84) “Physical custodian”, as used in section 19-2-511, means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

(85) “Placement out of the home” means placement for twenty-four-hour residential care in any facility or center operated or licensed by the department of human services, but the term does not include any placement that is paid for totally by private moneys or any placement in a home for the purposes of adoption in accordance with section 19-5-205. “Placement out of the home” may be voluntary or court-ordered. “Placement out of the home” includes independent living.

(85.5)(a) “Post-adoption record”, as used in part 3 of article 5 of this title, means information contained in the files subsequent to the completion of an adoption proceeding.

(b) The post-adoption record may contain information concerning, but not limited to:

(I) The written inquiries from persons requesting access to records;

(II) The search efforts of the confidential intermediary;

(III) The response, if any, to those search efforts by the persons sought;

(IV) Any updated medical information gathered pursuant to part 3 of article 5 of this title; and

(V) Any personal identifying information concerning any persons subject to the provisions of part 3 of article 5 of this title.

(86) “Prevention program”, as used in article 3.5 of this title, means a program of direct child abuse prevention services to a child, parent, or guardian and includes research or education programs related to the prevention of child abuse. Such a prevention program may be classified as a primary prevention program when it is available to the community on a voluntary basis and as a secondary prevention program when it is directed toward groups of individuals who have been identified as high risk.

(87) “Protective supervision” means a legal status created by court order under which the child is permitted to remain in the child's home or is placed with a relative or other suitable person and supervision and assistance is provided by the court, department of human services, or other agency designated by the court.

(87.5) “Public adoption”, as used in part 2 of article 5 of this title, means an adoption involving a child who is in the legal custody and guardianship of the county department of social services that has the right to consent to adoption for that child.

(88) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(89) “Reasonable efforts”, as used in articles 1, 2, and 3 of this title, means the exercise of diligence and care throughout the state of Colorado for children who are in out-of-home placement, or are at imminent risk of out-of-home placement. In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family, as described in section 19-3-208, or whether it is appropriate to find and finalize an alternative permanent plan for a child, and in making reasonable efforts, the child's health and safety shall be the paramount concern. Services provided by a county or city and county in accordance with section 19-3-208 are deemed to meet the reasonable effort standard described in this subsection (89). Nothing in this subsection (89) shall be construed to conflict with federal law.

(90) “Receiving center”, as used in article 2 of this title, means a facility used to provide temporary detention and care for juveniles by the department of human services pending placement in a training school, camp, or other facility.

(91) “Recipient”, as used in article 3.5 of this title, means and is limited to a nonprofit or public organization that receives a grant from the trust fund created in section 19-3.5-106.

(91.5) “Record”, as used in section 19-4-106, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(91.7) “Register of actions” means those portions of the electronic case management system necessary to carry out a statutory purpose or the duties of a court appointment.

(92) “Residential community placement”, as used in article 2 of this title, means any placement for residential purposes permitted under this title except in an institutional facility directly operated by, or a secure facility under contract with, the department of human services and except while a juvenile is under the jurisdiction of the juvenile parole board.

(93) “Residual parental rights and responsibilities”, as used in article 3 of this title, means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable parenting time unless restricted by the court, and the right to determine the child's religious affiliation.

(94) “Responsible person”, as used in part 3 of article 3 of this title, means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(94.1) “Restorative justice” means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(94.2) “Reunited parties”, as used in section 19-5-305, means any two persons who qualify as and meet any specified requirements for parties under the list of individuals in section 19-5-304(1)(b)(I).

(94.3) “School”, as used in sections 19-1-303 and 19-1-304, means a public or parochial or other nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. “Basic academic education” has the same meaning as set forth in section 22-33-104(2)(b), C.R.S.

(94.5) “Screening team” means the person or persons designated, pursuant to rule 3.7 of the Colorado rules of juvenile procedure, by the chief judge in each judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court to make recommendations to the juvenile court concerning whether a juvenile taken into temporary custody should be released or admitted to a detention or shelter facility pursuant to section 19-2-508.

(95) “Sentencing hearing”, as used in article 2 of this title, means a hearing to determine what sentence shall be imposed on a juvenile delinquent or what other order of disposition shall be made concerning a juvenile delinquent, including commitment. Such hearing may be part of the proceeding that includes the adjudicatory trial, or it may be held at a time subsequent to the adjudicatory trial.

(96) “Services”, as used in section 19-2-303, may include, but is not limited to, provision of diagnostic needs assessment, general counseling and counseling during a crisis situation, specialized tutoring, job training and placement, restitution programs, community service, constructive recreational activities, day reporting and day treatment programs, and follow-up activities.

(97) “Sexual conduct”, as used in section 19-3-304(2.5), means any of the following:

- (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- (b) Penetration of the vagina or rectum by any object;
- (c) Masturbation;
- (d) Sexual sadomasochistic abuse.

(98) “Shelter” means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(98.5) “Sibling group”, as used in article 3 and article 5 of this title, means biological siblings who have been raised together or have lived together.

(99) “Special county attorney”, as used in article 3 of this title, means an attorney hired by a county attorney or city attorney of a city and county or hired by a county department of social services with the concurrence of the county attorney or city attorney of a city and county to prosecute dependency and neglect cases.

(100) “Special respondent”, as used in article 3 of this title, means any person who is not a parent, guardian, or legal custodian and who is involuntarily joined as a party in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan.

(101) “Spousal equivalent” means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

(101.5) “Staff secure facility” means a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including but not limited to education and treatment, are provided on site. A staff secure facility may or may not be a locked facility.

(101.7) “Standardized mental illness screening” means the mental illness screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102, C.R.S.

(102) “State board”, as used in part 3 of article 3 of this title, means the state board of human services.

(103) “State department”, as used in section 19-3-211, part 3 of article 3 of this title, and article 3.3 of this title, means the department of human services created by section 24-1-120, C.R.S.

(103.5) “State registrar” means the state registrar of vital statistics in the department of public health and environment.

(103.7) “Status offense” shall have the same meaning as is defined in federal law in 28 CFR 31.304, as amended.

(104) “Stepparent” means a person who is married to a parent of a child but who has not adopted the child.

(105) “Technical violation”, as used in section 19-2-803, means a reasonable, good faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good faith mistake, or a court precedent that is later overruled.

(106) “Temporary holding facility” means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders.

(107) “Termination of the parent-child legal relationship”, as used in articles 3 and 5 of this title, means the permanent elimination by court order of all parental rights and duties, including residual

parental rights and responsibilities, as provided in section 19-3-608.

(108) “Third-party abuse”, as used in part 3 of article 3 of this title, means a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, as defined in subsection (101) of this section, or any other person not included in the definition of intrafamilial abuse, as defined in subsection (67) of this section.

(109) “Training school”, as used in article 2 of this title, means an institution providing care, education, treatment, and rehabilitation for juveniles in a closed setting and includes a regional center established in part 3 of article 10.5 of title 27, C.R.S.

(110) “Trust fund”, as used in article 3.5 of this title, means the Colorado children's trust fund created in section 19-3.5-106.

(111) “Unfounded report”, as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is not supported by a preponderance of the evidence.

(111.5) “Updated medical history statement” means a written narrative statement dated and signed by a birth parent about the medical history of the birth parent or other biological relatives of the adoptee that can be voluntarily submitted by the birth parent to the state registrar for future disclosure to the birth parent's adult child who is an adult adoptee or an adult descendant of the adoptee or legal representative of such person in accordance with the provisions of section 19-5-305(1.5).

(112) “Victim”, as used in article 2 of this title, means the party immediately and directly aggrieved by the juvenile, that party's spouse, the party's parent, sibling, or child who is living with the party, a victim compensation board that has paid a victim compensation claim, a person or entity who has suffered losses because of a contractual relationship with such party, including, but not limited to, an insurer, or because of liability under section 14-6-110, C.R.S., or, in the absence of any of the above, the state.

### **COLO. REV. STAT. ANN. § 19-3-102 (2012). Neglected or dependent child**

(1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his or her welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;



(e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;

(g) The child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

(2) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and

(b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and

(c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.

**COLO. REV. STAT. ANN. § 19-3-103 (2012). Child not neglected--when**

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

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

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

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

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

**COLO. REV. STAT. ANN. § 19-3-604 (2012). Criteria for termination**

(1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

(a) That the child has been adjudicated dependent or neglected and has been abandoned by the child's parent or parents as follows:

(I) That the parent or parents have surrendered physical custody of the child for a period of six months or more and have not manifested during such period the firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child except in cases when voluntary placement is renewable under section 19-1-115(8)(a);

(II) That the identity of the parent of the child is unknown and has been unknown for three months or more and that reasonable efforts to identify and locate the parent in accordance with section 19-3-603 have failed;

(b) That the child is adjudicated dependent or neglected and the court finds that no appropriate treatment plan can be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child;

(II) A single incident resulting in serious bodily injury or disfigurement of the child;

(III) Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501(2), the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected and the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;

(IV) Serious bodily injury or death of a sibling due to proven parental abuse or neglect;

(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

(c) That the child is adjudicated dependent or neglected and all of the following exist:

(I) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful or that the court has previously found, pursuant to section 19-3-508(1)(e), that an appropriate treatment plan could not be devised. In a county designated pursuant to section 19-1-123, if a child is under six years of age at the time a petition is filed in accordance with section 19-3-501(2), no parent or parents shall be found to be in reasonable compliance with or to have been successful at a court-approved treatment plan when:

(A) The parent has not attended visitations with the child as set forth in the treatment plan, unless good cause can be shown for failing to visit; or

(B) The parent exhibits the same problems addressed in the treatment plan without adequate improvement, including but not limited to improvement in the relationship with the child, and is unable or unwilling to provide nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions despite earlier intervention and treatment for the family. The court may receive testimony regarding the family's progress under the treatment plan from the child's physician or therapist, foster parent, educational or religious teachers, CASA volunteer, or caseworker.

(II) That the parent is unfit; and

(III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Any one of the bases for a finding of parental unfitness set forth in paragraph (b) of subsection (1) of this section;

(b) Conduct towards the child of a physically or sexually abusive nature;

(c) History of violent behavior;

(d) A single incident of life-threatening or serious bodily injury or disfigurement of the child;

(e) Excessive use of intoxicating liquors or controlled substances, as defined in section 12-22-303(7), C.R.S., which affects the ability to care and provide for the child;

(f) Neglect of the child;

(g) Injury or death of a sibling due to proven parental abuse or neglect, murder, voluntary manslaughter, or circumstances in which a parent aided, abetted, or attempted the commission of or conspired or solicited to commit murder of a child's sibling;

(h) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents;

(i) That any parent who is a named respondent in the termination proceeding has had prior involvement with the department of human services concerning an incident of abuse or neglect involving the child and a subsequent incident of abuse or neglect occurs;

(j) Whether a parent committed felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(k) That the child has been in foster care under the responsibility of the county department for fifteen of the most recent twenty-two months, unless:

(I) The child is placed with a relative of the child;

(II) The county department or a state agency has documented in the case plan, which shall be available for court review, that filing such a motion would not be in the best interests of the child;

(III) Where required to make reasonable efforts, services identified as necessary for the safe return of the child to the child's home have not been provided to the family consistent with the time period in the case plan; or

(IV) The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent;

(l) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under this article or comparable proceedings under the laws of another state or the federal government;

(m) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this article or section 19-5-105 or comparable proceedings under the laws of another state or the federal government.

(3) In considering the termination of the parent-child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. For the purpose of determining termination of the parent-child legal relationship, written

reports and other materials relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or any other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

## **CONNECTICUT**

### **CONN. GEN. STAT. ANN. § 17a-101g (2011). Classification and evaluation of reports. Determination of abuse or neglect of child. Investigation. Notice, entry of recommended finding. Referral to local law enforcement authority. Home visit. Removal of child in imminent risk of harm**

<Text of subsec. (a) as amended by 2011, P.A. 11-93, § 16.>

(a) Upon receiving a report of child abuse or neglect, as provided in sections 17a-101a to 17a-101c, inclusive, or section 17a-103, in which the alleged perpetrator is (1) a person responsible for such child's health, welfare or care, (2) a person given access to such child by such responsible person, or (3) a person entrusted with the care of a child, the Commissioner of Children and Families, or the commissioner's designee, shall cause the report to be classified and evaluated immediately. If the report contains sufficient information to warrant an investigation, the commissioner shall make the commissioner's best efforts to commence an investigation of a report concerning an imminent risk of physical harm to a child or other emergency within two hours of receipt of the report and shall commence an investigation of all other reports within seventy-two hours of receipt of the report. If the alleged perpetrator is a school employee, as defined in section 53a-65, or is employed by an institution or facility licensed or approved by the state to provide care for children, the department shall notify the Department of Education or the state agency that has issued such license or approval to the institution or facility of the report and the commencement of an investigation by the Commissioner of Children and Families. The department shall complete any such investigation not later than forty-five calendar days after the date of receipt of the report. If the report is a report of child abuse or neglect in which the alleged perpetrator is not a person specified in subdivision (1), (2) or (3) of this subsection, the Commissioner of Children and Families shall refer the report to the appropriate local law enforcement authority for the town in which the child resides or in which the alleged abuse or neglect occurred.

<Text of subsec. (a) as amended by 2011, P.A. 11-240, § 1.>

(a) Upon receiving a report of child abuse or neglect, as provided in sections 17a-101a to 17a-101c, inclusive, or section 17a-103, in which the alleged perpetrator is (1) a person responsible for such child's health, welfare or care, (2) a person given access to such child by such responsible person, or (3) a person entrusted with the care of a child, the Commissioner of Children and Families, or the commissioner's designee, shall cause the report to be classified and evaluated immediately. If the report contains sufficient information to warrant an investigation, the commissioner shall make the commissioner's best efforts to commence an investigation of a report concerning an imminent risk of physical harm to a child or other emergency within two hours of receipt of the report and shall commence an investigation of all other reports within seventy-two hours of receipt of the report. A

report classified by the commissioner, or the commissioner's designee, as lower risk may be referred for family assessment and services pursuant to subsection (g) of this section. Any such report may thereafter be referred for standard child protective services if safety concerns for the child become evident. A report referred for standard child protective services may be referred for family assessment and services at any time if the department determines there is a lower risk to the child. The department shall complete any such investigation not later than forty-five calendar days after the date of receipt of the report. If the report is a report of child abuse or neglect in which the alleged perpetrator is not a person specified in subdivision (1), (2) or (3) of this subsection, the Commissioner of Children and Families shall refer the report to the appropriate local law enforcement authority for the town in which the child resides or in which the alleged abuse or neglect occurred.

(b) The investigation shall include a home visit at which the child and any siblings are observed, if appropriate, a determination of the nature, extent and cause or causes of the reported abuse or neglect, a determination of the person or persons suspected to be responsible for such abuse or neglect, the name, age and condition of other children residing in the same household and an evaluation of the parents and the home. The report of such investigation shall be in writing. The investigation shall also include, but not be limited to, a review of criminal conviction information concerning the person or persons alleged to be responsible for such abuse or neglect and previous allegations of abuse or neglect relating to the child or other children residing in the household or relating to family violence. After an investigation into a report of abuse or neglect has been completed, the commissioner shall determine, based upon a standard of reasonable cause, whether a child has been abused or neglected, as defined in section 46b-120. If the commissioner determines that abuse or neglect has occurred, the commissioner shall also determine whether: (1) There is an identifiable person responsible for such abuse or neglect; and (2) such identifiable person poses a risk to the health, safety or well-being of children and should be recommended by the commissioner for placement on the child abuse and neglect registry established pursuant to section 17a-101k. If the commissioner has made the determinations in subdivisions (1) and (2) of this subsection, the commissioner shall issue notice of a recommended finding to the person suspected to be responsible for such abuse or neglect in accordance with section 17a-101k.

(c) Except as provided in subsection (d) of this section, no entry of the recommended finding shall be made on the child abuse or neglect registry and no information concerning the finding shall be disclosed by the commissioner pursuant to a check of the child abuse or neglect registry or request for information by a public or private entity for employment, licensure, or reimbursement for child care purposes pursuant to programs administered by the Department of Social Services or pursuant to any other general statute that requires a check of the child abuse or neglect registry until the exhaustion or waiver of all administrative appeals available to the person suspected to be responsible for the abuse or neglect, as provided in section 17a-101k.

(d) If the child abuse or neglect resulted in or involves (1) the death of a child; (2) the risk of serious physical injury or emotional harm of a child; (3) the serious physical harm of a child; (4) the arrest of a person due to abuse or neglect of a child; (5) a petition filed by the commissioner pursuant to section 17a-112 or 46b-129; or (6) sexual abuse of a child, entry of the recommended finding may be made on the child abuse or neglect registry and information concerning the finding may be disclosed by the commissioner pursuant to a check of the child abuse or neglect registry or request for information by a public or private entity for employment, licensure, or reimbursement for child care purposes pursuant to programs administered by the Department of Social Services or pursuant to any other general statute that requires a check of the child abuse or neglect registry, prior to the exhaustion or waiver of all administrative appeals available to the person suspected to be responsible

for the abuse or neglect as provided in section 17a-101k.

(e) If the Commissioner of Children and Families, or the commissioner's designee, has probable cause to believe that the child or any other child in the household is in imminent risk of physical harm from the child's surroundings and that immediate removal from such surroundings is necessary to ensure the child's safety, the commissioner, or the commissioner's designee, shall authorize any employee of the department or any law enforcement officer to remove the child and any other child similarly situated from such surroundings without the consent of the child's parent or guardian. The commissioner shall record in writing the reasons for such removal and include such record with the report of the investigation conducted under subsection (b) of this section.

(f) The removal of a child pursuant to subsection (e) of this section shall not exceed ninety-six hours. During the period of such removal, the commissioner, or the commissioner's designee, shall provide the child with all necessary care, including medical care, which may include an examination by a physician or mental health professional with or without the consent of the child's parents, guardian or other person responsible for the child's care, provided reasonable attempts have been made to obtain consent of the child's parents or guardian or other person responsible for the care of such child. During the course of a medical examination, a physician may perform diagnostic tests and procedures necessary for the detection of child abuse or neglect. If the child is not returned home within such ninety-six-hour period, with or without protective services, the department shall proceed in accordance with section 46b-129.

(g) (1) Notwithstanding the provisions of subsections (a) to (f), inclusive, of this section, the commissioner may establish a program of differential response to reports of child abuse and neglect whereby the report may be referred to appropriate community providers for family assessment and services without an investigation or at any time during an investigation, provided there has been an initial safety assessment of the circumstances of a family and child and criminal background checks have been performed on all adults involved in the report.

(2) The commissioner may adopt regulations in accordance with the provisions of chapter 54 [FN1] to establish a method for the department to monitor the progress of the child and family referred to a community provider pursuant to subdivision (1) of this subsection and to set standards for reopening an investigation pursuant to this section.

(3) Consistent with the provisions of section 17a-28, the department shall disclose all relevant information in its possession concerning the child and family, including prior child protection activity, to each provider to whom a report has been referred for use by the provider in the assessment, diagnosis and treatment of unique needs of the family and the prevention of future reports. Each provider who has received a report of child abuse or neglect referred pursuant to this subsection shall disclose to the department, consistent with the provisions of section 17a-28, all relevant information gathered during assessment, diagnosis and treatment of the child and family. The department may use such information solely to monitor and ensure the continued safety and well-being of the child or children.

**CONN. GEN. STAT. ANN. § 17a-104 (2011). Treatment by Christian Science practitioner**

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

**CONN. GEN. STAT. ANN. § 17a-112 (2011). Termination of parental rights of child committed to commissioner. Cooperative postadoption agreements. Placement of child from another state. Interstate Compact on the Placement of Children**

(a) In respect to any child in the custody of the Commissioner of Children and Families in accordance with section 46b-129, either the commissioner, or the attorney who represented such child in a pending or prior proceeding, or an attorney appointed by the Superior Court on its own motion, or an attorney retained by such child after attaining the age of fourteen, may petition the court for the termination of parental rights with reference to such child. The petition shall be in the form and contain the information set forth in subsection (b) of section 45a-715, and be subject to the provisions of subsection (c) of said section. If a petition indicates that either or both parents consent to the termination of their parental rights, or if at any time following the filing of a petition and before the entry of a decree, a parent consents to the termination of the parent's parental rights, each consenting parent shall acknowledge such consent on a form promulgated by the Office of the Chief Court Administrator evidencing that the parent has voluntarily and knowingly consented to the termination of such parental rights. No consent to termination by a mother shall be executed within forty-eight hours immediately after the birth of such mother's child. A parent who is a minor shall have the right to consent to termination of parental rights and such consent shall not be voidable by reason of such minority. A guardian ad litem shall be appointed by the court to assure that such minor parent is giving an informed and voluntary consent.

(b) Either or both birth parents and an intended adoptive parent may enter into a cooperative postadoption agreement regarding communication or contact between either or both birth parents and the adopted child. Such an agreement may be entered into if: (1) The child is in the custody of the Department of Children and Families; (2) an order terminating parental rights has not yet been entered; and (3) either or both birth parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights. The postadoption agreement shall be applicable only to a birth parent who is a party to the agreement. Such agreement shall be in addition to those under common law. Counsel for the child and any guardian ad litem for the child may be heard on the proposed cooperative postadoption agreement. There shall be no presumption of communication or contact between the birth parents and an intended adoptive parent in the absence of a cooperative postadoption agreement.

(c) If the Superior Court determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order, stating the nature and frequency of the communication or contact. A court may grant postadoption communication or contact privileges if: (1) Each intended adoptive parent consents to the granting of communication or contact privileges; (2) the intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court; (3) consent to postadoption communication or contact is obtained from the child, if the child is at least twelve years of age; and (4) the cooperative postadoption agreement is approved by the court.

(d) A cooperative postadoption agreement shall contain the following: (1) An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement; and (2) an acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek to enforce the cooperative postadoption agreement.

(e) The terms of a cooperative postadoption agreement may include the following: (1) Provision for communication between the child and either or both birth parents; (2) provision for future contact



between either or both birth parents and the child or an adoptive parent; and (3) maintenance of medical history of either or both birth parents who are parties to the agreement.

(f) The order approving a cooperative postadoption agreement shall be made part of the final order terminating parental rights. The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption agreement. Such an agreement shall not affect the ability of the adoptive parents and the child to change their residence within or outside this state.

(g) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to change or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute and allocate any cost for such mediation or dispute resolution proceedings.

(h) An adoptive parent, guardian ad litem for the child or the court, on its own motion, may, at any time, petition for review of any order entered pursuant to subsection (c) of this section, if the petitioner alleges that such action would be in the best interests of the child. The court may modify or terminate such orders as the court deems to be in the best interest of the adopted child.

(i) The Superior Court upon hearing and notice, as provided in sections 45a-716 and 45a-717, may grant a petition for termination of parental rights based on consent filed pursuant to this section if it finds that (1) upon clear and convincing evidence, the termination is in the best interest of the child, and (2) such parent has voluntarily and knowingly consented to termination of the parent's parental rights with respect to such child. If the court denies a petition for termination of parental rights based on consent, it may refer the matter to an agency to assess the needs of the child, the care the child is receiving and the plan of the parent for the child. Consent for the termination of the parental rights of one parent does not diminish the parental rights of the other parent of the child, nor does it relieve the other parent of the duty to support the child.

(j) The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child; (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child; (C) the child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control

necessary for the child's physical, educational, moral or emotional well-being, except that nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights; (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child; (E) the parent of a child under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families; (F) the parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent; or (G) the parent was convicted as an adult or a delinquent by a court of competent jurisdiction of a sexual assault resulting in the conception of the child, except a conviction for a violation of section 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction.

(k) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, [FN1] as amended; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.

(l) Any petition brought by the Commissioner of Children and Families to the Superior Court, pursuant to subsection (a) of section 46b-129, may be accompanied by or, upon motion by the petitioner, consolidated with a petition for termination of parental rights filed in accordance with this section with respect to such child. Notice of the hearing on such petitions shall be given in accordance with sections 45a-716 and 45a-717. The Superior Court, after hearing, in accordance with the provisions of subsection (i) or (j) of this section, may, in lieu of granting the petition filed pursuant to section 46b-129, grant the petition for termination of parental rights as provided in section 45a-717.

(m) Nothing contained in this section and sections 17a-113, 45a-187, 45a-606, 45a-607, 45a-707 to 45a-709, inclusive, 45a-715 to 45a-718, inclusive, 45a-724, 45a-725, 45a-727, 45a-733, 45a-754 and 52-231a shall negate the right of the Commissioner of Children and Families to subsequently petition the Superior Court for revocation of a commitment of a child as to whom parental rights have been terminated in accordance with the provisions of this section. The Superior Court may appoint a statutory parent at any time after it has terminated parental rights if the petitioner so requests.

(n) If the parental rights of only one parent are terminated, the remaining parent shall be the sole parent and, unless otherwise provided by law, guardian of the person.

(o) In the case where termination of parental rights is granted, the guardian of the person or statutory parent shall report to the court not later than thirty days after the date judgment is entered on a case plan, as defined by the federal Adoption Assistance and Child Welfare Act of 1980, for the child which shall include measurable objectives and time schedules. At least every three months thereafter, such guardian or statutory parent shall make a report to the court on the progress made on implementation of the plan. The court may convene a hearing upon the filing of a report and shall convene and conduct a permanency hearing pursuant to subsection (k) of section 46b-129 for the purpose of reviewing the permanency plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held pursuant to subsection (k) of section 46b-129, whichever is earlier, and at least once a year thereafter while the child remains in the custody of the Commissioner of Children and Families. For children where the commissioner has determined that adoption is appropriate, the report on the implementation of the plan shall include a description of the reasonable efforts the department is taking to promote and expedite the adoptive placement and to finalize the adoption of the child, including documentation of child specific recruitment efforts. At such hearing, the court shall determine whether the department has made reasonable efforts to achieve the permanency plan. If the court determines that the department has not made reasonable efforts to place a child in an adoptive placement or that reasonable efforts have not resulted in the placement of the child, the court may order the Department of Children and Families, within available appropriations, to contract with a child-placing agency to arrange for the adoption of the child. The department, as statutory parent, shall continue to provide care and services for the child while a child-placing agency is arranging for the adoption of the child.

(p) The provisions of section 17a-152, regarding placement of a child from another state, and the provisions of section 17a-175, regarding the Interstate Compact on the Placement of Children, shall apply to placements pursuant to this section.

(q) The provisions of this section shall be liberally construed in the best interests of any child for whom a petition under this section has been filed.

**CONN. GEN. STAT. ANN. § 45a-715 (2011). Petition to terminate parental rights.  
Cooperative postadoption agreements**

(a) Any of the following persons may petition the Court of Probate to terminate parental rights of all persons who may have parental rights regarding any minor child or for the termination of parental rights of only one parent provided the application so states: (1) Either or both parents, including a parent who is a minor; (2) the guardian of the child; (3) the selectmen of any town having charge of any foundling child; (4) a duly authorized officer of any child care facility or child-placing agency or organization or any children's home or similar institution approved by the Commissioner of Children and Families; (5) a relative of the child if the parent or parents have abandoned or deserted the child; (6) the Commissioner of Children and Families, provided the custodial parent of such minor child has

consented to the termination of parental rights and the child has not been committed to the commissioner, and no application for commitment has been made; provided in any case hereunder where the child with respect to whom the petition is brought has attained the age of twelve, the child shall join in the petition.

(b) A petition for termination of parental rights shall be entitled “In the interest of .... (Name of child), a person under the age of eighteen years”, and shall set forth with specificity: (1) The name, sex, date and place of birth, and present address of the child; (2) the name and address of the petitioner, and the nature of the relationship between the petitioner and the child; (3) the names, dates of birth and addresses of the parents of the child, if known, including the name of any putative father named by the mother, and the tribe and reservation of an American Indian parent; (4) if the parent of the child is a minor, the names and addresses of the parents or guardian of the person of such minor; (5) the names and addresses of: (A) The guardian of the person of the child; (B) any guardians ad litem appointed in a prior proceeding; (C) the tribe and reservation of an American Indian child; and (D) the child-placing agency which placed the child in his current placement; (6) the facts upon which termination is sought, the legal grounds authorizing termination, the effects of a termination decree and the basis for the jurisdiction of the court; (7) the name of the persons or agencies which have agreed to accept custody or guardianship of the child's person upon disposition.

(c) If the information required under subdivisions (2) and (6) of subsection (b) of this section is not stated, the petition shall be dismissed. If any other facts required under subdivision (1), (3), (4), (5) or (7) of subsection (b) of this section are not known or cannot be ascertained by the petitioner, he shall so state in the petition. If the whereabouts of either parent or the putative father named under subdivision (3) of subsection (b) of this section are unknown, the petitioner shall diligently search for any such parent or putative father. The petitioner shall file an affidavit with the petition indicating the efforts used to locate the parent or putative father.

(d) If a petition indicates that either or both parents consent to the termination of their parental rights, or if at any time following the filing of a petition and before the entry of a decree a parent consents to the termination of his parental rights, each consenting parent shall acknowledge such consent on a form promulgated by the Office of the Chief Court Administrator evidencing to the satisfaction of the court that the parent has voluntarily and knowingly consented to the termination of his parental rights. No consent to termination by a mother shall be executed within forty-eight hours immediately after the birth of her child. A parent who is a minor shall have the right to consent to termination of parental rights and such consent shall not be voidable by reason of such minority. A guardian ad litem shall be appointed by the court to assure that such minor parent is giving an informed and voluntary consent.

(e) A petition under this section shall be filed in the court of probate for the district in which the petitioner or the child resides or, in the case of a minor who is under the guardianship of any child care facility or child-placing agency, in the court of probate for the district in which the main office or any local office of the agency is located. If the petition is filed with respect to a child born out of wedlock, the petition shall state whether there is a putative father to whom notice shall be given under subdivision (2) of subsection (b) of section 45a-716.

(f) If any petitioner under subsection (a) is a minor or incompetent, the guardian ad litem, appointed by the court in accordance with section 45a-708, must approve the petition in writing, before action by the court.

(g) Before a hearing on the merits in any case in which a petition for termination of parental rights is contested in a court of probate, the court of probate shall, on the motion of any legal party except the petitioner, or may on its own motion or that of the petitioner, under rules adopted by the judges of the Supreme Court, transfer the case to the Superior Court. In addition to the provisions of this section, the probate court may, on the court's own motion or that of any interested party, transfer any termination of parental rights case to another judge of probate, which judge shall be appointed by the Probate Court Administrator from a panel of qualified probate judges who specialize in children's matters. Such panel shall be proposed by the Probate Court Administrator and approved by the executive committee of the Connecticut Probate Assembly. If the case is transferred, the clerk of the Court of Probate shall transmit to the clerk of the Superior Court, or the probate court to which the case was transferred, the original files and papers in the case. The Superior Court or the probate court to which the case was transferred, upon hearing after notice as provided in sections 45a-716 and 45a-717, may grant the petition as provided in section 45a-717.

(h) Either or both birth parents and an intended adoptive parent may enter into a cooperative postadoption agreement regarding communication or contact between either or both birth parents and the adopted child. Such an agreement may be entered into if: (1) The child is in the custody of the Department of Children and Families; (2) an order terminating parental rights has not yet been entered; and (3) either or both birth parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights. The postadoption agreement shall be applicable only to a birth parent who is a party to the agreement. Such agreement shall be in addition to those under common law. Counsel for the child and any guardian ad litem for the child may be heard on the proposed cooperative postadoption agreement. There shall be no presumption of communication or contact between the birth parents and an intended adoptive parent in the absence of a cooperative postadoption agreement.

(i) If the Court of Probate determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order, stating the nature and frequency of the communication or contact. A court may grant postadoption communication or contact privileges if: (1) Each intended adoptive parent consents to the granting of communication or contact privileges; (2) the intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court; (3) consent to postadoption communication or contact is obtained from the child, if the child is at least twelve years of age; and (4) the cooperative postadoption agreement is approved by the court.

(j) A cooperative postadoption agreement shall contain the following: (1) An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement; and (2) an acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek to enforce the cooperative postadoption agreement.

(k) The terms of a cooperative postadoption agreement may include the following: (1) Provision for communication between the child and either or both birth parents; (2) provision for future contact between either or both birth parents and the child or an adoptive parent; and (3) maintenance of medical history of either or both birth parents who are a party to the agreement.

(l) The order approving a cooperative postadoption agreement shall be made part of the final order terminating parental rights. The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption agreement, nor is the

cooperative postadoption contingent upon the finalization of an adoption. Such an agreement shall not affect the ability of the adoptive parents and the child to change their residence within or outside this state.

(m) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to change or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute and allocate any cost for such mediation or dispute resolution proceedings.

(n) An adoptive parent, guardian ad litem for the child or the court on its own motion may, at any time, petition for review of communication or contact ordered pursuant to subsection (i) of this section, if the adoptive parent believes that the best interests of the child are being compromised. The court may order the communication or contact be terminated, or order such conditions in regard to communication or contact as the court deems to be in the best interest of the adopted child.

**CONN. GEN. STAT. ANN. § 45a-717 (2011). Termination of parental rights. Conduct of hearing. Investigation and report. Grounds for termination**

(a) At the hearing held on any petition for the termination of parental rights filed in the Court of Probate under section 45a-715, or filed in the Superior Court under section 17a-112, or transferred to the Superior Court from the Court of Probate under section 45a-715, any party to whom notice was given shall have the right to appear and be heard with respect to the petition. If a parent who is consenting to the termination of such parent's parental rights appears at the hearing on the petition for termination of parental rights, the court shall explain to the parent the meaning and consequences of termination of parental rights. Nothing in this subsection shall be construed to require the appearance of a consenting parent at the hearing regarding the termination of such parent's parental rights except as otherwise provided by court order.

(b) If a party appears without counsel, the court shall inform such party of the party's right to counsel and upon request, if he or she is unable to pay for counsel, shall appoint counsel to represent such party. No party may waive counsel unless the court has first explained the nature and meaning of a petition for the termination of parental rights. Unless the appointment of counsel is required under section 46b-136, the court may appoint counsel to represent or appear on behalf of any child in a hearing held under this section to speak on behalf of the best interests of the child. If the respondent parent is unable to pay for such respondent's own counsel or if the child or the parent or guardian of the child is unable to pay for the child's counsel, in the case of a Superior Court matter, the reasonable compensation of counsel appointed for the respondent parent or the child shall be established by, and paid from funds appropriated to, the Judicial Department and, in the case of a Probate Court matter, the reasonable compensation of counsel appointed for the respondent parent or the child shall be established by, and paid from funds appropriated to, the Judicial Department, however, in the case of a Probate Court matter, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(c) The court shall, if a claim for paternity has been filed in accordance with section 46b-172a, continue the hearing under the provisions of this section until the claim for paternity is adjudicated, provided the court may combine the hearing on the claim for paternity with the hearing on the

termination of parental rights petition.

(d) Upon finding at the hearing or at any time during the pendency of the petition that reasonable cause exists to warrant an examination, the court, on its own motion or on motion by any party, may order the child to be examined at a suitable place by a physician, psychiatrist or licensed clinical psychologist appointed by the court. The court may also order examination of a parent or custodian whose competency or ability to care for a child before the court is at issue. The expenses of any examination if ordered by the court on its own motion shall be paid for by the petitioner or, if ordered on motion by a party, shall be paid for by the party moving for such an examination unless such party or petitioner is unable to pay such expenses in which case, they shall be paid for by funds appropriated to the Judicial Department, however, in the case of a Probate Court matter, if funds have not been included in the budget of the Judicial Department for such purposes, such expenses shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund. The court may consider the results of the examinations in ruling on the merits of the petition.

(e) (1) The court may, and in any contested case shall, request the Commissioner of Children and Families or any child-placing agency licensed by the commissioner to make an investigation and written report to it, within ninety days from the receipt of such request. The report shall indicate the physical, mental and emotional status of the child and shall contain such facts as may be relevant to the court's determination of whether the proposed termination of parental rights will be in the best interests of the child, including the physical, mental, social and financial condition of the biological parents, and any other factors which the commissioner or such child-placing agency finds relevant to the court's determination of whether the proposed termination will be in the best interests of the child. (2) If such a report has been requested, upon the expiration of such ninety-day period or upon receipt of the report, whichever is earlier, the court shall set a day for a hearing not more than thirty days thereafter. The court shall give reasonable notice of such adjourned hearing to all parties to the first hearing, including the child, if over fourteen years of age, and to such other persons as the court shall deem appropriate. (3) The report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness, if available, and subject himself to examination.

(f) At the adjourned hearing or at the initial hearing where no investigation and report has been requested, the court may approve a petition for termination of parental rights based on consent filed pursuant to this section terminating the parental rights and may appoint a guardian of the person of the child, or if the petitioner requests, the court may appoint a statutory parent, if it finds, upon clear and convincing evidence that (1) the termination is in the best interest of the child and (2) such parent has voluntarily and knowingly consented to termination of the parent's parental rights with respect to such child. If the court denies a petition for termination of parental rights based on consent, it may refer the matter to an agency to assess the needs of the child, the care the child is receiving and the plan of the parent for the child. Consent for the termination of the parental right of one parent does not diminish the parental rights of the other parent of the child nor does it relieve the other parent of the duty to support the child.

(g) At the adjourned hearing or at the initial hearing where no investigation and report has been requested, the court may approve a petition terminating the parental rights and may appoint a guardian of the person of the child, or, if the petitioner requests, the court may appoint a statutory parent, if it finds, upon clear and convincing evidence, that (1) the termination is in the best interest of the child, and (2) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the

child; (B) the child has been denied, by reason of an act or acts of parental commission or omission, including, but not limited to sexual molestation and exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights; (C) there is no ongoing parent-child relationship which is defined as the relationship that ordinarily develops as a result of a parent having met on a continuing, day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of the parent-child relationship would be detrimental to the best interests of the child; (D) the parent of a child who (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and such parent has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child; (E) the parent of a child, under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families; (F) the parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent; or (G) the parent was convicted as an adult or a delinquent by a court of competent jurisdiction of sexual assault resulting in the conception of a child except for a violation of section 53a-71 or 53a-73a provided the court may terminate such parent's parental rights to such child at any time after such conviction.

(h) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by a child-placing agency to facilitate the reunion of the child with the parent; (2) the terms of any applicable court order entered into and agreed upon by any individual or child-placing agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (3) the feelings and emotional ties of the child with respect to the child's parents, any guardian of the child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (4) the age of the child; (5) the efforts the parent has made to adjust such parent's circumstances, conduct or conditions to make it in the best interest of the child to return the child to the parent's home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (6) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.



(i) If the parental rights of only one parent are terminated, the remaining parent shall be sole parent and, unless otherwise provided by law, guardian of the person.

(j) In the case where termination of parental rights is granted, the guardian of the person or statutory parent shall report to the court within thirty days of the date judgment is entered on a case plan, as defined by the federal Adoption Assistance and Child Welfare Act of 1980, [FN1] as amended from time to time, for the child. At least every three months thereafter, such guardian or statutory parent shall make a report to the court on the implementation of the plan. The court may convene a hearing upon the filing of a report and shall convene a hearing for the purpose of reviewing the plan no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held pursuant to subsection (k) of section 46b-129 if the child or youth is in the care and custody of the Commissioner of Children and Families, whichever is earlier, and at least once a year thereafter until such time as any proposed adoption plan has become finalized. If the Commissioner of Children and Families is the statutory parent for the child, at such a hearing the court shall determine whether the department has made reasonable efforts to achieve the permanency plan. In the case where termination of parental rights is granted, the guardian of the person or statutory parent shall obtain the approval of the court prior to placing the child or youth for adoption outside the state. Before ordering or approving such placement, the court shall make findings concerning compliance with the provisions of section 17a-175. Such findings shall include, but not be limited to: (1) A finding that the state has received notice in writing from the receiving state, in accordance with subsection (d) of Article III of section 17a-175, indicating that the proposed placement does not appear contrary to the interests of the child, (2) the court has reviewed such notice, (3) whether or not an interstate compact study or other home study has been completed by the receiving state, and (4) if such a study has been completed, whether the conclusions reached by the receiving state as a result of such study support the placement.

## **DELAWARE**

### **DEL. CODE ANN. tit. 13, § 1101 (2011). Definitions**

(1) “Abandoned” shall be interpreted as referring to a basis for termination of parental rights as described in § 1103(a)(2) of this title.

a. A minor who has not attained 6 months of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has failed to:

1. Make reasonable and consistent payments, in accordance with the respondent's financial means, for support of the minor; and
2. Visit regularly with the minor; and
3. Manifest the ability and willingness to exercise parental responsibilities if, during this time, the minor was not in the physical custody of the other parent.

b. A minor who has not attained 6 months of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has manifested the unwillingness to exercise parental rights and responsibilities, as evidenced by the respondent's placing the minor in

circumstances which leave the minor in substantial risk of injury or death.

c. A minor who has attained 6 months of age at the time a petition for termination of parental rights has been filed, and for whom the respondent, for a period of at least 6 consecutive months immediately preceding the filing of the petition, has failed to:

1. Make reasonable and consistent payments, in accordance with the respondent's financial means, for support of the minor; and
2. Communicate or visit regularly with the minor; and
3. Manifest the ability and willingness to exercise parental responsibilities if, during this time, the minor was not in the physical custody of the other parent.

The respondent's act of abandonment cannot be cured by subsequent conduct. No present intent to abandon the minor need be proved by the petitioner.

(2) "Authorized agency" means any agency duly approved, certified, recognized or licensed by the proper authority of any other state in which that agency is located to place children for adoption.

(3) "Child" means any male or female who has not attained his or her eighteenth birthday.

(4) "Court" shall mean the Family Court of the State.

(5) "Department" means the Department of Services for Children, Youth and Their Families of this State.

(6) "Father" means the biological or adoptive male parent of the child.

(7) "Infant" means any child who is less than 6 months of age.

(8) "Licensed agency" means any agency granted a license by the Department to place children for adoption.

(9) "Mentally incompetent" shall be interpreted as referring to a parent who is unable to discharge parental responsibilities by reason of mental illness, psychopathology, mental retardation or mental deficiency.

(10) "Parental responsibilities" means the care, support and control of the child in a manner that provides for the child's necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of such child.

(11) "Presumed father" means any man who is assumed to be the father of a child in accordance with Chapter 8 of this title.

**DEL. CODE ANN. tit. 13, § 1103 (2011). Grounds for termination of parental rights**

(a) The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be

initiated whenever it appears to be in the child's best interest and that 1 or more of the following grounds exist:

(1) The parent or parents of a child, or the person or persons or organization holding parental rights over such child, desires to relinquish such parental rights for the purpose of adoption;

(2) The child has been abandoned.

a. The Court may order a termination of parental rights based upon abandonment if the Court finds that the following occurred and that the respondent intended to abandon the child:

1. In the case of a minor who has not attained 6 months of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has failed to:

A. Pay reasonable prenatal, natal and postnatal expenses in accordance with the respondent's financial means;

B. Visit regularly with the minor; and

C. Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent;

2. In the case of a minor who has attained 6 months of age at the time a petition for termination of parental rights is filed, the respondent, for a period of at least 6 consecutive months in the year preceding the filing of the petition, has failed to:

A. Communicate or visit regularly with the minor; and

B. Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent; or

3. In the case of a minor who has not attained 6 years of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has manifested the unwillingness to exercise parental rights and responsibilities, as evidenced by the respondent's placing the minor in circumstances which leave the minor in substantial risk of injury or death.

b. In cases in which no finding of intent to abandon has been made, the Court may order a termination of parental rights based upon abandonment if the Court finds that the respondent, for a period of at least 12 consecutive months in the 18 months preceding the filing of the petition, has failed to:

1. Communicate or visit regularly with the minor;

2. File or pursue a pending petition to establish paternity or to establish a right to have contact or visitation with the minor; and

3. Manifest an ability and willingness to assume legal and physical custody of the minor, if during this time, the minor was not in the physical custody of the parent;

and if the Court finds that one of the following grounds exists:

1. If the minor is not in the legal and physical custody of the other parent, the respondent is not able or willing promptly to assume legal and physical custody of the minor, and to pay for the minor's support, in accordance with the respondent's financial means;
2. If the minor is in the legal and physical custody of the other parent and a stepparent, and the stepparent is the prospective adoptive parent, the respondent is not able or willing promptly to establish and maintain contact with the minor and to pay for the minor's support, in accordance with the respondent's financial means;
3. Placing the minor in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minor's conception, the respondent's behavior during the mother's pregnancy or since the minor's birth, or the respondent's behavior with respect to other minors, indicates that the respondent is unfit to maintain a relationship of parent and child with the minor; or
4. Failure to terminate would be detrimental to the minor. In determining whether a failure to termination would be detrimental to the minor, the Court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the minor, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the minor, the age of the minor, the quality of any previous relationship between the respondent and the minor and between the respondent and any other minor children, the duration and suitability of the minor's present custodial environment and the effect of a change of physical custody on the minor.

c. The respondent's act of abandonment cannot be cured by subsequent conduct.

d. Abandonment of a baby as provided in § 907A of Title 16 shall be final 30 days after such abandonment, and such abandonment shall be:

1. The surrendering person's irrevocable consent to the termination of all parental rights, if any, of such person on the ground of abandonment; and
2. The surrendering person's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental rights proceeding involving such child, unless such surrendering person has manifested an intent to exercise parental rights and responsibilities within 30 days of such abandonment.

(3) The parent or parents of the child or any person or persons holding parental rights over such child are found by the Court to be mentally incompetent and, from evidence of 2 qualified psychiatrists selected by the Court, found to be unable to discharge parental responsibilities in the foreseeable future. The Court shall appoint a licensed attorney as guardian ad litem to represent the alleged incompetent in the proceeding; or

(4) The respondent has been found by a court of competent jurisdiction to have:

- a. Committed a felony level offense against the person, as described within subchapter II of Chapter 5 of Title 11, in which the victim was a child; or
- b. Aided or abetted, attempted, conspired or solicited to commit an offense set forth in paragraph (a)(4)a. of this section; or
- c. Committed or attempted to commit the offense of Dealing in Children, as set forth in § 1100 of Title 11; or
- d. Committed the felony level offense of endangering the welfare of a child as set forth in § 1102 of Title 11.

(5) The parent or parents of the child, or any person or persons holding parental rights over the child, are not able, or have failed, to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions are met:

- a. In the case of a child in the care of the Department or a licensed agency:
  - 1. The child has been in the care of the Department or licensed agency for a period of 1 year, or for a period of 6 months in the case of a child who comes into care as an infant, or there is a history of previous placement or placements of this child; or
  - 2. There is a history of neglect, abuse or lack of care of the child or other children by the respondent; or
  - 3. The respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration, except that the Court may consider postconviction conduct of the respondent; or
  - 4. The respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with the respondent's financial means; or
  - 5. Failure to terminate the relationship of parent and child will result in continued emotional instability or physical risk to the child. In making a determination under this paragraph, the Court shall consider all relevant factors, including:
    - A. Whether the conditions that led to the child's placement, or similar conditions of a harmful nature, continue to exist and there appears to be little likelihood that these conditions will be remedied at an early date which would enable the respondent to discharge parental responsibilities so that the child can be returned to the respondent in the near future;
    - B. The respondent's efforts to assert parental rights of the child, and the role of other persons in thwarting the respondent's efforts to assert such rights;
    - C. The respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child or any other children;
    - D. The effect of a change of physical custody on the child; and

- E. The effect of a delay in termination on the chances for a child to be placed for adoption.
- b. In the case of a child in the home of a stepparent, guardian, permanent guardian or blood relative:
1. The child has resided in the home of the stepparent, guardian, permanent guardian or blood relative for a period of at least 1 year, or for a period of 6 months in the case of an infant; and
  2. The Court finds the respondent is incapable of discharging parental responsibilities, and there appears to be little likelihood that the respondent will be able to discharge such parental responsibilities in the near future.
- (6) The respondent's parental rights over a sibling of the child who is the subject of the petition have been involuntarily terminated in a prior proceeding.
- (7) The parent has subjected a child to torture, chronic abuse, sexual abuse, and/or life-threatening abuse.
- (8) A child has suffered unexplained serious physical injury, near death or death under such circumstances as would indicate that such injuries, near death or death resulted from the intentional or reckless conduct or wilful neglect of the parent.
- (b) Unless adoption is contemplated, the termination of 1 parent's rights shall not be granted if the effect will be to leave only 1 parent holding parental rights, unless the Court shall find the continuation of the rights to be terminated will be harmful to the child.
- (c) Nothing in this chapter shall be construed to authorize any court to terminate the rights of a parent to a child, solely because the parent, in good faith, provides for his or her child, in lieu of medical treatment, treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination. However, nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his or her health and welfare.
- (d) The Department is not required to perform, but is not prohibited from performing, reunification and related services as outlined in Chapter 90 of Title 29 when the grounds for termination of parental rights are those stated in paragraph (a)(2), (4), (6), (7) or (8) of this section.

## **DISTRICT OF COLUMBIA**

### **D.C. CODE § 16-2301 (2012). Definitions**

As used in this subchapter-

- (1) The term "Division" means the Family Division of the Superior Court of the District of Columbia. Pursuant to section 16-2301.01, the term "Division" shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.

(1A) “Family Court” means the Family Court of the Superior Court of the District of Columbia.

(2) The term “judge” means a judge assigned to the Family Division of the Superior Court.

(3) The term “child” means an individual who is under 18 years of age, except that the term “child” does not include an individual who is sixteen years of age or older and-

(A) charged by the United States attorney with (i) murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term “child” also includes a person under the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term “minor” means an individual who is under the age of twenty-one years.

(5) The term “adult” means an individual who is twenty-one years of age or older.

(6) The term “delinquent child” means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term “delinquent act” means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term “child in need of supervision” means a child who-

(A)(i) subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9)(A) The term “neglected child” means a child:

(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to

1003;

(ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;

(iii) whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(iv) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care;

(v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;

(vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;

(vii) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(viii) who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;

(ix) in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or

(x) who is regularly exposed to illegal drug-related activity in the home.

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

(C) Subparagraph (A)(viii), (ix), and (x) of this paragraph shall apply as of October 1, 2003.

(10) The term "mentally ill child" means a child who is mentally ill within the meaning of section 21-501.

(11) The term "substantially retarded child" means a child who is substantially retarded within the meaning of section 21-1101 et seq.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian:



- (A) to whom the legal custody of a child has been granted by the order of a court;
  - (B) who is acting in loco parentis; or
  - (C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.
- (13) The term “detention” means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.
- (14) The term “shelter care” means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.
- (15) The term “detention or shelter care hearing” means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.
- (16) The term “factfinding hearing” means a hearing to determine whether the allegations of a petition are true.
- (17) The term “dispositional hearing” means a hearing, after a finding of fact, to determine-
- (A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or
  - (B) what order of disposition should be made in a neglect case.
- (18) The term “probation” means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.
- (19) The term “protective supervision” means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.
- (20) The term “guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to)-
- (A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;
  - (B) the authority and duty of reasonable visitation (except as limited by Division order);
  - (C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term “legal custody” means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes-

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care. A Division order of “legal custody” is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term “residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support.

(23)(A) The term “abused”, when used with reference to a child, means:

(i) infliction of physical or mental injury upon a child;

(ii) sexual abuse or exploitation of a child; or

(iii) negligent treatment or maltreatment of a child.

(B)(i) The term “abused”, when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term “discipline” does not include:

(I) burning, biting, or cutting a child;

(II) striking a child with a closed fist;

(III) inflicting injury to a child by shaking, kicking, or throwing the child;

(IV) nonaccidental injury to a child under the age of 18 months;

(V) interfering with a child's breathing; and

(VI) threatening a child with a dangerous weapon or using such a weapon on a child. For purposes of this provision, the term “dangerous weapon” means a firearm, a knife, or any of the prohibited weapons described in section 22-4514.

(ii) The list in sub-subparagraph (i) of this subparagraph is illustrative of unacceptable discipline and is not intended to be exclusive or exhaustive.

(24) The term “negligent treatment” or “maltreatment” means failure to provide adequate food, clothing, shelter, or medical care, which includes medical neglect, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian.

(25) The term “sexual exploitation” means a parent, guardian, or other custodian allows a child to engage in prostitution as defined in section 2(1) of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; § 22-2701.01), or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; § 22-3101(5)).

(26) The term “parenting classes” means any program which enhances the parenting skills of individuals through providing role models, discussion, training in early childhood development and child psychology, or other instruction designed to strengthen the parent, guardian, or custodian's ability to nurture children.

(27) The term “family counseling” means any psychological or psychiatric or other social service offered by a provider to the parent and 1 or more members of the extended family or the child's guardian or other caretaker of a child who has been adjudicated neglected, delinquent, or in need of supervision. A caretaker is an adult person in whose care a minor has been entrusted by written authorization of the child's parent, guardian, or legal custodian.

(28) The term “entry into foster care” means the earlier of:

(A) The date of the first judicial finding that the child has been neglected; or

(B) The date that is 60 days after the date on which the child is removed from the home.

(29) The term “Agency” means the Child and Family Services Agency established by section 6-2121.01.

(30) The term “physical injury” means bodily harm greater than transient pain or minor temporary marks.

(31) The term “mental injury” means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

(32) The term “sexual abuse” means:

(A) engaging in, or attempting to engage in, a sexual act or sexual contact with a child;

(B) causing or attempting to cause a child to engage in sexually explicit conduct; or

(C) exposing a child to sexually explicit conduct.

(33) The term “sexually explicit conduct” means actual or simulated:

- (A) sexual act;
- (B) sexual contact;
- (C) bestiality;
- (D) masturbation; or
- (E) lascivious exhibition of the genitals, anus, or pubic area.

(34) The term “sexual act” shall have the same meaning as provided in section 101(8) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(8)).

(35) The term “sexual contact” shall have the same meaning as provided in section 101(9) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(9)).

(36) The term “controlled substance” means a drug or chemical substance, or immediate precursor, as set forth in Schedules I through V of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-901.01 et seq.), which has not been prescribed by a physician.

(37) The term “drug-related activity” means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(38) The term “incompetent to proceed” means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(39) The term “psychiatrist” means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

(40) The term “qualified psychologist” means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(41)(A) The term “victim” means any person, organization, partnership, business, corporation, agency or governmental entity:

- (i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

(B) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

(42) The term “immediate family member” means:

(A) the person's parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

(B) any person who maintains or has maintained a romantic relationship, not necessarily including a sexual relationship, with the person; or

(C) any person who has a child in common with the person.

(43) The term “weapons offense” means any violation of any law, rule, or regulation which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device as these terms are defined in section 7-2501.01.

(44) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(45) The term “Superior Court” means the Superior Court of the District of Columbia.

**D.C. CODE § 16-2320 (2012). Disposition of child who is neglected, delinquent, or in need of supervision.**

(a) If a child is found to be neglected, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Permit the child to remain with his or her parent, guardian, or other custodian, subject to such conditions and limitations as the Division may prescribe, including, but not limited to, the following services for the child and his or her parent, guardian, or other custodian:

(A) medical, psychiatric, or other treatment at an appropriate facility under protective supervision;

(B) parenting classes; and

(C) family counseling.

(2) Place the child under protective supervision.

(3) Transfer legal custody to any of the following-

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Mayor of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement likely to be less damaging to the child than the child's own home.

It shall be presumed that it is generally preferable to leave a child in his or her own home.

(4) Commitment of the child for medical, psychiatric, or other treatment at an appropriate facility on an in-patient basis if, at the dispositional hearing provided for in section 16-2317, the Division finds that confinement is necessary to the treatment of the child. A child for whom medical, psychiatric, or other treatment is ordered may petition the Division for review of the order thirty days after treatment under the order has commenced, and, if, after a hearing for the purpose of such review, the original order is affirmed, the child may petition for review thereafter every six months.

(5) The Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child. The Division shall have the authority to (i) order any public agency of the District of Columbia to provide any service the Division determines is needed and which is within such agency's legal authority and (ii) order any private agency receiving public funds for services to families or children to provide any such services when the Division deems it is in the best interests of the child and within the scope of the legal obligations of the agency.

(6) Terminate the parent and child relationship for the purpose of seeking an adoptive placement for the child pursuant to subchapter III of this chapter.

(b) Unless a child found neglected is also found to be delinquent, he shall not be committed to, or confined in, an institution for delinquent children.

(c) If a child is found to be delinquent or in need of supervision, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Any disposition authorized by subsection (a) of this section (other than paragraphs (3)(A) and (5) thereof).

(2) Transfer of legal custody to a public agency for the care of delinquent children.

(3) Probation under such conditions and limitations as the Division may prescribe, including but not limited to the completion of parenting classes or family counseling in cases where either or both

was ordered by the Division.

(c-1) The Division shall order any child between the ages of 14 and 18 years who is found to be delinquent or in need of supervision to perform a minimum of 90 hours of community service with an agency of the District government or a non-profit or community service organization in accordance with section 24-904(a).

(c-2) When determining what disposition shall be ordered under subsection (c) of this section, the Division shall consider any victim impact statement submitted to the Division and the victim, or the immediate family members of the victim when the victim is a child or when the victim is deceased or incapacitated, shall have the right to make a statement at the disposition hearing. The absence of the victim at disposition shall not preclude the court from holding the hearing.

(c-3) When determining what disposition shall be ordered under subsection (a) of this section, the Division may consider a child's failure to appear at a scheduled hearing.

(d) No child found in need of supervision, as defined by section 16-2301(8), unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children, but shall be released to the child's parent, guardian, or custodian, unless the return of the child will result in placement in, or return to, an abusive situation, or the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.

(e) No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders.

(f) In its dispositional order for a child adjudicated neglected, the Division shall:

(1) Address the matters set forth in section 16-2319(c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within 30 days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division and all parties if it is unable for whatever reasons to provide the services delineated in the plan;

(2) Include a determination of whether:

(A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and

(B) Continuation of the child in the child's home would be contrary to the welfare of the child.

(g) The department or agency to whom the legal custody of a child has been transferred pursuant to subsection (a) of this section shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent at least ten (10) days prior to the change in placement, except that in the case of an emergency notice shall be

given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice of a change in placement need not be given to the parent when the judge has determined that visitation would be detrimental to the child or the judge has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child. Except in the case of an emergency, the hearing shall be held and a decision rendered prior to a change in the placement.

(h) Any child who is found to be delinquent for violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 may, in addition to any other disposition ordered by the court for his supervision, care, and rehabilitation, be ordered to attend classes conducted by the Mayor pursuant to section 48-905.04(c).

## **FLORIDA**

### **FLA. STAT. ANN. § 39.01 (2011). Definitions**

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

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

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

(3) “Addictions receiving facility” means a substance abuse service provider as defined in chapter 397.

(4) “Adjudicatory hearing” means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.



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

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

(7) “Alleged juvenile sexual offender” means:

(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or

(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse. “Juvenile sexual abuse” means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this paragraph, the following definitions apply:

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

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

3. “Consent” means an agreement, including all of the following:

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

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

c. Awareness of potential consequences and alternatives.

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

e. Voluntary decision.

f. Mental competence.

Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) “Arbitration” means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) “Authorized agent” or “designee” of the department means an employee, volunteer, or other person or agency determined by the state to be eligible for state-funded risk management coverage,

which is assigned or designated by the department to perform duties or exercise powers under this chapter.

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

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

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

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

(14) “Child who has exhibited inappropriate sexual behavior” means a child who is 12 years of age or younger and who has been found by the department or the court to have committed an inappropriate sexual act.

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

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

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

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

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

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

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

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

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

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

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

- (a) Adoption when a petition for termination of parental rights has been filed or will be filed;
- (b) Permanent guardianship of a dependent child under s. 39.6221;
- (c) Permanent placement with a fit and willing relative under s. 39.6231; or
- (d) Placement in another planned permanent living arrangement under s. 39.6241.

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

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

(22) “Diligent efforts by a parent” means a course of conduct which results in a reduction in risk to the child in the child's home that would allow the child to be safely placed permanently back in the home as set forth in the case plan.

(23) “Diligent efforts of social service agency” means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

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

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

(26) “District” means any one of the 15 service districts of the department established pursuant to s. 20.19.

(27) “District administrator” means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose

service district falls within the boundaries of a judicial circuit.

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

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

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.

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

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

- (a) The persons reside in the same house or living unit; or
- (b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

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

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

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.

- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

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

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

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

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

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

- i. Permanent or temporary disfigurement.
  - j. Permanent or temporary loss or impairment of a body part or function.
  - k. Significant bruises or welts.
- (b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.
- (c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
- 1. Solicit for or engage in prostitution; or
  - 2. Engage in a sexual performance, as defined by chapter 827.
- (d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.
- (e) Abandons the child. Within the context of the definition of “harm,” the term “abandoned the child” or “abandonment of the child” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this paragraph, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child . The term “abandoned” does not include a surrendered newborn infant as described in s. 383.50.
- (f) Neglects the child. Within the context of the definition of “harm,” the term “neglects the child” means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:
- 1. Eliminate the requirement that such a case be reported to the department;
  - 2. Prevent the department from investigating such a case; or
  - 3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.
- (g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

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

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

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

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

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

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

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

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

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

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

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

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

(38) “Licensed health care professional” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a

physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

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

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

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

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

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

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

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

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

Neglect of a child includes acts or omissions.

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

(46) “Office” means the Office of Adoption and Child Protection within the Executive Office of the Governor.



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

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

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

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

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

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

- (a) Reunification;
- (b) Adoption when a petition for termination of parental rights has been or will be filed;
- (c) Permanent guardianship of a dependent child under s. 39.6221;
- (d) Permanent placement with a fit and willing relative under s. 39.6231; or

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

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

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

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

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

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

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

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

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

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

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

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

to carry out the required actions of the protective investigation function.

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

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

(65) “Reunification services” means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(66) “Secretary” means the Secretary of Children and Family Services.

(67) “Sexual abuse of a child” means one or more of the following acts:

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

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

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

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

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

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

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

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827.

(68) “Shelter” means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

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

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

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

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

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

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

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

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

### **FLA. STAT. ANN. § 39.806 (2011). Grounds for termination of parental rights**

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

- (a) When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department for subsequent

adoption and the department is willing to accept custody of the child.

1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.

2. The surrender and consent may be withdrawn after acceptance by the department only after a finding by the court that the surrender and consent were obtained by fraud or under duress.

(b) Abandonment as defined in s. 39.01(1) or when the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search within 60 days.

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term “substantially similar offense” means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 9 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 9-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the

parent, whichever occurs first;

2. The parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling.

1. As used in this subsection, the term “sibling” means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term “egregious conduct” means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

(h) The parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child.

(i) The parental rights of the parent to a sibling of the child have been terminated involuntarily.

(j) The parent or parents have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the 3-year period immediately preceding the filing of the petition for termination of parental rights.

(k) A test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant, and the biological mother of the child is the biological mother of at least one other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in s. 39.01(32)(g), after which the biological mother had the opportunity to participate in substance abuse treatment.

(l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(e)-(l) have occurred.

(3) If a petition for termination of parental rights is filed under subsection (1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan having a goal of reunification, but may instead file with the court a case plan having a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

(4) If an expedited termination of parental rights petition is filed, 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.

## **GEORGIA**

### **GA. CODE ANN. § 15-11-2 (2011). Definitions**

As used in this chapter, the term:

(1) “Adult” means any individual who is not a child under the definition in paragraph (2) of this Code section.

(1.1) “Biological father” means the male who impregnated the biological mother resulting in the birth of the child.

(2) “Child” means any individual who is:

(A) Under the age of 17 years;

(B) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or

(C) Under the age of 18 years, if alleged to be a “deprived child” or a “status offender” as defined by this Code section.

(3) “Community rehabilitation center” means a rehabilitation and custodial center established within a county for the purpose of assisting in the rehabilitation of delinquent and unruly children in a neighborhood and family environment in cooperation with community educational, medical, and social agencies, which center meets the following requirements:

(A) Is located within any county having a juvenile court presided over by at least one full-time judge exercising jurisdiction exclusively over juvenile matters; and

(B) Is operated by a nonprofit corporation organized under Chapter 3 of Title 14, the “Georgia Nonprofit Corporation Code,” and has a full-time chief executive officer. The charter, bylaws, and method of selecting the board of directors and chief executive officer of such nonprofit corporation shall be subject to the unanimous approval of the chief judge of the judicial circuit in which the county is located, the judge or judges of the juvenile court, the superintendent of the county school district, and the commissioner of corrections, which approval shall be in writing and shall be appended to the charter and bylaws of the nonprofit organization. Any amendment of the charter or

bylaws of the nonprofit corporation shall be subject to the same written approval as the original charter and bylaws.

(4) “Court” or “juvenile court” means the court exercising jurisdiction over juvenile matters.

(4.1) “Criminal justice purposes” means the performance of any activity directly involving the investigation, detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of children or adults who are accused of, convicted of, or charged with crimes or the collection, storage, and dissemination of criminal history record information.

(5) “Custodian” means:

(A) A person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court; or

(B) A public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of the child has been given by order of a court.

(6) “Delinquent act” means:

(A) An act designated a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the crime does not fall under subparagraph (C) of paragraph (12) of this Code section and is not a juvenile traffic offense as defined in Code Section 15-11-73;

(B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or

(C) Failing to appear as required by a citation issued with regard to a violation of Code Section 3-3-23.

(7) “Delinquent child” means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

(8) “Deprived child” means a child who:

(A) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals;

(B) Has been placed for care or adoption in violation of law;

(C) Has been abandoned by his or her parents or other legal custodian; or

(D) Is without a parent, guardian, or custodian.

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 a “deprived child.”

(8.1) “Identification data” means the fingerprints, name, race, sex, date of birth, and any other unique identifiers of the child.

(9) “Judge” means judge or judges of the court exercising jurisdiction over juvenile matters. Such term shall not mean or include an associate juvenile court judge or associate juvenile court traffic judge unless specifically so stated.

(10) “Juvenile court intake officer” means the juvenile court judge, associate juvenile court judge, court service worker, or person employed as a juvenile probation or intake officer designated by the juvenile court judge or, where there is none, the superior court judge, which person is on duty for the purpose of determining whether any child taken into custody should be released or detained and, if detained, the appropriate place of detention. Each superior or juvenile court judge shall provide for one of the above persons to be on duty or on call as an intake officer during each 24 hour period.

(10.1) “Legal father” means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

(E) Has legitimated the child pursuant to Code Section 19-7-21.1

and who has not surrendered or had terminated his rights to the child.

(10.2) “Legal mother” means the female who is the biological or adoptive mother of the child and who has not surrendered or had terminated her rights to the child.

(10.3) “Parent” means either the legal father or the legal mother of the child.

(10.4) “Putative father registry” means the registry established and maintained pursuant to subsections (d) and (e) of Code Section 19-11-9.

(10.5) “Shelter care” means:

(A) A licensed foster home or home approved by the court which may be a public or private home or the home of the noncustodial parent or a relative; or

(B) A facility operated by a licensed child welfare agency.

(11) “Status offender” means a child who is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator's status as a child. Such offenses shall include, but are not limited to, truancy, running away from home, incorrigibility, and unruly behavior.

(12) “Unruly child” means a child who:

(A) While subject to compulsory school attendance is habitually and without justification truant from school;

(B) Is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or other custodian and is ungovernable;

(C) Has committed an offense applicable only to a child;

(D) Without just cause and without the consent of his or her parent or legal custodian deserts his or her home or place of abode;

(E) Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.;

(F) Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly; or

(G) Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parents, guardian, or custodian, or possesses alcoholic beverages; and

(H) In any of the foregoing, is in need of supervision, treatment, or rehabilitation; or

(I) Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

**GA. CODE ANN. § 15-11-94 (2011). Conditions and procedures under which parental rights may be terminated**

(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home. If the court finds clear and convincing evidence of the circumstance provided in paragraph (5) of subsection (b) of this Code section, the court shall presume that termination of parental rights is in the best interest of the child.

(b) Except as provided in subsections (e) through (h) of Code Section 15-11-96, the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents

voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) A decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent, guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The parent has abandoned the child or the child was left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child;

(4)(A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child;

(ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;

(iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

- (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;
- (ii) To provide for the care and support of the child as required by law or judicial decree; and
- (iii) To comply with a court ordered plan designed to reunite the child with the parent or parents; or

(5) The parent has been convicted of the murder of the child's other parent.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is a deprived child.

**GA. CODE ANN. § 19-7-4 (2011). Protection of children being reared under immoral, etc., conditions**

If a child is found under circumstances of destitution and suffering, abandonment, or exposure or if the child has been begging or if it is found that the child is being reared under immoral, obscene, or indecent influences which are likely to degrade his moral character and devote him to a vicious life and it appears to the appropriate court by competent evidence, including such examination of the child as may be practicable, that by reason of the neglect, habitual drunkenness, lewd or other vicious habits, or other behavior of the parents or guardians of the child, it is necessary for the welfare of the child to protect the child from such conditions, the court may order that the parents or guardians be deprived of custody of the child and that appropriate measures as provided by law be taken for the welfare of the child.

**GA. CODE ANN. § 19-7-5 (2011). Reports by physicians, treating personnel, institutions and others as to child abuse; failure to report suspected child abuse**

(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) “Abused” means subjected to child abuse.
- (2) “Child” means any person under 18 years of age.
- (3) “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, 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.

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

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

(B) Bestiality;

(C) Masturbation;

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

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

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

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

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

(4) “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, 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 24 of Title 43;

(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; or

(N) Law enforcement personnel.

(2) If a person is required to report abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as a member of the staff of 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. A staff member 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 staff, physicians, law enforcement personnel, school officials, or staff of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photograph 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.

(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.

**GA. CODE ANN. § 19-8-11 (2011). Termination of rights of remaining parent where termination of rights of other parent or guardian has already been obtained**

(a) (1) In those cases where the department or a child-placing agency has either obtained:

(A) The voluntary written surrender of all parental rights from one of the parents or the guardian of a child; or

(B) An order of a court of competent jurisdiction terminating all of the rights of one of the parents or the guardian of a child,

the department or child-placing agency may in contemplation of the placement of such child for adoption petition the superior court of the county where the child resides to terminate the parental rights of the remaining parent pursuant to this Code section.

(2) In those cases where a person who is the resident of another state has obtained the voluntary written surrender of all parental rights from one of the parents or the guardian of a child, each such person to whom the child has been surrendered may in contemplation of the adoption of such child in such other state petition the superior court of the county where the child resides to terminate the parental rights of the remaining parent pursuant to this Code section.



(3) Parental rights may be terminated pursuant to paragraph (1) or (2) of this subsection where the court determines by clear and convincing evidence that the:

(A) Child has been abandoned by that parent;

(B) Parent of the child cannot be found after a diligent search has been made;

(C) Parent is insane or otherwise incapacitated from surrendering such rights; or

(D) Parent has failed to exercise proper parental care or control due to misconduct or inability, as set out in paragraph (2), (3), or (4) of subsection (b) of Code Section 15-11-94,

and the court shall set the matter down to be heard in chambers not less than 30 and not more than 60 days following the receipt by such remaining parent of the notice under subsection (b) of this Code section and shall enter an order terminating such parental rights if it so finds and if it is of the opinion that adoption is in the best interests of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

(b) Whenever a petition is filed pursuant to subsection (a) of this Code section, the parent whose rights the petitioner is seeking to terminate shall be personally served with a conformed copy of the petition, and a copy of the court's order setting forth the date upon which the petition shall be considered or, if personal service cannot be perfected, by registered or certified mail or statutory overnight delivery, return receipt requested, at his last known address. If service cannot be made by either of these methods, that parent shall be given notice by publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address. A parent who receives notification pursuant to this subsection may appear and show cause why such parent's rights to the child sought to be placed for adoption should not be terminated. Notice shall be deemed to have been received the date:

(1) Personal service is perfected;

(2) Of delivery shown on the return receipt of registered or certified mail or statutory overnight delivery; or

(3) Of the last publication.

## **HAWAII**

### **HAW. REV. STAT. ANN. § 587A-4 (2011). Definitions**

As used in this chapter, unless the context clearly indicates otherwise:

“Abandoned infant” means a child who is three years old or younger and:

(1) The child's parents, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest in or lack of commitment for assuming parental responsibility

for the child;

(2) The persons with whom the child resides have not known the identity or whereabouts of the child's parents for sixty days or more, and reasonable efforts have been made to identify or locate the child's parents; or

(3) The child's mother also falls under the provisions of paragraph (1) or (2), and the child's presumed or alleged father has failed to assert a claim or interest as a parent for sixty days or more; provided that the child's father has knowledge of the child's birth and that he is the child's presumed or alleged father.

“Adjudication” means a finding by a court that is supported by a preponderance of the evidence that the child has been harmed or is subjected to threatened harm by the acts or omissions of the child's family.

“Aggravated circumstances” means that:

(1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the murder or voluntary manslaughter of, another child of the parent;

(2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;

(3) The parent's rights regarding a sibling of the child have been judicially terminated or divested;

(4) The parent has tortured the child; or

(5) The child is an abandoned infant.

“Authorized agency” means the department, other public agency, or a person or organization that is licensed by the department or approved by the court to receive children for control, care, maintenance, or placement.

“Birth parent” and “biological parent” can be used interchangeably and mean the biological parents of the child. The term “birth”, as used in this chapter, is interchangeable with the term “natural”, as that term is used in chapter 578.

“Caregiver” means an adult who is not a child's parent or legal and physical custodian, and with whom the child has been residing for at least six months with the verbal or written consent of the child's legal and physical custodian. The status of “caregiver” as used in this chapter does not pertain to court-ordered or voluntary foster placement.

“Case plan” means the combined safe family home factors and the service plan or permanent plan.

“Child” means a person who is born alive and is less than eighteen years of age.

“Clear and convincing evidence” means the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true. This measure falls between

the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.

“Court” means one of the family courts established pursuant to chapter 571.

“Court-appointed special advocate” means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem.

“Criminal history record check” means an examination of an individual's criminal history through fingerprint analysis or name inquiry into state and national criminal history records and files, including the files of the Hawaii criminal justice data center.

“Date of entry into foster care” means the date a child was first placed in foster custody by the court or sixty days after the child's actual removal from the home, whichever is earlier.

“Default” means the status found by the court when a party who has been properly served or notified of a scheduled hearing fails to appear at court for the hearing or fails to plead or otherwise defend, thereby allowing the court to proceed without the absent party.

“Department” means the department of human services and its authorized representatives.

“Family” means each legal parent of a child; the birth mother, unless the child has been legally adopted; the concerned birth father as provided in section 578-2(a)(5), unless the child has been legally adopted; each parent's spouse or former spouse; each sibling or person related by blood or marriage; each person residing in the dwelling unit; and any other person or legal entity with:

- (1) Legal or physical custody or guardianship of the child, or
- (2) Responsibility for the child's care.

For purposes of this chapter, the term “family” does not apply to an authorized agency that assumes the foregoing legal status or relationship with a child.

“Family home” means the home of the child's legal custodian.

“Family supervision” means the legal status in which a child's legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home.

“Foster care” means continuous twenty-four-hour care and supportive services provided for a child by an authorized agency or the court, including, the care, supervision, guidance, and rearing of a child by a resource family.

“Foster custodian” means the authorized agency that has foster custody of the child.

“Foster custody” means the legal status created when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order, after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.

“Foster parent” or “foster family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “resource family”.

“Guardian ad litem” means any person who is appointed by the court under this chapter to protect and promote the needs and interests of a child or a party, including a court-appointed special advocate.

“Hanai relative” means an adult, other than a blood relative, whom the court or department has found by credible evidence to perform or to have performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child.

“Harm” means damage or injury to a child's physical or psychological health or welfare, where:

(1) The child exhibits evidence of injury, including, but not limited to:

(A) Substantial or multiple skin bruising;

(B) Substantial external or internal bleeding;

(C) Burn or burns;

(D) Malnutrition;

(E) Failure to thrive;

(F) Soft tissue swelling;

(G) Extreme pain;

(H) Extreme mental distress;

(I) Gross degradation;

(J) Poisoning;

(K) Fracture of any bone;

(L) Subdural hematoma; or

(M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;

(2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming,

or depiction; or other similar forms of sexual exploitation;

(3) The child's psychological well-being has been injured as evidenced by a substantial impairment in the child's ability to function;

(4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care; or

(5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child's family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240.

“Imminent harm” means that without intervention within the next ninety days, there is reasonable cause to believe that harm to the child will occur or reoccur.

“Incapacitated person” means a person who, even with appropriate and reasonably available assistance, is unable to substantially:

(1) Comprehend the legal significance of the issues or nature of the proceedings under this chapter;

(2) Consult with counsel; and

(3) Assist in preparing the person's case or strategy.

Incapacity shall not be based solely on a person's status as a minor.

“Ohana conference” means a family-focused, strength-based meeting conducted by trained community facilitators that is designed to build and enhance the network of protection for a child who is subject to a proceeding under this chapter. Ohana conferences include extended family members and other important people in the child's life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.

“Parent” means any legal parent of a child; the birth mother, unless the child has been legally adopted; the adjudicated, presumed, or concerned birth father of the child as provided in section 578-2(a)(5), unless the child has been legally adopted; or the legal guardians or any other legal custodians of the child.

“Party” means an authorized agency; a child who is subject to a proceeding under this chapter; the child's parents and guardian ad litem; any other person who is alleged in the petition or who is subsequently found at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions that brought the child within the scope of this chapter; and may include any other person, including the child's current foster parent or current resource family, if the court finds that such person's participation is in the best interest of the child; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section 587A-13, except as otherwise provided in this chapter.

“Permanent custody” means the legal status created by order of the court after the termination of parental rights as set forth in this chapter.

“Permanent plan” means a specific, comprehensive written plan prepared pursuant to section 587A-32.

“Police officer” means a person employed by any county in the State of Hawaii to enforce the laws and ordinances for preserving the peace and maintaining safety and order in the community, or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers set forth in this chapter.

“Preponderance of the evidence” means the degree of proof, which as a whole, convinces the trier of fact that the fact sought to be proved is more probable than not. “Preponderance of the evidence” shall be the standard of proof required in any proceeding, unless otherwise specified.

“Protective custody” means the legal status of a child whose physical custody is assumed by a police officer under this chapter.

“Reasonable cause to believe” means the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy.

“Relative” means a person related to a child by blood or adoption, or a hanai relative as defined in this chapter, who, as determined by the court or the department, is willing and able to safely provide support to the child and the child's family.

“Resource family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “foster parent” and “foster family”.

“Safe family home factors” means a list of criteria that must be considered in determining whether a parent is able to provide a safe family home as set out herein in section 587A-7.

“Service plan” means a specific, comprehensive written plan prepared by an authorized agency pursuant to section 587A-27.

“Temporary family supervision” means a legal status created under this chapter pursuant to court order after the department has filed a petition for temporary foster custody, and the court finds it more appropriate to return the child to the child's family home pending an adjudication determination.

“Temporary foster custody” means a legal status created under this chapter with or without a court order, whereby the department temporarily assumes the duties and rights of a foster custodian of a child.

“Termination of parental rights” means the severance of parental rights.

“Threatened harm” means any reasonably foreseeable substantial risk of harm to a child.

#### **HAW. REV. STAT. ANN. § 587A-7 (2011). Safe family home factors**

(a) The following factors shall be fully considered when determining whether a child's family is

willing and able to provide the child with a safe family home:

(1) Facts relating to the child's current situation, which shall include:

(A) The child's age, vulnerability, and special needs that affect the child's attachment, growth, and development;

(B) The child's developmental, psychological, medical, and dental health status and needs, including the names of assessment and treatment providers;

(C) The child's peer and family relationships and bonding abilities;

(D) The child's educational status and setting, and the department's efforts to maintain educational stability for the child in out-of-home placement;

(E) The child's living situation;

(F) The child's fear of being in the family home;

(G) The impact of out-of-home placement on the child;

(H) Services provided to the child and family; and

(I) The department's efforts to maintain connections between the child and the child's siblings, if they are living in different homes;

(2) The initial and any subsequent reports of harm and threatened harm to the child;

(3) Dates and reasons for the child's out-of-home placement; description, appropriateness, and location of the placement; and who has placement responsibility;

(4) Facts regarding the alleged perpetrators of harm to the child, the child's parents, and other family members who are parties to the court proceedings, which facts shall include:

(A) Birthplace and family of origin;

(B) Manner in which the alleged perpetrator of harm was parented;

(C) Marital and relationship history; and

(D) Prior involvement in services;

(5) Results of psychiatric, psychological, or developmental evaluations of the child, the alleged perpetrators, and other family members who are parties;

(6) Whether there is a history of abusive or assaultive conduct by the child's family members and others who have access to the family home;

(7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;

(8) Whether any alleged perpetrator has completed services in relation to any history identified in paragraphs (6) and (7), and acknowledged and accepted responsibility for the harm to the child;

(9) Whether any non-perpetrator who resides in the family home has demonstrated an ability to protect the child from further harm and to ensure that any current protective orders are enforced;

(10) Whether there is a support system available to the child's family, including adoptive and hanai relatives, friends, and faith-based or other community networks;

(11) Attempts to locate and involve extended family, friends, and faith-based or other community networks;

(12) Whether the child's family has demonstrated an understanding of and involvement in services that have been recommended by the department or court-ordered as necessary to provide a safe family home for the child;

(13) Whether the child's family has resolved identified safety issues in the family home within a reasonable period of time; and

(14) The department's assessment, which shall include the demonstrated ability of the child's family to provide a safe family home for the child, and recommendations.

(b) The court shall consider the likelihood that the current situation presented in the safe family home factors set forth in subsection (a) will continue in the reasonably foreseeable future.

**HAW. REV. STAT. ANN. § 587A-33 (2011). Termination of parental rights hearing**

(a) At a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that:

(1) A child's parent whose rights are subject to termination is not presently willing and able to provide the parent's child with a safe family home, even with the assistance of a service plan;

(2) It is not reasonably foreseeable that the child's parent whose rights are subject to termination will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, which shall not exceed two years from the child's date of entry into foster care;

(3) The proposed permanent plan is in the best interests of the child. In reaching this determination, the court shall:

(A) Presume that it is in the best interests of the child to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home; and

(B) Give greater weight to the presumption that the permanent plan is in the child's best interest, the younger the child is upon the child's date of entry into foster care; and



- (4) The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent.
- (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and the goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:
- (1) That the child's parent's parental rights be terminated;
  - (2) Termination of the existing service plan and revocation of the prior award of foster custody;
  - (3) That permanent custody of the child be awarded to an appropriate authorized agency;
  - (4) An appropriate permanent plan; and
  - (5) The entry of any other orders the court deems to be in the best interests of the child, including restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings.
- (c) Unless otherwise ordered by the court or until the child is adopted, the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the termination of parental rights, the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.
- (d) A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.
- (e) An order for the termination of parental rights entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, until the child has been adopted.
- (f) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as the court deems to be in the best interests of the child.
- (g) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child. The department shall immediately notify the court, and the court shall set the case for a permanency hearing within ten days after the department receives such a report, unless the court deems a later date to be in the best interests of the child.
- (h) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order:
- (1) The preparation of a plan to achieve permanency for the child;

- (2) The entry of any orders that the court deems to be in the best interests of the child;
  - (3) A periodic review hearing to be held within six months after the date of the last permanency hearing; and
  - (4) A permanency hearing to be held within twelve months of the date of the last permanency hearing.
- (i) Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to terminate parental rights.

## **IDAHO**

### **IDAHO CODE ANN. § 16-1602 (2012). 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;

- (c) Whether aggravated circumstances as defined in section 16-1619, Idaho Code, exist.
- (5) “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.
- (6) “Case plan hearing” means a hearing to:
- (a) Review, approve, modify or reject the case plan; and
  - (b) Review reasonable efforts being made to rehabilitate the family; and
  - (c) Review reasonable efforts being made to reunify the children with a parent or guardian.
- (7) “Child” means an individual who is under the age of eighteen (18) years.
- (8) “Circumstances of the child” includes, but is not limited to, the joint legal custody or joint physical custody of the child.
- (9) “Commit” means to transfer legal and physical custody.
- (10) “Concurrent planning” means a planning model that prepares for and implements different outcomes at the same time.
- (11) “Court” means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.
- (12) “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.
- (13) “Department” means the department of health and welfare and its authorized representatives.
- (14) “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.
- (15) “Family or household member” shall have the same meaning as in section 39-6303(6), Idaho Code.
- (16) “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.

(17) “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.

(18) “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.

(19) “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.

(20) “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.

(21) “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.

(22) “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.

(23) “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.

(24) “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.

(25) “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.

(26) “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.

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

(28) “Protective order” means an order created by the court granting relief as delineated in section 39-6306, Idaho Code, and shall be for a period not to exceed three (3) months unless otherwise stated herein. Failure to comply with the order shall be a misdemeanor.

(29) “Protective supervision” means a legal status created by court order in neglect and abuse cases whereby the child is permitted to remain in his home under supervision by the department.

(30) “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.

(31) “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.

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

(33) “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.

#### **IDAHO CODE ANN. § 16-2002 (2012). Definitions**

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

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

(2) “Child” or “minor” means any individual who is under the age of eighteen (18) years.

(3) “Neglected” means:

(a) Conduct as defined in section 16-1602(25), Idaho Code; or

(b) The parent(s) has failed to comply with the court's orders in a child protective act case or the case plan, and reunification of the child with his or her parent(s) has not occurred within the time standards set forth in section 16-1629(9), Idaho Code.

(4) “Abused” means conduct as defined in section 16-1602(1), Idaho Code.

(5) “Abandoned” means the parent has willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact. Failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section; provided however, where termination is sought by a grandparent seeking to adopt the child, the willful failure of the parent to maintain a normal parental relationship as provided herein without just cause for six (6) months shall constitute prima facie evidence of abandonment.

(6) “Legal custody” means status 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; and

(d) To authorize medical, dental, psychiatric, psychological and other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children;

provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

(7) “Guardianship of the person” means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(a) The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

- (b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;
  - (c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized child placement agency;
  - (d) When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.
- (8) “Guardian ad litem” means a person appointed by the court pursuant to section 16-1614 or 5-306, Idaho Code.
- (9) “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.
- (10) “Department” means the department of health and welfare and its authorized representatives.
- (11) “Parent” means:
- (a) The birth mother or the adoptive mother;
  - (b) The adoptive father;
  - (c) The biological father of a child conceived or born during the father's marriage to the birth mother; and
  - (d) The unmarried biological father whose consent to an adoption of the child is required pursuant to section 16-1504, Idaho Code.
- (12) “Presumptive father” means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.
- (13) “Parent and child relationship” includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.
- (14) “Parties” includes the child and the petitioners.
- (15) “Unmarried biological father,” as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child who was not married to the child's mother at the time the child was conceived or born.
- (16) “Unmarried biological mother,” as used in this chapter, means the biological mother of a child who was not married to the child's biological father at the time the child was conceived or born.

(17) “Disability” means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities 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.

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

(19) “Supportive services” means services which assist a parent 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 effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

**IDAHO CODE ANN. § 16-2005 (2012). 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 parent has subjected the child to torture, chronic abuse or sexual abuse, has committed murder or intentionally killed the other parent of the child, has committed murder or voluntary manslaughter of another child or has aided, abetted, conspired or solicited to commit such murder



or voluntary manslaughter, and/or has committed battery which resulted in serious bodily injury to a child; or

(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 19..., 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.

## **ILLINOIS**

### **20 ILL. COMP. STAT. ANN. 505/35.2 (2011). Termination of parental rights**

§ 35.2. If a child has been found to be an abused minor under Section 4-8 of the Juvenile Court Act [FN1] or Section 2-21 of the Juvenile Court Act of 1987, [FN2] and the perpetrator of the abuse was the child's parent, and such parent has been convicted of aggravated battery of the child, and the child has been committed to the Department of Children and Family Services for care and service under Section 5-7 of the Juvenile Court Act [FN3] or Section 2-27 of the Juvenile Court Act of 1987, [FN4]

the Department shall cause to be filed a petition seeking the termination of such parent's parental rights pursuant to "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as amended, [FN5] or under Section 2-29 of the Juvenile Court Act of 1987, [FN6] and the Department shall also seek placement of the child with suitable adoptive parents.

**705 ILL. COMP. STAT. ANN. 405/2-3 (2011). 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, [FN1] 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. [FN2]

(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, as amended, [FN3] 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 for forced labor or services defined in Section 10-9 of the Criminal Code of 1961, 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, 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.

#### **705 ILL. COMP. STAT. ANN. 405/2-21 (2011). Findings and adjudication**

§ 2-21. Findings and adjudication.

(1) The court shall state for the record the manner in which the parties received service of process and shall note whether the return or returns of service, postal return receipt or receipts for notice by certified mail, or certificate or certificates of publication have been filed in the court record. The court shall enter any appropriate orders of default against any parent who has been properly served in any manner and fails to appear.

No further service of process as defined in Sections 2-15 and 2-16 is required in any subsequent proceeding for a parent who was properly served in any manner, except as required by Supreme Court Rule 11.

The caseworker shall testify about the diligent search conducted for the parent.

After hearing the evidence the court shall determine whether or not the minor is abused, neglected, or dependent. If it finds that the minor is not such a person, the court shall order the petition dismissed and the minor discharged. The court's determination of whether the minor is abused, neglected, or dependent shall be stated in writing with the factual basis supporting that determination.

If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the factual basis supporting that determination, and specify, to the extent possible, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court.

If the court finds that the child has been abused, neglected or dependent, the court shall admonish the parents that they must cooperate with the Department of Children and Family Services, comply with the terms of the service plan, and correct the conditions that require the child to be in care, or risk

termination of parental rights.

If the court determines that a person has inflicted physical or sexual abuse upon a minor, the court shall report that determination to the Department of State Police, which shall include that information in its report to the President of the school board for a school district that requests a criminal history records check of that person, or the regional superintendent of schools who requests a check of that person, as required under Section 10-21.9 or 34-18.5 of the School Code. [FN1]

(2) If, pursuant to subsection (1) of this Section, the court determines and puts in writing the factual basis supporting the determination that the minor is either abused or neglected or dependent, the court shall then set a time not later than 30 days after the entry of the finding for a dispositional hearing (unless an earlier date is required pursuant to Section 2-13.1) to be conducted under Section 2-22 at which hearing the court shall determine whether it is consistent with the health, safety and best interests of the minor and the public that he be made a ward of the court. To assist the court in making this and other determinations at the dispositional hearing, the court may order that an investigation be conducted and a dispositional report be prepared concerning the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, history of delinquency or criminality, personal habits, and any other information that may be helpful to the court. The dispositional hearing may be continued once for a period not to exceed 30 days if the court finds that such continuance is necessary to complete the dispositional report.

(3) The time limits of this Section may be waived only by consent of all parties and approval by the court, as determined to be consistent with the health, safety and best interests of the minor.

(4) For all cases adjudicated prior to July 1, 1991, for which no dispositional hearing has been held prior to that date, a dispositional hearing under Section 2-22 shall be held within 90 days of July 1, 1991.

(5) The court may terminate the parental rights of a parent at the initial dispositional hearing if all of the following conditions are met:

(i) the original or amended petition contains a request for termination of parental rights and appointment of a guardian with power to consent to adoption; and

(ii) the court has found by a preponderance of evidence, introduced or stipulated to at an adjudicatory hearing, that the child comes under the jurisdiction of the court as an abused, neglected, or dependent minor under Section 2-18; and

(iii) the court finds, on the basis of clear and convincing evidence admitted at the adjudicatory hearing that the parent is an unfit person under subdivision D of Section 1 of the Adoption Act; [FN2] and

(iv) the court determines in accordance with the rules of evidence for dispositional proceedings, that:

(A) it is in the best interest of the minor and public that the child be made a ward of the court;

(A-5) reasonable efforts under subsection (1-1) of Section 5 of the Children and Family Services Act [FN3] are inappropriate or such efforts were made and were unsuccessful; and

(B) termination of parental rights and appointment of a guardian with power to consent to adoption is in the best interest of the child pursuant to Section 2-29.

**705 ILL. COMP. STAT. ANN. 405/2-23 (2011). Kinds of dispositional orders**

**§ 2-23. Kinds of dispositional orders.**

(1) The following kinds of orders of disposition may be made in respect of wards of the court:

(a) A minor under 18 years of age found to be neglected or abused under Section 2-3 or dependent under Section 2-4 may be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with the Department of Children and Family Services and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act. [FN1]

However, in any case in which a minor is found by the court to be neglected or abused under Section 2-3 of this Act, custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21, as forming the basis for the court's finding of abuse or neglect, until such time as a hearing is held on the issue of the best interests of the minor and the fitness of such parent, guardian or legal custodian to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor.

(b) A minor under 18 years of age found to be dependent under Section 2-4 may be (1) placed in accordance with Section 2-27 or (2) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act.

However, in any case in which a minor is found by the court to be dependent under Section 2-4 of this Act, custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21, as forming the basis for the court's finding of dependency, until such time as a hearing is held on the issue of the fitness of such parent, guardian or legal custodian to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor.

(b-1) A minor between the ages of 18 and 21 may be placed pursuant to Section 2-27 of this Act if (1) the court has granted a supplemental petition to reinstate wardship of the minor pursuant to subsection (2) of Section 2-33, or (2) the court has adjudicated the minor a ward of the court, permitted the minor to return home under an order of protection, and subsequently made a finding that it is in the minor's best interest to vacate the order of protection and commit the minor to the Department of Children and Family Services for care and service.

(c) When the court awards guardianship to the Department of Children and Family Services, the court shall order the parents to cooperate with the Department of Children and Family Services,

comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights.

(2) Any order of disposition may provide for protective supervision under Section 2-24 and may include an order of protection under Section 2-25.

Unless the order of disposition expressly so provides, it does not operate to close proceedings on the pending petition, but is subject to modification, not inconsistent with Section 2-28, until final closing and discharge of the proceedings under Section 2-31.

(3) The court also shall enter any other orders necessary to fulfill the service plan, including, but not limited to, (i) orders requiring parties to cooperate with services, (ii) restraining orders controlling the conduct of any party likely to frustrate the achievement of the goal, and (iii) visiting orders. Unless otherwise specifically authorized by law, the court is not empowered under this subsection (3) to order specific placements, specific services, or specific service providers to be included in the plan. If, after receiving evidence, the court determines that the services contained in the plan are not reasonably calculated to facilitate achievement of the permanency goal, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The court also shall enter an order for the Department to develop and implement a new service plan or to implement changes to the current service plan consistent with the court's findings. The new service plan shall be filed with the court and served on all parties within 45 days after the date of the order. The court shall continue the matter until the new service plan is filed. Unless otherwise specifically authorized by law, the court is not empowered under this subsection (3) or under subsection (2) to order specific placements, specific services, or specific service providers to be included in the plan.

(4) In addition to any other order of disposition, the court may order any minor adjudicated neglected with respect to his or her own injurious behavior to make restitution, in monetary or non-monetary form, under the terms and conditions of Section 5-5-6 of the Unified Code of Corrections, [FN2] except that the "presentence hearing" referred to therein shall be the dispositional hearing for purposes of this Section. The parent, guardian or legal custodian of the minor may pay some or all of such restitution on the minor's behalf.

(5) Any order for disposition where the minor is committed or placed in accordance with Section 2-27 shall provide for the parents or guardian of the estate of such minor to pay to the legal custodian or guardian of the person of the minor such sums as are determined by the custodian or guardian of the person of the minor as necessary for the minor's needs. Such payments may not exceed the maximum amounts provided for by Section 9.1 of the Children and Family Services Act. [FN3]

(6) Whenever the order of disposition requires the minor to attend school or participate in a program of training, the truant officer or designated school official shall regularly report to the court if the minor is a chronic or habitual truant under Section 26-2a of the School Code. [FN4]

(7) The court may terminate the parental rights of a parent at the initial dispositional hearing if all of the conditions in subsection (5) of Section 2-21 are met.



## **INDIANA**

### **IND. CODE ANN. § 31-34-1-1 (2011). Inability, refusal, or neglect of parent, guardian or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision**

Sec. 1. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

### **IND. CODE ANN. § 31-34-1-2 (2011). Act or omission of parent, guardian or custodian seriously endangering child's physical or mental health**

Sec. 2. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

### **IND. CODE ANN. § 31-34-1-14 (2011). Exception for failure of parent, guardian or custodian to provide medical treatment because of religious beliefs; rebuttable presumption; effect of presumption**

Sec. 14. If a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the religious beliefs of the parent, guardian, or custodian, a rebuttable presumption arises that the child is not a child in need of services because of the failure. However, this presumption does not do any of the following:

(1) Prevent a juvenile court from ordering, when the health of a child requires, medical services from a physician licensed to practice medicine in Indiana.

(2) Apply to situations in which the life or health of a child is in serious danger.

**IND. CODE ANN. § 31-34-1-16 (2011). Termination of parental rights or transfer of custody may not be required; voluntary placement agreements**

Sec. 16. (a) The department may not:

- (1) initiate a court proceeding to:
  - (A) terminate the parental rights concerning; or
  - (B) transfer legal custody of; or
- (2) require a parent, guardian, or custodian to consent to:
  - (A) the termination of parental rights; or
  - (B) transfer of legal custody of;

a child with an emotional, a behavioral, or a mental disorder or a developmental or physical disability who is voluntarily placed out of the home for the purpose of obtaining special treatment or care, solely because the parent, guardian, or custodian is unable to provide the treatment or care. Relinquishment of custody of a child described in this subsection may not be made a condition for receipt of services or care delivered or funded by the department or the county office of family and children.

(b) When a child described in subsection (a) is voluntarily placed out of the home to receive special treatment or care, the department and the parent, guardian, or custodian of the child may execute a voluntary placement agreement that includes the following:

- (1) A statement that, by entering into a voluntary placement agreement, the parent, guardian, or custodian of the child is not transferring legal custody of the child to the department.
- (2) A statement specifying the legal status of the child.
- (3) A statement specifying the rights and obligations of the parent, guardian, or custodian.

**IND. CODE ANN. § 31-34-21-5.6 (2011). Exceptions to requirement to make reasonable efforts to preserve and reunify families**

Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.

(b) Reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

- (1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
  - (A) an offense described in IC 31-35-3-4(1)(B) or IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a victim who is:

- (i) a child described in IC 31-35-3-4(2); or
  - (ii) a parent of the child; or
- (B) a comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.
- (2) A parent, guardian, or custodian of a child who is a child in need of services:
- (A) has been convicted of:
    - (i) the murder (IC 35-42-1-1) or voluntary manslaughter (IC 35-42-1-3) of a victim who is a child described in IC 31-35-3-4(2)(B) or a parent of the child; or
    - (ii) a comparable offense described in item (i) in any other state, territory, or country; or
  - (B) has been convicted of:
    - (i) aiding, inducing, or causing another person;
    - (ii) attempting; or
    - (iii) conspiring with another person;
- to commit an offense described in clause (A).
- (3) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
- (A) battery (IC 35-42-2-1(a)(5)) as a Class A felony;
  - (B) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;
  - (C) battery (IC 35-42-2-1(a)(3)) as a Class C felony;
  - (D) aggravated battery (IC 35-42-2-1.5);
  - (E) criminal recklessness (IC 35-42-2-2) as a Class C felony;
  - (F) neglect of a dependent (IC 35-46-1-4) as a Class B felony; or
  - (G) a comparable offense described in clauses (A) through (F) in another state, territory, or country;
- against a child described in IC 31-35-3-4(2)(B).
- (4) The parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court under:

(A) IC 31-35-2 (involuntary termination involving a delinquent child or a child in need of services);

(B) IC 31-35-3 (involuntary termination involving an individual convicted of a criminal offense);  
or

(C) any comparable law described in clause (A) or (B) in any other state, territory, or country.

(5) The child is an abandoned infant, provided that the court:

(A) has appointed a guardian ad litem or court appointed special advocate for the child; and

(B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child.

**IND. CODE ANN. § 31-35-2-4 (2011). Petition; contents**

Sec. 4. (a) A petition to terminate the parent-child relationship involving a delinquent child or a child in need of services may be signed and filed with the juvenile or probate court by any of the following:

(1) The attorney for the department.

(2) The child's court appointed special advocate.

(3) The child's guardian ad litem.

(b) The petition must meet the following requirements:

(1) The petition must be entitled "In the Matter of the Termination of the Parent-Child Relationship of \_\_\_\_\_, a child, and \_\_\_\_\_, the child's parent (or parents)".

(2) The petition must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

(3) The petition must indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(3) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

## **IOWA**

### **IOWA CODE ANN. § 232.2 (2011). Definitions**

As used in this chapter unless the context otherwise requires:

1. “Abandonment of a child” means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.
2. “Adjudicatory hearing” means a hearing to determine if the allegations of a petition are true.
3. “Adult” means a person other than a child.
4. “Case permanency plan” means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b) (10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:
  - a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.
  - b. The type and appropriateness of the placement and services to be provided to the child.

- c. The care and services that will be provided to the child, biological parents, and foster parents.
- d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.
- e. The most recent information available regarding the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider. If the child remains in foster care until the age of majority, the child is entitled to receive prior to discharge the most recent information available regarding the child's health and educational records.
- f. (1) When a child is sixteen years of age or older, a written transition plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. The transition plan and needs assessment shall be developed with a focus on the services, other support, and actions necessary to facilitate the child's successful entry into adulthood. The transition plan shall be personalized at the direction of the child and shall be developed with the child present, honoring the goals and concerns of the child, and shall address the following areas of need when the child becomes an adult, including but not limited to all of the following:
  - (a) Education.
  - (b) Employment services and other workforce support.
  - (c) Health and health care coverage.
  - (d) Housing.
  - (e) Relationships, including local opportunities to have a mentor.
  - (f) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall provide for the child's application for adult services.
- (2) The transition plan shall be considered a working document and shall be reviewed and updated for each permanency hearing by the court or other formal case permanency plan review. The transition plan shall also be reviewed and updated during the ninety calendar-day period preceding the child's eighteenth birthday and during the ninety calendar-day period immediately preceding the date the child is expected to exit foster care, if the child remains in foster care after the child's eighteenth birthday. The transition plan may be reviewed and updated more frequently.
- (3) The transition plan shall be developed and reviewed by the department in collaboration with a child-centered transition team. The transition team shall be comprised of the child's caseworker and persons selected by the child, persons who have knowledge of services available to the child, and any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time. If the child is reasonably likely to need or be eligible for adult services, the transition team membership shall include representatives from the adult services system. The adult services system representatives may include but are not limited to the administrator of county general relief under chapter 251 or

252 or of the central point of coordination process implemented under section 331.440. The membership of the transition team and the meeting dates for the team shall be documented in the transition plan.

(4) The final transition plan shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

(6) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall be reviewed and approved by the transition committee for the area in which the child resides, in accordance with section 235.7, before the child reaches age seventeen and one-half. The transition committee's review and approval shall be indicated in the case permanency plan.

(7) Provision for the department or a designee of the department on or before the date the child reaches age eighteen to provide to the child a certified copy of the child's birth certificate and to facilitate securing a federal social security card. The fee for the certified copy that is otherwise chargeable under section 144.13A, 144.46, or 331.605 shall be waived by the state or county registrar.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out-of-state shall visit the child at least once every six months.

j. If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

k. If it is part of the child's records or it is otherwise known that the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, that information shall be addressed in the plan and shall be provided to the child's parent, guardian, or foster parent or other person with custody of the child. The information shall be provided whether the child's placement is voluntary or made pursuant to a court determination. The information shall be provided at the time it is learned by the department or agency developing the plan and, if possible, at the time of the child's placement. The information shall only be withheld if ordered by the court or it is determined by the department or agency developing the plan that providing the information would be detrimental to the child or to the family with whom the child is living. In determining whether providing the information would be detrimental, the court, department, or agency shall consider any

history of abuse within the child's family or toward the child.

l. The provisions involving sibling visitation or interaction required under section 232.108.

m. Documentation of the educational stability of the child while in foster care. The documentation shall include but is not limited to all of the following:

(1) Evidence there was an evaluation of the appropriateness of the child's educational setting while in placement and of the setting's proximity to the educational setting in which the child was enrolled at the time of placement.

(2) An assurance either that the department coordinated with appropriate local educational agencies to identify how the child could remain in the educational setting in which the child was enrolled at the time of placement or, if it was determined it was not in the child's best interest to remain in that setting, that the affected educational agencies would immediately and appropriately enroll the child in another educational setting during the child's placement and ensure that the child's educational records were provided for use in the new educational setting. For the purposes of this subparagraph, "local educational agencies" means the same as defined in the federal Elementary and Secondary Education Act of 1965, § 9101, as codified in 20 U.S.C. § 7801(26).

5. "Child" means a person under eighteen years of age.

6. "Child in need of assistance" means an unmarried child:

a. Whose parent, guardian, or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

(3) The child's parent, guardian, or custodian, or person responsible for the care of the child, as defined in section 232.68, has knowingly disseminated or exhibited obscene material as defined in section 728.1 to the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian, or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.



- f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling to provide such treatment.
  - g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing, or shelter and refuses other means made available to provide such essentials.
  - h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.
  - i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political, or artistic value.
  - j. Who is without a parent, guardian, or other custodian.
  - k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.
  - l. Who for good cause desires to have the child's parents relieved of the child's care and custody.
  - m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.
  - n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.
  - o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.
  - p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.
- (1) For the purposes of this paragraph, “in the presence of a child” means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.
- (2) For the purposes of this paragraph, “dangerous substance” means any of the following:

- (a) Amphetamine, its salts, isomers, or salts of its isomers.
- (b) Methamphetamine, its salts, isomers, or salts of its isomers.
- (c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:
  - (i) The process of manufacturing an illegal or controlled substance.
  - (ii) As a precursor in the manufacturing of an illegal or controlled substance.
  - (iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. “Chronic runaway” means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. “Complaint” means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. “Court” means the juvenile court established under section 602.7101.

9. “Court appointed special advocate” means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. “Criminal or juvenile justice agency” means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. a. “Custodian” means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child.

b. The rights and duties of a custodian with respect to a child are as follows:

- (1) To maintain or transfer to another the physical possession of that child.
- (2) To protect, train, and discipline that child.
- (3) To provide food, clothing, housing, and medical care for that child.
- (4) To consent to emergency medical care, including surgery.

(5) To sign a release of medical information to a health professional.

c. All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. “Delinquent act” means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

c. The violation of section 123.47 which is committed by a child.

13. “Department” means the department of human services and includes the local, county, and service area officers of the department.

14. “Desertion” means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. “Detention” means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the child's case.

16. “Detention hearing” means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. “Director” means the director of the department of human services or that person's designee.

18. “Dismissal of complaint” means the termination of all proceedings against a child.

19. “Dispositional hearing” means a hearing held after an adjudication to determine what dispositional order should be made.

20. “Family in need of assistance” means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian, or custodian.

21. a. “Guardian” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

- (1) To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.
- (2) To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.
- (3) To serve as custodian, unless another person has been appointed custodian.
- (4) To make periodic visitations if the guardian does not have physical possession or custody of the child.
- (5) To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.
- (6) To make other decisions involving protection, education, and care and control of the child.

22. a. “Guardian ad litem” means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsection 1, paragraphs “a” and “d”, section 232.103, subsection 2, paragraph “c”, and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

- (1) Conducting in-person interviews with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.
- (2) Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.
- (3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.
- (4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).
- (5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.
- (6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

(7) If the child is required to have a transition plan developed in accordance with the child's case permanency plan and subject to review and approval of a transition committee under section 235.7, assisting the transition committee in development of the transition plan.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

d. If authorized by the court, a guardian ad litem may continue a relationship with and provide advice to a child for a period of time beyond the child's eighteenth birthday.

23. "Health practitioner" means a licensed physician or surgeon, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. "Informal adjustment" means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

25. "Informal adjustment agreement" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian, or custodian providing for the informal adjustment of the complaint.

26. "Intake" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. "Intake officer" means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. "Judge" means the judge of a juvenile court.

29. "Juvenile" means the same as "child". However, in the interstate compact for juveniles, section 232.173, "juvenile" means a person defined as a juvenile in the compact.

30. "Juvenile court officer" means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. "Juvenile court social records" or "social records" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than

official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. “Juvenile detention home” means a physically restricting facility used only for the detention of children.

33. “Juvenile parole officer” means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. “Juvenile shelter care home” means a physically unrestricting facility used only for the shelter care of children.

35. “Mental injury” means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

36. “Nonjudicial probation” means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

37. “Nonsecure facility” means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. “Official juvenile court records” or “official records” means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees, and orders of the court.

39. “Parent” means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. “Peace officer” means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. “Petition” means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. “Physical abuse or neglect” or “abuse or neglect” means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodian or other person legally responsible for the child.

42A. “Preadoptive care” means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a preadoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. “Predisposition investigation” means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. “Predisposition report” is a report furnished to the court which contains the information collected during a predisposition investigation.

45. “Probation” means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. “Registry” means the central registry for child abuse information as established under chapter 235A.

47. “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. “Secure facility” means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. “Sexual abuse” means the commission of a sex offense as defined by the penal law.

50. “Shelter care” means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of the child's case.

51. “Shelter care hearing” means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. “Sibling” means an individual who is related to another individual by blood, adoption, or affinity through a common legal or biological parent.

53. “Social investigation” means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case

over which the court has jurisdiction.

54. “Social report” means a report furnished to the court which contains the information collected during a social investigation.

55. “Taking into custody” means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

56. “Termination hearing” means a hearing held to determine whether the court should terminate a parent-child relationship.

57. “Termination of the parent-child relationship” means the divestment by the court of the parent's and child's privileges, duties, and powers with respect to each other.

58. “Voluntary placement” means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.

59. “Waiver hearing” means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

**IOWA CODE ANN. § 232.116 (2011). Grounds for termination**

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2011.]>

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

- a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.
- b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.
- c. The court finds that there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.
- d. The court finds that both of the following have occurred:
  - (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
  - (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance



continues to exist despite the offer or receipt of services.

e. The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.
- (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

f. The court finds that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

g. The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
- (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

j. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

k. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

l. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

<Text of subsec. 1, par. 1, subpar. (2), effective until July 1, 2012.>

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

<Text of subsec. 1, par. 1, subpar. (2), effective July 1, 2012.>

(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

m. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

n. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

o. The parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101, the parent is divorced from or was never married to the minor's other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

c. The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the court.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

b. The child is over ten years of age and objects to the termination.

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

## **KANSAS**

### **KAN. STAT. ANN. § 38-2202 (2011). Definitions**

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 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), article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), or article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce).

(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 social and rehabilitation services or the secretary's designee.

(cc) "Secure facility" means a 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 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 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) "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.

(gg) "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.

**KAN. STAT. ANN. § 38-2269 (2011). Factors to be considered in termination of parental rights; appointment of permanent custodian**

(a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

(b) In making a determination of unfitness the court shall consider, but is not limited to, the following, if applicable:

(1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unable to care for the ongoing physical, mental and



emotional needs of the child;

(2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;

(3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;

(4) physical, mental or emotional abuse or neglect or sexual abuse of a child;

(5) conviction of a felony and imprisonment;

(6) unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at the time of injury or death;

(7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;

(8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; and

(9) whether the child has been in extended out of home placement as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply.

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, shall consider, but is not limited to, the following:

(1) Failure to assure care of the child in the parental home when able to do so;

(2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

(d) A finding of unfitness may be made as provided in this section if the court finds that the parents have abandoned the child, the custody of the child was surrendered pursuant to K.S.A. 38-2282, and amendments thereto, or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

(e) If a person is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived, a

finding of unfitness may be made.

(f) The existence of any one of the above factors standing alone may, but does not necessarily, establish grounds for termination of parental rights.

(g)(1) If the court makes a finding of unfitness, the court shall consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order. A termination of parental rights under the code shall not terminate the right of a child to inherit from or through a parent. Upon such termination all rights of the parent to such child, including, such parent's right to inherit from or through such child, shall cease.

(2) If the court terminates parental rights, the court may authorize adoption pursuant to K.S.A. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 38-2272, and amendments thereto, or continued permanency planning.

(3) If the court does not terminate parental rights, the court may authorize appointment of a permanent custodian pursuant to K.S.A. 38-2272, and amendments thereto, or continued permanency planning.

(h) If a parent is convicted of an offense as provided in subsection (a)(7) of K.S.A. 38-2271, and amendments thereto, or is adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in subsection (a)(7) of K.S.A. 38-2271, and amendments thereto, and if the victim was the other parent of a child, the court may disregard such convicted or adjudicated parent's opinions or wishes in regard to the placement of such child.

(i) A record shall be made of the proceedings.

(j) When adoption, proceedings to appoint a permanent custodian or continued permanency planning has been authorized, the person or agency awarded custody of the child shall within 30 days submit a written plan for permanent placement which shall include measurable objectives and time schedules.

## **KENTUCKY**

### **KY. REV. STAT. ANN. § 600.020 (2011). Definitions for KRS Chapters 600 to 645**

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

(1) “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

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

- (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
  - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child;
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
  - (i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;
- (2) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:
- (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
  - (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
  - (c) The parent has sexually abused the child and has refused available treatment;
  - (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
  - (e) The parent has caused the child serious physical injury;
- (3) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior

does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(4) “Beyond the control of school” means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;

(5) “Boarding home” means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

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

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

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

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

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

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

(12) “Commitment” means an order of the court which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

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

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

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

(16) “Court-designated worker” means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

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

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

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

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

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

(22) “Diversion agreement” means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

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

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

(25) “Firearm” shall have the same meaning as in KRS 237.060 and 527.010;

(26) “Foster family home” means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

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

- (28) “Habitual truant” means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150(1) two (2) or more times during a one (1) year period;
- (29) “Hospital” means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (30) “Independent living” means those activities necessary to assist a committed child to establish independent living arrangements;
- (31) “Informal adjustment” means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (32) “Intentionally” means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (33) “Intermittent holding facility” means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and in which children are supervised and observed on a regular basis by certified juvenile facility staff;
- (34) “Juvenile holding facility” means a physically secure facility, approved by the Department of Juvenile Justice, which is an entirely separate portion or wing of a building containing an adult jail, which provides total sight and sound separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile facility staff to provide twenty-four (24) hours per day supervision;
- (35) “Least restrictive alternative” means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence;
- (36) “Motor vehicle offense” means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (37) “Near fatality” means an injury that, as certified by a physician, places a child in serious or critical condition;
- (38) “Needs of the child” means necessary food, clothing, health, shelter, and education;
- (39) “Nonoffender” means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;
- (40) “Nonsecure facility” means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and

hardware to restrict freedom;

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

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

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

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

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

(46) “Physically secure facility” means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(47) “Public offense action” means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(48) “Qualified mental health professional” means:

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

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

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

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

psychiatric unit of a general hospital or a regional comprehensive care center;

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

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

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

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

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

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

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

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

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

(55) “Sexual abuse” includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

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



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

(58) “Staff secure facility for residential treatment” means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(59) (a) “Status offense action” is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;
2. Habitual runaway;
3. Habitual truant;
4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
5. Alcohol offenses as provided in KRS 244.085.

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

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

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

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

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

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

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

**KY. REV. STAT. ANN. § 625.090 (2011). Grounds for termination**

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

- (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
- 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
- 3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and

(b) Termination would be in the best interest of the child.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
- (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
- (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
- (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
- (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
- (f) That the parent has caused or allowed the child to be sexually abused or exploited;
- (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable

future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;
2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

(5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its

discretion may determine not to terminate parental rights.

(6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:

(a) Terminating the right of the parent; or

(b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

## **LOUISIANA**

### **LA. CHILD. CODE ANN. art. 1003 (2011). Definitions**

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

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

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

(2) “Agency” shall include the Department of Children and Family Services, the corresponding department of any other state, and those private agencies and institutions licensed for the placement of children for adoption by the Department of Children and Family Services or by the corresponding department of any other state.

(3) “Child in need of care” means a child adjudicated as such under Title VI.

(4) “Dangerous to others” means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(5) “Dangerous to self” means the condition of a person whose behavior, significant threats, or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

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

(7) “Grave disability” means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental

illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm. The term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(8) “Mental deficiency” means significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior, as determined by a psychiatrist or psychologist and manifested during the developmental period.

(9) “Mental illness” means a psychiatric disorder which has substantial adverse effects on the parent's ability to function and which requires care and treatment as determined by a psychiatrist or psychologist. It does not include a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.

(10) “Neglect” means the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or abused. Disagreement by the parent regarding the need for medical care shall not, by itself, be grounds for termination of parental rights. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's health or welfare.

(11) “Permanent placement” means either placement of the child with a legal guardian or placement of the child with adoptive parents pursuant to a final decree of adoption.

(12) “Starvation” means mistreatment causing suffering from extreme hunger or malnourishment.

(13) “Substance abuse” means the condition of a person who uses narcotic, stimulant, depressant, soporific, tranquilizing, or hallucinogenic drugs or alcohol to the extent that it renders the person dangerous to himself or others or renders the person gravely disabled.

(14) “Torture” means torment, maiming, mutilation, or ritualistic or malicious acts causing extreme and unjustifiable physical or mental pain or suffering, disfigurement, or injury.

#### **LA. CHILD. CODE ANN. art. 1015 (2011). Grounds**

The grounds for termination of parental rights are:

(1) Conviction of murder of the child's other parent.

(2) Unjustified intentional killing of the child's other parent.

(3) Misconduct of the parent toward this child or any other child of the parent or any other child in his household which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

- (a) Murder.
  - (b) Unjustified intentional killing.
  - (c) Aggravated incest.
  - (d) Rape.
  - (e) Sodomy.
  - (f) Torture.
  - (g) Starvation.
  - (h) A felony that has resulted in serious bodily injury.
  - (i) Abuse or neglect which is chronic, life threatening, or results in gravely disabling physical or psychological injury or disfigurement.
  - (j) Abuse or neglect after the child is returned to the parent's care and custody while under department supervision, when the child had previously been removed for his safety from the parent pursuant to a disposition judgment in a child in need of care proceeding.
  - (k) The parent's parental rights to one or more of the child's siblings have been terminated due to neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful.
  - (l) Sexual abuse, which shall include, but is not limited to acts which are prohibited by R.S. 14: 43.1, 43.2, 80, 81, 81.1, 81.2, 89 and 89.1.
- (4) Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:
- (a) For a period of at least four months as of the time of the hearing, despite a diligent search, the whereabouts of the child's parent continue to be unknown.
  - (b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.
  - (c) As of the time the petition is filed, the parent has failed to maintain significant contact with the child by visiting him or communicating with him for any period of six consecutive months.
- (5) Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

(6) The child is in the custody of the department pursuant to a court order or placement by the parent; the parent has been convicted and sentenced to a period of incarceration of such duration that the parent will not be able to care for the child for an extended period of time, considering the child's age and his need for a safe, stable, and permanent home; and despite notice by the department, the parent has refused or failed to provide a reasonable plan for the appropriate care of the child other than foster care.

(7) The relinquishment of an infant pursuant to Chapter 13 of Title XI of this Code.

(8) The commission of a felony rape by the natural parent which resulted in the conception of the child.

## **MAINE**

### **ME. REV. STAT. ANN. tit. 19-A, § 1653 (2011). Parental rights and responsibilities**

1. Legislative findings and purpose. The Legislature makes the following findings concerning relationships among family members in determining what is in the best interest of children.

A. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

B. The Legislature finds that domestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development.

C. The Legislature finds and declares that, except when a court determines that the best interest of a child would not be served, it is the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. Parental rights and responsibilities; order. This subsection governs parental rights and responsibilities and court orders for parental rights and responsibilities.

A. When the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

B. The court may award reasonable rights of contact with a minor child to a 3rd person.

C. The court may award parental rights and responsibilities with respect to the child to a 3rd person, a suitable society or institution for the care and protection of children or the department, upon a finding that awarding parental rights and responsibilities to either or both parents will place the

child in jeopardy as defined in Title 22, section 4002, subsection 6.

D. The order of the court awarding parental rights and responsibilities must include the following:

(1) Allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child as provided in subsection 3. An award of shared parental rights and responsibilities may include either an allocation of the child's primary residential care to one parent and rights of parent-child contact to the other parent, or a sharing of the child's primary residential care by both parents. If either or both parents request an award of shared primary residential care and the court does not award shared primary residential care of the child, the court shall state in its decision the reasons why shared primary residential care is not in the best interest of the child;

(2) Conditions of parent-child contact in cases involving domestic abuse as provided in subsection 6;

(3) A provision for child support as provided in subsection 8 or a statement of the reasons for not ordering child support;

(4) A statement that each parent must have access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records and other information on school activities, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access;

(5) A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 7;

(6) A statement of the definition of shared parental rights and responsibilities contained in section 1501, subsection 5, if the order of the court awards shared parental rights and responsibilities; and

(7) If the court appoints a parenting coordinator pursuant to section 1659, a parenting plan defining areas of parental rights and responsibilities within the scope of the parenting coordinator's authority.

An order modifying a previous order is not required to include provisions of the previous order that are not modified.

E. The order of the court may not include a requirement that the State pay for the defendant to attend a batterers' intervention program unless the program is certified under section 4014.

3. Best interest of child. The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. In making decisions regarding the child's residence and parent-child contact, the court shall consider as primary the safety and well-being of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;



- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;
- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
- I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
- K. The effect on the child if one parent has sole authority over the child's upbringing;
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
- (1) The child emotionally;
  - (2) The safety of the child; and
  - (3) The other factors listed in this subsection, which must be considered in light of the presence of past or current domestic abuse;
- M. The existence of any history of child abuse by a parent;
- N. All other factors having a reasonable bearing on the physical and psychological well-being of the child;
- O. A parent's prior willful misuse of the protection from abuse process in chapter 101 [FN1] in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence

of the willful misuse of the protection from abuse process;

P. If the child is under one year of age, whether the child is being breast-fed;

Q. The existence of a parent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203;

R. If there is a person residing with a parent, whether that person:

(1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 [FN2] or a comparable crime in another jurisdiction;

(2) Has been adjudicated of a juvenile offense that, if the person had been an adult at the time of the offense, would have been a violation of Title 17-A, chapter 11 or 12; or

(3) Has been adjudicated in a proceeding, in which the person was a party, under Title 22, chapter 1071 [FN3] as having committed a sexual offense; and

S. Whether allocation of some or all parental rights and responsibilities would best support the child's safety and well-being.

4. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's gender or the child's age or gender.

5. Departure from family residence. The court may not consider departure from the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the departing parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the departure, or when one parent has left the family residence by mutual agreement or at the request or insistence of the other parent.

5-A. Effect of protective order. Although the court shall consider the fact that a protective order was issued under chapter 101, the court shall determine the proper award of parental rights and responsibilities and award of rights of contact de novo and may not use as precedent the award of parental rights and responsibilities and rights of contact included in the protective order.

6. Conditions of parent-child contact in cases involving domestic abuse. The court shall establish conditions of parent-child contact in cases involving domestic abuse as follows.

A. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has committed domestic abuse only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child and the parent who is a victim of domestic abuse can be made.

B. In an order of parental rights and responsibilities, a court may:

(1) Order an exchange of a child to occur in a protected setting;

- (2) Order contact to be supervised by another person or agency;
- (3) Order the parent who has committed domestic abuse to attend and complete to the satisfaction of the court a domestic abuse intervention program or other designated counseling as a condition of the contact;
- (4) Order either parent to abstain from possession or consumption of alcohol or controlled substances, or both, during the visitation and for 24 hours preceding the contact;
- (5) Order the parent who has committed domestic abuse to pay a fee to defray the costs of supervised contact;
- (6) Prohibit overnight parent-child contact; and
- (7) Impose any other condition that is determined necessary to provide for the safety of the child, the victim of domestic abuse or any other family or household member.

C. The court may require security from the parent who has committed domestic abuse for the return and safety of the child.

D. The court may order the address of the child and the victim to be kept confidential.

E. The court may not order a victim of domestic abuse to attend counseling with the parent who has committed domestic abuse.

F. If a court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include but are not limited to:

- (1) Minimizing circumstances when the family of the parent who has committed domestic abuse would be supervising visits;
- (2) Ensuring that contact does not damage the relationship with the parent with whom the child has primary physical residence;
- (3) Ensuring the safety and well-being of the child; and
- (4) Requiring that supervision is provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

G. Fees set forth in this subsection incurred by the parent who has committed domestic abuse may not be considered as a mitigating factor reducing that parent's child support obligation.

6-A. Custody and contact limited; convictions for sexual offenses. The award of primary residence and parent-child contact with a person who has been convicted of a child-related sexual offense is governed by this subsection.

A. For the purposes of this section, “child-related sexual offense” means the following sexual offenses if, at the time of the commission of the offense, the victim was under 18 years of age:

- (1) Sexual exploitation of a minor, under Title 17-A, section 282;
- (2) Gross sexual assault, under Title 17-A, section 253;
- (3) Sexual abuse of a minor, under Title 17-A, section 254;
- (4) Unlawful sexual contact, under Title 17-A, section 255-A or former section 255;
- (5) Visual sexual aggression against a child, under Title 17-A, section 256;
- (6) Sexual misconduct with a child under 14 years of age, under Title 17-A, section 258;
- (6-A) Solicitation of a child by computer to commit a prohibited act, under Title 17-A, section 259; or

(7) An offense in another jurisdiction that involves conduct that is substantially similar to that contained in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). For purposes of this subparagraph, “another jurisdiction” means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa and each of the several states except Maine. “Another jurisdiction” also means the Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-B, subsection 1, paragraph A or B.

B. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has been convicted of a child-related sexual offense only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child can be made.

C. In an order of parental rights and responsibilities, a court may require that parent-child contact between a minor child and a person convicted of a child-related sexual offense may occur only if there is another person or agency present to supervise the contact. If the court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

- (1) Minimize circumstances when the family of the parent who is a sex offender or sexually violent predator would be supervising visits;
- (2) Ensure that contact does not damage the relationship with the parent with whom the child has primary physical residence;
- (3) Ensure the safety and well-being of the child; and
- (4) Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

6-B. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if any contact were

to be permitted and that any contact is not in the best interests of the child if the court finds that the person seeking primary residence or contact with the child:

A. Has been convicted of an offense listed in subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking primary residence or contact with the child may present evidence to rebut the presumption.

7. Violation of order concerning parental rights and responsibilities and contact. Either parent may petition the court for a hearing on the issue of noncompliance with the order issued under subsection 2. If the court finds that a parent has violated a part of the order, the court may find that parent in contempt and may:

A. Require additional or more specific terms and conditions consistent with the order;

B. Order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; or

C. Order a parent found in contempt to pay a forfeiture of at least \$100.

8. Child support order. The court may order conditions of child support as follows.

A. Either parent of a minor child shall contribute reasonable and just sums as child support payable weekly, biweekly, monthly or quarterly. In an action filed under section 1654, the court may require the child's nonprimary care provider to pay past support. Availability of public welfare benefits to the family may not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 65, subchapter 2, article 3. [FN4] If an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section and a determination of past support must comply with chapter 63. [FN5]

B. After January 1, 1990, if the court orders either parent to provide child support, the court order must require that the child support be provided beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever occurs first.

C. The court may require the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring at least one parent to obtain and maintain private health insurance for the child, if private health insurance

for the child is available at reasonable cost. The court order must also require the parent providing insurance to furnish proof of coverage to the other parent within 15 days of receipt of a copy of the court order. If private health insurance for the child is not available at reasonable cost at the time of the hearing, the court order must include a provision requiring at least one parent to obtain and maintain private health insurance for the child that must be effective immediately upon private health insurance for the child being available at reasonable cost.

When the department provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to reasonable cost health insurance coverage and, if so, the health insurance policy information and any subsequent changes.

9. Enforcement of child support order. The court may enforce a child support order as provided in chapter 65. [FN6]

10. Modification or termination. Upon the petition of one or both of the parents, an order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require.

A. Modification and termination of child support orders are governed by section 2009.

B. Modification of and termination orders for parental rights and responsibilities other than child support are governed by section 1657.

11. Mediation. Prior to a contested hearing under this chapter relating to initial or modified orders, the court shall refer the parties to mediation as provided in chapter 3. [FN7]

12. Termination of order. A court order requiring the payment of child support remains in force as to each child until the order is altered by the court or until that child:

A. Attains 18 years of age. For orders issued after January 1, 1990, if the child attains 18 years of age while attending secondary school as defined in Title 20-A, section 1, the order remains in force until the child graduates, withdraws or is expelled from secondary school or attains 19 years of age, whichever occurs first;

B. Becomes married; or

C. Becomes a member of the armed services.

13. Automatic adjustments. The order of the court or hearing officer may include automatic adjustments to the amount of money paid for the support of a child when the child attains 12 or 18 years of age; or when the child graduates, withdraws or is expelled from secondary school, attains 19 years of age or is otherwise emancipated, whichever occurs first.

14. Notice of relocation. The order must require notice of the intended relocation of a child by a parent awarded shared parental rights and responsibilities or allocated parental rights and responsibilities. At least 30 days before the intended relocation of a child by a parent, the parent shall provide notice to the other parent of the intended relocation. If the relocation must occur in fewer than

30 days, the parent who is relocating shall provide notice as soon as possible to the other parent. If the parent who is relocating believes notifying the other parent will cause danger to the relocating parent or the child, the relocating parent shall notify the court of the intended relocation, and the court shall provide appropriate notice to the other parent in a manner determined to provide safety to the relocating parent and child.

**ME. REV. STAT. ANN. tit. 22, § 4002 (2011). Definitions**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Abuse or neglect. “Abuse or neglect” means a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or section 5051-A, subsection 1, paragraph C, by a person responsible for the child.

1-A. Abandonment. “Abandonment” means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:

- A. Failure, for a period of at least 6 months, to communicate meaningfully with the child;
- B. Failure, for a period of at least 6 months, to maintain regular visitation with the child;
- C. Failure to participate in any plan or program designed to reunite the parent with the child;
- D. Deserting the child without affording means of identifying the child and his parent or custodian;
- E. Failure to respond to notice of child protective proceedings; or
- F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims.

1-B. Aggravating factor. “Aggravating factor” means any of the following circumstances with regard to the parent.

A. The parent has subjected any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society.

(2) Deleted. Laws 2001, c. 696, § 10.

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.

B. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a

household lived in or frequented by the parent:

- (1) Murder;
- (2) Felony murder;
- (3) Manslaughter;
- (4) Aiding, conspiring or soliciting murder or manslaughter;
- (5) Felony assault that results in serious bodily injury; or
- (6) Any comparable crime in another jurisdiction.

C. The parental rights of the parent to a sibling have been terminated involuntarily.

D. The parent has abandoned the child.

2. Child. “Child” means any person who is less than 18 years of age.

3. Child protection proceeding. “Child protection proceeding” means a proceeding on a child protection petition under subchapter IV, [FN1] a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, [FN2] or a proceeding on a medical treatment petition under subchapter VIII. [FN3]

3-A. Repealed. Laws 2001, c. 439, § X-1.

4. Custodial parent. “Custodial parent” means a parent with custody.

5. Custodian. “Custodian” means the person who has legal custody and power over the person of a child.

5-A. Foster parent. “Foster parent” means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom the child lives pursuant to a court order or agreement with the department.

6. Jeopardy to health or welfare or jeopardy. “Jeopardy to health or welfare” or “jeopardy” means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm;

B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;

B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;



C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or

D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

6-A. Licensed mental health professional. “Licensed mental health professional” means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

7. Parent. “Parent” means a natural or adoptive parent, unless parental rights have been terminated.

7-A. Repealed. Laws 2005, c. 372, § 2.

8. Person. “Person” means an individual, corporation, facility, institution or agency, public or private.

9. Person responsible for the child. “Person responsible for the child” means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child. It includes the child's custodian.

9-A. Preadoptive parent. “Preadoptive parent” means a person who has entered into a preadoption agreement with the department with respect to the child.

9-B. Relative. “Relative” means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child.

9-C. Removal of the child from home. “Removal of the child from home” means that the department or a court has taken a child out of the home of the parent, legal guardian or custodian without the permission of the parent or legal guardian.

9-D. Resource family. “Resource family” means a person or persons who provide care to a child in the child welfare system and who are foster parents, permanency guardians, adoptive parents or members of the child's extended birth family.

10. Serious harm. “Serious harm” means:

A. Serious injury;

B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or

C. Sexual abuse or exploitation.

11. Serious injury. “Serious injury” means serious physical injury or impairment.

12. Suspicious child death. “Suspicious child death” means the death of a child under circumstances in which there is reasonable cause to suspect that abuse or neglect was a cause of or factor contributing to the child's death.

**ME. REV. STAT. ANN. tit. 22, § 4010 (2011). Spiritual treatment**

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

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

**ME. REV. STAT. ANN. tit. 22, § 4035 (2011). Hearing on jeopardy order petition**

1. Hearing required. The court shall hold a hearing prior to making a jeopardy order.

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4.

B. The court shall make findings of fact on the record upon which the jeopardy determination is made.

C. The court shall make a jeopardy determination with regard to each parent who has been properly served.

2-A. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption:

A. That the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking custody or contact with the child may produce evidence to rebut the presumption; and

B. That the parent or person responsible for the child would create a situation of jeopardy for the child if the parent or person allows, encourages or fails to prevent contact between the child and a person who:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The parent or person responsible for the child may produce evidence to rebut the presumption.

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this dispositional phase must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

4. Repealed. Laws 1997, c. 715, § A-8.

4-A. Jeopardy order. The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

**ME. REV. STAT. ANN. tit. 22, § 4038 (2011). Mandated review; review on motion**

1. Mandated review. If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

1-A. No mandated review. Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

A. When custody has been granted to a person other than a parent or the department;

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; or

C. Repealed. Laws 2003, c. 408, § 4.

D. Repealed. Laws 2003, c. 408, § 5.

E. When a permanency guardianship has been established pursuant to section 4038-C.

2. Review on motion. The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

3. Notice of review. Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

“The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records.”

A copy of the notice must be filed with the court prior to the review or hearing.

3-A. Prehearing conference. The court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.

4. Repealed. 1985, c. 739, § 13, eff. April 18, 1986.

5. Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041. After hearing or by agreement, the court shall make written findings that determine:

A. The safety of the child in the child's placement;

B. The continuing necessity for and appropriateness of the child's placement;

C. The effect of a change in custody on the child;

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care;

E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and

F. If the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living.

6. Disposition. The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A to C. Deleted. Laws 1989, c. 270, § 13.

7. Repealed. Laws 1997, c. 715, § B-9.

7-A. Repealed. Laws 2005, c. 372, § 4.

**ME. REV. STAT. ANN. tit. 22, § 4055 (2011). Grounds for termination**

1. Grounds. The court may order termination of parental rights if:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

(a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653;

(c) Section 3792 prior to the effective date of this chapter; or

(d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; [FN1] and

B. Either:

(1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

(a) Termination is in the best interest of the child; and

(b) Either:

(i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

(ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;

(iii) The child has been abandoned; or

(iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041.

(c) Deleted. Laws 1983, c. 772, § 8.

1-A. Rebuttable presumption. The court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs if:

A. The parent has acted toward a child in a manner that is heinous or abhorrent to society or has failed to protect a child in a manner that is heinous or abhorrent to society, without regard to the intent of the parent;

B. The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

- (1) Murder;
- (2) Felony murder;
- (3) Manslaughter;
- (4) Aiding or soliciting suicide;
- (5) Aggravated assault;
- (6) Rape;
- (7) Gross sexual misconduct or gross sexual assault;
- (8) Sexual abuse of minors;
- (9) Incest;
- (10) Kidnapping;
- (11) Promotion of prostitution; or
- (12) A comparable crime in another jurisdiction;

C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 9 months due to substance abuse constitutes a chronic substance abuse problem;

D. The child has been placed in the legal custody or care of the department, the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to show the court that the parent has sought services that would rehabilitate the parent or the parent can not show evidence that an additional period of services would result in reunification in a time reasonably calculated to meet the needs of the child and the child's need for a permanent home; or

E. The child has been placed in the legal custody or care of the department for at least 9 months, and the parents have been offered or received services to correct the situation but have refused or have made no significant effort to correct the situation.

2. Primary considerations. In deciding to terminate parental rights, the court shall consider the best interest of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the parent's home and the child's physical and emotional needs.

3. Wishes of child. The court shall consider the wishes of a child, in a manner appropriate to the age of the child, in making an order under this section.

## **MARYLAND**

### **Md. CODE ANN., FAM. LAW § 5-323 (2011). Grant of guardianship--Nonconsensual “Drug” defined**

(a) In this section, “drug” means cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine.

#### Authority

(b) If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

#### Exemption from considerations

(c) A juvenile court need not consider any factor listed in subsection (d) of this section in determining a child's best interests if, after a thorough investigation by a local department, the juvenile court finds that:

(1) the identities of the child's parents are unknown; and

(2) during the 60 days immediately after the child's adjudication as a child in need of assistance, no one has claimed to be the child's parent.

#### Considerations

(d) Except as provided in subsection (c) of this section, in ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:

(1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;

(ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and

(iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;

(2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:

(i) the extent to which the parent has maintained regular contact with:

1. the child;

2. the local department to which the child is committed; and

3. if feasible, the child's caregiver;

(ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;

(iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and

(iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or



B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

2. the mother refused the level of drug treatment recommended by a qualified addictions specialist, as defined in § 5-1201 of this title, or by a physician or psychologist, as defined in the Health Occupations Article;

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:

- A. a minor offspring of the parent;
- B. the child; or
- C. another parent of the child; or

2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

(4)(i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;
2. home;
3. placement; and
4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

(iv) the likely impact of terminating parental rights on the child's well-being.

#### Waiver of local department's obligation

(e)(1) A juvenile court shall consider the evidence under subsection (d)(3)(i) and (ii) of this section as to a continuing or serious act or condition and may waive a local department's obligations for services described in subsection (d)(1) of this section if, after appropriate evaluation of efforts made and services offered, the juvenile court finds by clear and convincing evidence that a waiver is in the child's best interests.

(2) A juvenile court may waive a local department's obligations for services described in subsection (d)(1) of this section if the juvenile court finds by clear and convincing evidence that one or more of the acts or circumstances listed in subsection (d)(3)(iii), (iv), or (v) of this section exists.

(3) If a juvenile court waives reunification efforts under § 3-812(d) of the Courts Article, the juvenile court may not consider any factor under subsection (d)(1) of this section.

#### Specific finding required

(f) If a juvenile court finds that an act or circumstance listed in subsection (d)(3)(iii), (iv), or (v) of this section exists, the juvenile court shall make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety.

#### Construction as voluntary

(g) If a parent has consented to guardianship in accordance with § 5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered voluntary.

### **MD. CODE ANN., FAM. LAW § 5-701 (2011). Definitions**

#### In general

(a) Except as otherwise provided in § 5-705.1 of this subtitle, in this subtitle the following words have the meanings indicated.

#### Abuse

(b) “Abuse” means:

(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or

(2) sexual abuse of a child, whether physical injuries are sustained or not.

#### Administration

(c) “Administration” means the Social Services Administration of the Department.

#### Central registry

(d)(1) Except as provided in paragraph (2) of this subsection, “central registry” means any component of the Department's confidential computerized database that contains information regarding child abuse and neglect investigations.

(2) “Central registry” does not include a local department case file.

#### Child

(e) “Child” means any individual under the age of 18 years.

#### Repealed

(f) Repealed by Acts 2005, c. 464, § 2, eff. Jan. 1, 2006.

#### Educator or human service worker

(g)(1) “Educator or human service worker” means any professional employee of any correctional, public, parochial or private educational, health, juvenile service, social or social service agency, institution, or licensed facility.

(2) “Educator or human service worker” includes:

(i) any teacher;

(ii) any counselor;

(iii) any social worker;

(iv) any caseworker; and

(v) any probation or parole officer.

#### Family member

(h) “Family member” means a relative by blood, adoption, or marriage of a child.

#### Health practitioner

(i)(1) “Health practitioner” includes any person who is authorized to practice healing under the Health Occupations Article or § 13-516 of the Education Article.

(2) “Health practitioner” does not include an emergency medical dispatcher.

#### Household

(j) “Household” means the location:

(1) in which the child resides;

(2) where the abuse or neglect is alleged to have taken place; or

(3) where the person suspected of abuse or neglect resides.

#### Household member

(k) “Household member” means a person who lives with, or is a regular presence in, a home of a child at the time of the alleged abuse or neglect.

#### Identifying information

(l) “Identifying information” means the name of:

(1) the child who is alleged to have been abused or neglected;

(2) a member of the household of the child;

(3) a parent or legal guardian of the child; or

(4) an individual suspected of being responsible for abuse or neglect of the child.

#### Indicated

(m) “Indicated” means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.

#### Law enforcement agency

(n)(1) “Law enforcement agency” means a State, county, or municipal police department, bureau, or agency.

(2) “Law enforcement agency” includes:

(i) a State, county, or municipal police department or agency;

(ii) a sheriff's office;

(iii) a State's Attorney's office; and

(iv) the Attorney General's office.

#### Local department

(o) Except as provided in §§ 5-705.1 and 5-714 of this subtitle, “local department” means the local department that has jurisdiction in the county:

(1) where the allegedly abused or neglected child lives; or

(2) if different, where the abuse or neglect is alleged to have taken place.

#### Local department case file

(p) “Local department case file” means that component of the Department's confidential computerized database that contains information regarding child abuse and neglect investigations to which access is limited to the local department staff responsible for the investigation.

#### Local State's Attorney

(q) “Local State's Attorney” means the State's Attorney for the county:

(1) where the allegedly abused or neglected child lives; or

(2) if different, where the abuse or neglect is alleged to have taken place.

#### Mental injury

(r) “Mental injury” means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

#### Neglect

(s) “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

(1) that the child's health or welfare is harmed or placed at substantial risk of harm; or

(2) mental injury to the child or a substantial risk of mental injury.

#### Police officer

(t) “Police officer” means any State or local officer who is authorized to make arrests as part of the officer's official duty.

#### Record

(u) “Record” means the original or any copy of any documentary material, in any form, including a report of suspected child abuse or neglect, that is made by, received by, or received from the State, a county, or a municipal corporation in the State, or any subdivision or agency concerning a case of alleged child abuse or neglect.

#### Report

(v) “Report” means an allegation of abuse or neglect, made or received under this subtitle.

#### Ruled out

(w) “Ruled out” means a finding that abuse, neglect, or sexual abuse did not occur.

#### Sexual abuse

(x)(1) “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.

(2) “Sexual abuse” includes:

(i) incest, rape, or sexual offense in any degree;

(ii) sodomy; and

(iii) unnatural or perverted sexual practices.

#### Unsubstantiated

(y) “Unsubstantiated” means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.

## **MASSACHUSETTS**

### **MASS. GEN. LAWS ANN. ch. 119, § 26 (2011). Procedure at hearing; order of commitment; petition to dispense with parental consent to adoption; reimbursement of commonwealth; petition for review**

(a) If the child is identified by the court and it appears that the precept and summonses have been duly and legally served, that notice has been issued to the department and the report of the person qualified under section 21A is received, the court may excuse the child from the hearing and shall proceed to hear the evidence.

(b) If the court finds the allegations in the petition proved within the meaning of this chapter, it may adjudge that the child is in need of care and protection. In making such adjudication, the health and safety of the child shall be of paramount concern. If the child is adjudged to be in need of care and protection, the court may commit the child to the custody of the department until he becomes an adult or until, in the opinion of the department, the object of his commitment has been accomplished, whichever occurs first; and the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. The court also may make any other appropriate order, including conditions and limitations, about the care and custody of the child as may be in the child's best interest including, but not limited to, any 1 or more of the following:

(1) It may permit the child to remain with a parent, guardian or other custodian, and may require supervision as directed by the court for the care and protection of the child.

(2) It may transfer temporary or permanent legal custody to:

(i) any person, including the child's parent, who, after study by a probation officer or other person or agency designated by the court, is found by the court to be qualified to give care to the child;

(ii) any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(iii) the department of children and families.

(3) It may order appropriate physical care including medical or dental care.

(4) It may dispense with the need for consent of any person named in section 2 of chapter 210 to the adoption, custody, guardianship or other disposition of the child named therein.

In determining whether such an order should be made, the standards set forth in section 3 of said chapter 210 concerning an order to dispense with the need for consent to adoption of a child shall be applied. If the child who is the subject of the petition is under the age of 12, and if the court adjudicates the child to be in need of care and protection under this section, the court shall enter an order dispensing with the need for consent to adoption upon finding that the best interests of the child, as defined in paragraph (c) of said section 3 of said chapter 210, will be served thereby. The entry of such an order shall have the effect of terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein.

The department shall file a petition or a motion to amend a petition to dispense with parental consent to adoption, custody, guardianship or other disposition of the child if: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of such parent; or (iii) the child has been in foster care in the custody of the state for 15 of the immediately preceding 22 months. Under this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, under section 24 or this section, that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home. The department shall concurrently identify, recruit, process and approve a qualified family for adoption.

The department need not file such a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary for the safe return of the child to the child's home if reasonable efforts as set forth in section 29C are required to be made with respect to the child.

Notwithstanding the foregoing, the following circumstances shall constitute grounds for dispensing with the need for consent to adoption, custody, guardianship or other disposition of the child: (i) the child has been abandoned; or (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an

assault constituting a felony which resulted in serious bodily injury to the child or to another child of the parent.

(5) The court may order the parents or parent of said child to reimburse the commonwealth or other agency for care in appropriate cases.

(c) On any petition filed in any court under this section, the department or the parents, person having legal custody, probation officer or guardian of a child or the counsel or guardian ad litem for a child may petition the court not more than once every 6 months for a review and redetermination of the current needs of such child whose case has come before the court, except that any person against whom a decree to dispense with consent to adoption has been entered under clause (4) of subsection (b) shall not have such right of petition for review and redetermination. Unless the court enters written findings setting forth specific extraordinary circumstances that require continued intervention by the court, the court shall enter a final order of adjudication and permanent disposition, not later than 15 months after the date the case was first filed in court. The date by which a final order of adjudication and permanent disposition shall be entered may be extended once for a period not to exceed 3 months and only if the court makes a written finding that the parent has made consistent and goal-oriented progress likely to lead to the child's return to the parent's care and custody. Findings in support of such final order of adjudication and permanent disposition shall be made in writing within a reasonable time of the court's order. The court shall not lose jurisdiction over the petition by reason of its failure to enter a final order and the findings in support thereof within the time set forth in this paragraph.

**MASS. GEN. LAWS ANN. ch. 210, § 3 (2011). Dispensing with required consent in certain cases**

(a) Whenever a petition for adoption is filed by a person having the care or custody of a child, the consent of the persons named in section 2, other than that of the child, shall not be required if:-- (i) the person to be adopted is 18 years of age or older; or (ii) the court hearing the petition finds that the allowance of the petition is in the best interests of the child pursuant to paragraph (c).

(b) The department of children and families or a licensed child care agency may commence a proceeding, independent of a petition for adoption, in the probate court in Suffolk county or in any other county in which the department or agency maintains an office, to dispense with the need for consent of any person named in section 2 to adoption of the child in the care or custody of the department or agency. Notice of such proceeding shall be given to such person in a manner prescribed by the court. The court shall appoint counsel to represent the child in the proceeding unless the petition is not contested by any party. The court shall issue a decree dispensing with the need for consent or notice of any petition for adoption, custody, guardianship or other disposition of the child named therein, if it finds that the best interests of the child as provided in paragraph (c) will be served by the decree. Pending a hearing on the merits of a petition filed under this paragraph, temporary custody may be awarded to the petitioner. The entry of such decree shall have the effect of terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein. The department shall provide notice of the hearing on the merits to any foster parent, pre-adoptive parent or relative providing care for the child informing the foster parent, pre-adoptive parent or relative of his right to attend the hearing and be heard. The provisions of this paragraph shall not be construed to require that a foster parent, pre-adoptive parent or relative be made a party to the proceeding.



A petition brought pursuant to this paragraph may be filed and a decree entered notwithstanding the pendency of a petition brought under chapter 119 or chapter 201 regarding the same child. The chief justice for administration and management of the trial court may, pursuant to the provisions of section 9 of chapter 211B, assign a justice from any department of the trial court to sit as a justice in any other department or departments of the trial court and hear simultaneously a petition filed under this paragraph and any other pending case or cases involving custody or adoption of the same child. A temporary or permanent custody decree shall not be a requirement to the filing of such petition.

A juvenile court or a district court shall enter a decree dispensing with the need for consent of any person named in section 2 to the adoption of a child named in a petition filed pursuant to section 24 of chapter 119 in such court upon a finding that such child is in need of care and protection pursuant to section 26 of said chapter 119 and that the best interests of the child as defined in paragraph (c) will be served by such decree. The entry of such decree shall have the effect of terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein. Facts may be set forth either in the care and protection petition filed pursuant to said section 24 of said chapter 119 or upon a motion made in the course of a care and protection proceeding, alleging that the allowance of the petition or motion is in the best interests of the child.

The department of children and families shall file a petition or, in the alternative, a motion to amend a petition pending pursuant to section 26 of chapter 119 to dispense with parental consent to adoption, custody, guardianship or other disposition of the child under the following circumstances: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of any assault constituting a felony which results in serious bodily injury to the child or to another child of the parent; or (iii) the child has been in foster care in the custody of the commonwealth for 15 of the immediately preceding 22 months. For the purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, pursuant to section 24 or section 26 of chapter 119, that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home. For the purposes of this paragraph, "serious bodily injury" shall mean bodily injury which involves a 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.

The department shall concurrently identify, recruit, process and approve a qualified family for adoption.

The department need not file a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child, or, where the child is the subject of a pending petition pursuant to section 26 of chapter 119, a motion to amend the petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child, if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary for the safe return of the child to the child's home if reasonable efforts as set forth in section 29C of said chapter 119 are required to be made with respect to the child.

(c) In determining whether the best interests of the child will be served by granting a petition for adoption without requiring certain consent as permitted under paragraph (a), the court shall consider the ability, capacity, fitness and readiness of the child's parents or other person named in section 2 to assume parental responsibility and shall also consider the ability, capacity, fitness and readiness of the petitioners under said paragraph (a) to assume such responsibilities. In making the determination, the health and safety of the child shall be of paramount, but not exclusive, concern.

In determining whether the best interests of the child will be served by issuing a decree dispensing with the need for consent as permitted under paragraph (b), the court shall consider the ability, capacity, fitness and readiness of the child's parents or other person named in section 2 to assume parental responsibility, and shall also consider the plan proposed by the department or other agency initiating the petition. In making the determination, the health and safety of the child shall be of paramount, but not exclusive, concern.

In considering the fitness of the child's parent or other person named in section 2, the court shall consider, without limitation, the following factors:

- (i) the child has been abandoned;
- (ii) the child or another member of the immediate family of the child has been abused or neglected as a result of the acts or omissions of one or both parents, the parents were offered or received services intended to correct the circumstances which led to the abuse or neglect and refused, or were unable to utilize such services on a regular and consistent basis so that a substantial danger of abuse or neglect continues to exist, or have utilized such services on a regular and consistent basis without effectuating a substantial and material or permanent change in the circumstances which led to the abuse or neglect;
- (iii) a court of competent jurisdiction has transferred custody of the child from the child's parents to the department, the placement has lasted for at least six months and the parents have not maintained significant and meaningful contact with the child during the previous six months nor have they, on a regular and consistent basis, accepted or productively utilized services intended to correct the circumstances;
- (iv) the child is four years of age or older, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least 12 of the immediately preceding 15 months and the child cannot be returned to the custody of the parents at the end of such 15-month period; provided, however, that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;
- (v) the child is younger than four years of age, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least 6 of the immediately preceding 12 months and the child cannot be returned to the custody of the parents at the end of such 12-month period; provided, however, that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;
- (vi) the parent, without excuse, fails to provide proper care or custody for the child and there is a reasonable expectation that the parent will not be able to provide proper care or custody within a

reasonable time considering the age of the child provided that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;

(vii) because of the lengthy absence of the parent or the parent's inability to meet the needs of the child, the child has formed a strong, positive bond with his substitute caretaker, the bond has existed for a substantial portion of the child's life, the forced removal of the child from the caretaker would likely cause serious psychological harm to the child and the parent lacks the capacity to meet the special needs of the child upon removal;

(viii) a lack of effort by a parent or other person named in section 2 to remedy conditions which create a risk of harm due to abuse or neglect of the child;

(ix) severe or repetitive conduct of a physically, emotionally or sexually abusive or neglectful nature toward the child or toward another child in the home;

(x) the willful failure to visit the child where the child is not in the custody of the parent or other person named in section 2;

(xi) the willful failure to support the child where the child is not in the custody of the parent or other person named in section 2. Failure to support shall mean that the parent or other person has failed to make a material contribution to the child's care when the contribution has been requested by the department or ordered by the court;

(xii) a condition which is reasonably likely to continue for a prolonged, indeterminate period, such as alcohol or drug addiction, mental deficiency or mental illness, and the condition makes the parent or other person named in section 2 unlikely to provide minimally acceptable care of the child;

(xiii) the conviction of a parent or other person named in section 2 of a felony that the court finds is of such a nature that the child will be deprived of a stable home for a period of years. Incarceration in and of itself shall not be grounds for termination of parental rights; or

(xiv) whether or not there has been a prior pattern of parental neglect or misconduct or an assault constituting a felony which resulted in serious bodily injury to the child and a likelihood of future harm to the child based on such prior pattern or assault.

For the purposes of this section "abandoned" shall mean being left without any provision for support and without any person responsible to maintain care, custody and control because the whereabouts of the person responsible therefor is unknown and reasonable efforts to locate the person have been unsuccessful. A brief and temporary absence from the home without intent to abandon the child shall not constitute abandonment.

Hearings on petitions to dispense with consent to adoption that allege that a child has been abandoned shall be scheduled and heard on an expedited basis. Notwithstanding the foregoing, the following circumstances shall constitute grounds for dispensing with the need for consent to adoption, custody, guardianship or other disposition of the child: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such

murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of the parent. For the purposes of this section, "serious bodily injury" shall mean bodily injury which involves a 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 this section shall be construed to prohibit the petitioner and a birth parent from entering into an agreement for post-termination contact or communication. The court issuing the termination decree under this section shall have jurisdiction to resolve matters concerning the agreement. Such agreement shall become null and void upon the entry of an adoption or guardianship decree.

Notwithstanding the existence of any agreement for post-termination or post-adoption contact or communication, the decree entered under this section shall be final.

Nothing in this section shall be construed to prohibit a birth parent who has entered into a post-termination agreement from entering into an agreement for post-adoption contact or communication pursuant to section 6C once an adoptive family has been identified.

#### **110 MASS. CODE REGS. 2.00 (2012): Glossary**

Whenever used throughout 110 CMR, the following words shall have the following meanings, unless the context plainly requires otherwise.

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

Antipsychotic Drugs shall mean drugs which are considered neuroleptics, in that they are used to treat certain psychotic symptoms. Such antipsychotic drugs shall include, but shall not be limited to:

Generic Name	Trade Name
1 Acetophenazine	Tindal
2 Amoxapine	Asendin
3 Butaperazine	Repoise
4 Carphenazine	Proketazine
5 Chlorpromazine	Thorazine
6 Chlorprothizene	Taractan
7 Fluphenazine	Prolixin, Permitil

8	Haloperidol	Haldol
9	Loxapine	Loxitane
10	Mesoridazine	Serentil
11	Molindone	Moban
12	Perphenazine	Trilafon, Etrafon, Triavil
13	Pimozide	Orap
14	Piperacetazine	Quide
15	Prochlorperazine	Compazine
16	Promazine	Sparine
17	Reserpine	--
18	Thioridazine	Mellaril
19	Thiothixene	Navane
20	Trifluoperazine	Stelazine
21	Triflupromazine	Vesprin

Antipsychotic drugs include the above-listed drugs by whatever official name, common or usual name, chemical name, or brand name they may be designated. All isomers, esters, ethers, and salts of; and any combination of; drugs listed above are deemed to be antipsychotic drugs.

Area means one of the 29 geographic areas of the Department of Children and Families.

Area Director means the director of one of the Areas of the Department of Children and Families.

Caretaker means a child's:

- (a) parent
- (b) stepparent
- (c) guardian
- (d) any household member entrusted with the responsibility for a child's health or welfare
- (e) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is

not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The “caretaker” definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under 18 years of age).

Central Registry means a subset of the Department's computerized system. Every area and regional office of the Department, as well as the Central Office of the Department, shall have access to the computerized system, via terminals and printers which shall be located in each such office. The computerized system shall have security procedures which protect the data contained therein against unauthorized users or access. The Department's Central Registry shall consist exclusively of data located within the designated subset of the Department's computerized system. No files, papers, index card systems, or any other form of document shall constitute a part of the Department's Central Registry.

Child means a person who has not reached his/her 18th birthday, but does not include unborn children.

Child in the Care of the Department means a child receiving services from the Department pursuant to a Voluntary Placement Agreement.

Child in the Custody of the Department means a child placed in the Department's custody through court order, including an order under a Child in Need of Services (CHINS) petition, or through adoption surrender.

Closed Referral means that a client may be referred to a provider only by the Department, i.e., the provider may only be reimbursed by the Department for delivering the service(s) if the client was so referred. Compare, “Open Referral”.

Commissioner means the Commissioner of the Department of Children and Families.

Contract means any agreement between the Department and a provider, and shall specifically include Purchase of Service Agreements, Master Agreements, etc.

Day means calendar day, unless noted to the contrary (i.e. “working day”).

Department means the Department of Children and Families.

Designee means any Department employee designated by means of a written memorandum, bearing the written approval of the Commissioner or Deputy Commissioner, and filed with the General Counsel of the Department.

Diseases Dangerous to the Public Health is defined under 105 CMR 300.100 and 105 CMR 310.020 and includes the following:

- (a) Actinomycosis
- (b) AIDS (Acquired Immune Deficiency Syndrome)
- (c) Animal Bite

- (d) Anthrax
- (e) Brucellosis (Undulant Fever)
- (f) Chickenpox (Varicella)
- (g) Cholera
- (h) Diarrhea of the Newborn
- (i) Diphtheria
- (j) Dysentery, Amebic
- (k) Dysentery, Bacillary (Shigellosis)
- (l) Encephalitis (specify if known)
- (m) Food Poisoning by:
  - 1. Botulism
  - 2. Mushrooms and other poisonous vegetable and animal products
  - 3. Mineral or organic poisons such as arsenic, lead, etc.
  - 4. Staphylococcal
- (n) German Measles (Rubella)
- (o) Glanders
- (p) Hepatitis, Viral (includes Infectious and Serum Hepatitis)
- (q) Impetigo of the Newborn
- (r) Leprosy
- (s) Leptospirosis (including Weil's Disease)
- (t) Lymphocytic Choriomeningitis
- (u) Malaria
- (v) Measles (Rubeola)
- (w) Meningitis (B. Influenzal, meningococcal, pneumococcal, streptococcal and other forms)

- (x) Mumps
- (y) Ophthalmia Neonatorum
- (z) Plague
- (aa) Poliomyelitis
- (bb) Psittacosis
- (cc) Rabies - Human
- (dd) Rickettsialpox
- (ee) Rocky Mountain Spotted Fever
- (ff) Salmonellosis (except Typhi and Paratyphi)
- (gg) Salmonellosis: Typhi and Paratyphi (Typhoid and Paratyphoid Fevers)
- (hh) Smallpox (Variola)
- (ii) Smallpox Vaccination Reactions--Generalized Vaccinia, Eczema Vaccinatum
- (jj) Streptococcal Infections (including Erysipelas Scarlet Fever, Streptococcal Sore Throat, etc.)
- (kk) Tetanus
- (ll) Trachoma
- (mm) Trichinosis
- (nn) Tuberculosis
- (oo) Tularemia
- (pp) Typhus Fever (including Brills' Disease)
- (qq) Whooping Cough (pertussis)
- (rr) Yellow Fever

Electroconvulsive Treatment or ECT means a process that passes a controlled electric current into the brain to induce a seizure.

Emergency means a situation where the failure to take immediate action would place a family and/or child at substantial risk of serious and imminent family disruption, or death, or serious emotional or physical injury.



Extraordinary Medical Treatment shall include No-code orders, sterilization, electroconvulsive treatment, antipsychotic medication, withholding or providing life-prolonging treatment (as defined in this Glossary), and any other treatment determined to be extraordinary by using the following analysis:

Recognizing that it is impossible to itemize every extraordinary medical treatment, the Department shall utilize the following factors to determine whether a medical treatment is extraordinary:

(a) Complexity, risk and novelty of the proposed treatment: The more complex the treatment, the greater the risk of death or serious complications, the more experimental the procedure, then the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or to seek judicial approval prior to authorizing treatment. See, *In the Matter of Guardianship of Richard Roe III*, 421 N.E.2d 40, 53 (1981). *In the Matter of Spring*, 405 N.E.2d 115 (1980). *In the Matter of Moe*, 432 N.E.2d 712 (1982).

(b) Possible side effects: The more serious and permanent the side effect, the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or to seek judicial approval prior to authorizing treatment. See, *Superintendent of Belchertown State School v. Saikewicz*, 370 N.E.2d 417 (1977). *Rogers v. Commissioner of DMH*, 390 Mass. 489, 501-502 (1983). *In the Matter of Guardianship of Richard Roe III*, 421 N.E.2d 40 (1981). *Custody of a Minor*, 385 Mass. 697, 434 N.E.2d 601 (1982).

(c) Intrusiveness of proposed treatment: The more intrusive the treatment, the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or prior judicial approval. See, *In the Matter of Hier*, 18 Mass. Appeals Court 200 (1984). *Superintendent of Belchertown State School v. Saikewicz*, supra. *In The Matter of Moe*, supra. *In The Matter of Spring*, supra.

(d) Prognosis with and without treatment: The less clear the benefit from the proposed treatment, the greater the need for parental consent or prior judicial approval. See, *Superintendent of Belchertown State School v. Saikewicz*, supra; *Custody of a Minor*, 385 Mass. 697, 434 N.E.2d 601 (1982); *In The Matter of Spring*, supra.

(e) Clarity of professional opinion: The more divided the medical opinion, the greater the need for parental consent or prior judicial approval. See, *In The Matter of Spring*, supra.

(f) Presence or absence of an emergency: In a medical emergency a physician can act without anyone's consent. See, M.G.L. c. 112, § 12F.

(g) Prior judicial involvement: if a court has been involved in past medical decisions, this argues for judicial involvement in any future medical treatment decision, but this is not conclusive. See, *In The Matter of Guardianship of Richard Roe III*, supra at 56.

(h) Conflicting Interests: Where the interests of the decision maker conflict with the interests of the child, the greater the need for obtaining parental consent or prior judicial approval. *In the Matter of Guardianship of Richard Roe III*, 421 N.E.2d 40 (1981).

Family Planning Services means medical, educational and social services, excluding abortion and sterilization, which enable individuals voluntarily to limit family size or plan spacing of children.

Family planning services include the below-listed services. See, 106 CMR 269.030(A)(B) and 106 CMR 421.412.

- (a) Information and referral (including outreach & follow-up)
- (b) Individual and group counseling
- (c) A physical examination:
  - 1. for a female, includes thyroid, breast, heart, abdominal, speculum, pelvic, and rectal examinations, and measurements of height, weight and blood pressure;
  - 2. for a male, includes thyroid, heart, genital, abdominal, and rectal examinations, and measurements of height, weight and blood pressure. See, 106 CMR 421.412(2).
- (d) A pap smear for females. See, 106 CMR 421.412(3).
- (e) Any laboratory test indicated by the child's history or examination. See, 106 CMR 421.412(4).
- (f) A medically approved method of contraception. See, 106 CMR 421.427(5).
- (g) Medical examinations, consultations, laboratory tests and contraceptive services rendered by a licensed physician
- (h) Medical treatment for related conditions, such as venereal diseases or vaginal infections
- (i) Prescriptions and medical items related to family planning services including drugs, supplies and devices
- (j) Clinical follow-up

Foster Parent Applicant means a person who has applied to be a foster parent and meets the initial eligibility criteria set forth at 110 CMR 7.100.

Foster Parent means a person approved by the Department to be a foster parent in accordance with 110 CMR 7.100 et seq.

Guardian means the individual, organization or agency which has been appointed guardian of the person by a Court of the Commonwealth, in accordance with M.G.L. c. 201, or a court of competent jurisdiction in another state.

Guardian Ad Litem means the person appointed by a court to serve as an independent investigator for the court, not as an advocate for the ward, in a particular legal proceeding, without control over either the individual's person or property.

Handicapped Person means any person who:

- (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities,

(b) has a record of such an impairment, or

(c) is regarded as having such an impairment.

Incompetent means determination made by a court, in accordance with M.G.L. c. 201, that an individual does not have the legal power to direct his personal or financial affairs.

Institutional Abuse or Neglect means abuse or neglect which occurs in any facility for children, including but not limited to group homes, residential or public or private schools, hospitals, detention and treatment facilities, family foster care homes, group day care centers, and family day care homes.

Life-prolonging Treatment, as distinguished from live-saving treatment, means intrusive medical treatment where there is no prospect of recovery. In the Matter of Earle A. Spring, 380 Mass. 629, 405 N.E.2d 115, 120 (1980). Recovery does not mean the ability to remain alive but rather life without intolerable suffering. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977).

Mandated Reporters are defined at M.G.L. c. 119, § 51A and include: any physician; medical intern; hospital personnel engaged in the examination, care or treatment of persons; medical examiner; psychologist; emergency medical technician; dentist; nurse; chiropractor; podiatrist; osteopath; public or private school teacher; educational administrator; guidance or family counselor; day care worker or any person paid to care for or work with a child in any public or private facility, or home or program funded by the Commonwealth or licensed pursuant to the provisions of M.G.L. c. 28A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs; probation officer; clerk/magistrate of the district courts; parole officer, social worker; foster parent; firefighter; or police officer, office for children licenser, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of M.G.L. c. 112, § 165, drug and alcoholism counselor, psychiatrist, and clinical social worker.

Mature Child means a child who is able to understand the circumstances and implications of the situation in which he/she is involved and is able to participate in the decision-making process without excessive anxiety or fear. A child who is 14 years of age or older is presumed to be a mature child. Other relevant sources of law concerning a “mature child” include:

(a) M.G.L. c. 119, § 21 (CHINS);

(b) M.G.L. c. 210, § 2 (adoptions);

(c) M.G.L. c. 112, § 12F (certain medical treatment);

(d) M.G.L. c. 4, § 7 (general age of majority).

Medical Emergency means any immediately life threatening condition and shall include, but is not limited, to the following conditions.

(a) severe, profuse bleeding

(b) choking, blocked airway

- (c) unconsciousness
- (d) cardiac arrest
- (e) cardio-vascular accident
- (f) any fracture
- (g) extensive burns
- (h) severe cuts
- (i) other similar severe injury
- (j) other sudden signs of serious physical illness
- (k) any condition where delay in treatment will endanger the life, limb or mental well being of the patient. See, M.G.L. c. 112, § 12F.

Possibility that a disease may deteriorate to an irreversible condition at an uncertain but relatively distant date is not an emergency. See, 104 CMR 2.11(3) and *In the Matter of Guardianship of Richard Roe, III*, 421 N.E.2d 40, 55; 383 Mass. 415 (1981).

In determining whether a medical emergency exists the relevant time period to be examined begins when the claimed emergency arises, and ends when the individual who seeks to act in the emergency could, with reasonable diligence, obtain parental consent or judicial review, as applicable. See, *Roe* at 55.

Mental Health Facility means a public or private facility for the in-patient care or treatment or diagnosis or evaluation of mentally ill or mentally retarded persons, except for the Bridgewater State Hospital. See M.G.L. c. 123, § 1. Community residential care facilities for children (as defined at 110 CMR 7.120) are not mental health facilities for purposes of 110 CMR.

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

No Code order means a medical order regarding a terminally ill patient directing a hospital and its staff not to use heroic medical efforts in the event of cardiac or respiratory failure. Heroic medical efforts include invasive and traumatic life-saving techniques such as intracardial medication, intracardial massage and electric shock treatment. No code orders include “do not resuscitate” orders or orders stated in different language attempting to accomplish substantially the same result as a “no code” order. See, *Custody of a Minor*, 385 Mass. 697, 434 N.E.2d 601 (1982).

Non-mandated Reporters are all persons who are not mandated reporters.

Open Referral means that a client may be referred to a provider in any fashion (including client self-referral) and that the provider may thereafter be reimbursed by the Department for delivering the service(s), regardless of how the client was referred to the provider. Compare, “Closed Referral”.

Outreach means those Department activities conducted in the community to make the community aware of the philosophy of the Department, the variety of social services offered by the Department, the ways to obtain Department services, and the Department's desire to work in conjunction with other community resources and agencies to meet clients' needs. Outreach activity provides a way for the Department to identify existing resources, duplications and gaps in services, and unmet service needs in the community.

Partner means a non-Department entity that is providing cash contributions to a provider, which, when joined with Department funds, result in funding the total cost of one or more services which are provided by a provider.

Preadoptive Parent means a person approved by the Department to be an adoptive parent in accordance with 110 CMR 7.200 et seq.

Pre-adoptive Parent Applicant means a person who has applied to be an adoptive parent and meets the eligibility criteria established by 110 CMR 7.100 and 7.200.

Pre-adoptive Placement means the provision of substitute care by pre-adoptive parents, pending their adoption of the child placed in substitute care with them.

Provider means any party agreeing by contract with the Department to provide one or more services, or agreeing by a Purchase of Service Agreement to serve Department clients. Some providers provide a comprehensive array of activities and services (investigation, case management, legal services, etc.) which parallel those of the Department. Other providers merely provide a single service (day care, counseling, etc.)

Region means one of the six geographic regions of the Department of Children and Families. Regional Director means the director of one of the Regions of the Department of Children and Families.

Routine Medical Care shall include but is not limited to the following:

- (a) Allergy Shots.
- (b) Blood Pressure Test. See, 106 CMR 421.445(J).
- (c) Comprehensive Physical Examination--documenting the finding of an unclothed physical examination including a complete system review pertinent to the age of the child, fundoscopic examination of the eyes for children over five years of age, and observation of the teeth and gums for children three years of age or older. See, 106 CMR 421.445(D).
- (d) Dental Care.
- (e) Developmental Assessment--the child's current levels of functioning in the below-listed areas, as appropriate to the child's age. See, 106 CMR 421.445(F).

1. gross motor development, including strength, balance, and locomotion
  2. fine motor development, including eye-hand coordination
  3. language development, including expression, comprehensive and articulation
  4. self-help and self-care skills
  5. social interaction and emotional development
  6. cognitive skills, including problem-solving and reasoning abilities
- (f) Diseases Dangerous to the Public Health, Treatment of. See, M.G.L. c. 112, § 12F and 105 CMR 300.100.
- (g) Drug Dependency Treatment. See, M.G.L. c. 112, § 12E.
- (h) Family Planning Services. See, 106 CMR 421.401 et seq.
- (i) Fractures, Treatment of
- (j) Hearing Test. See, 106 CMR 421.445(K).
- (k) Immunization - against diphtheria, pertussis, tetanus, measles, poliomyelitis, mumps, rubella and such other communicable diseases as may be specified by the Department of Public Health. See, M.G.L. c. 76, § 15 and 105 CMR 220.100.
- (l) Laboratory Tests and Special Medical Studies - when determined by the examining physician to be necessary.
- (m) Lead Poisoning Test. See, 106 CMR 421.445(P).
- (n) Nutritional Status Assessment--the evaluation of the child's nutritional health in light of dietary practice and the entire health assessment (that is, history, physical examination, height and weight measurements, and the laboratory tests) and documentation of any nutritional disturbance or dysfunction. See, 106 CMR 421.445(G).
- (o) Pelvic Examination. See, 106 CMR 421.445(O).
- (p) Pregnancy Treatment--except abortion or sterilization. See, M.G.L. c. 112, § 12F.
- (q) Preventive Health Services.
- (r) Psychiatric Assessment, Evaluation, or Treatment on out-patient basis, or up to 90 days on in-patient basis.
- (s) Treatment--commonly prescribed for a specific physical illness, which treatment does not pose risks of permanent serious side effects or risk of death, See,

379 N.E.2d 1053, 1064 (1978) or is determined not to be extraordinary medical treatment by using the analysis outlined in 110 CMR.

(t) Tubercular Skin Test or Chest X-ray.

(u) Venereal Disease Treatment. See, M.G.L. c. 112, § 12F; 105 CMR 300.140.

(v) Vision Test. See, 106 CMR 421.445(L).

Emotional Injury means an impairment to or disorder of the intellectual or psychological capacity of a child as evidenced by observable and substantial reduction in the child's ability to function within a normal range of performance and behavior.

Physical Injury means

(a) death; or

(b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or

(c) soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or

(d) addiction to drug at birth; or

(e) failure to thrive.

Sterilization means any medical procedure, treatment, or operation intended to render an individual permanently incapable of reproducing. See, *Matter of Moe*, 385 Mass. 555, 432 N.E.2d 712, 716 ft. 3 (1982); 106 CMR 485.002.

Substitute Care means the provision of planned, temporary 24 hour a day care when the parent or principal caretaker is unable or unavailable to provide care on a daily basis. Substitute care encompasses the provision of foster care, community residential care, and supervised independent living. The Department shall protect and promote the basic principle that every child has a right to permanent family by providing substitute care which is time-limited, community-based and in the least restrictive setting possible.

Substitute Judgment means a decision regarding proposed health care made for an individual incapable of consenting to his/her own health care, which would be made by the incapable individual if s/he were capable, taking into account his/her actual interests and preferences and also his/her present and future incapability. See, *Rogers v. Commissioner of Dept. of Mental Health*, 390 Mass. 489 (1983).

Support means to find after an investigation that there is reasonable cause to believe a report that a child has suffered abuse or neglect inflicted by a caretaker. Support shall mean the same as the earlier phrase Substantiate.

Unsupport means to find after an investigation a lack of reasonable cause to believe a report that a child has suffered abuse or neglect inflicted by a caretaker. Unsupport shall mean the same as the earlier phrase Unsubstantiate.

Venereal Diseases is defined in accordance with 105 CMR 300.100, 105 CMR 300.140 and 105 CMR 340.100 and includes.

- (a) Chancroid
- (b) Gonorrhea
- (c) Granuloma Inguinale
- (d) Lymphogranuloma Venereum
- (e) Syphilis

Volunteer means any person who gives his/her services to the Department without any express or implied promise of remuneration.

Ward means a person who has been adjudicated incompetent and for whom a guardian has been appointed by a Probate Court in accordance with M.G.L. c. 201.

## **MICHIGAN**

### **MICH. COMP. LAWS ANN. § 712A.2 (2012). Family division of circuit court; authority and jurisdiction**

Sec. 2. The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. If the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction as provided in that section. The court has jurisdiction over a juvenile 14 years of age or older who is charged with a specified juvenile violation only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant. As used in this sub-subdivision, “specified juvenile violation” means 1 or more of the following:

(A) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.



(B) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this paragraph, “dangerous weapon” means 1 or more of the following:

- (i) A loaded or unloaded firearm, whether operable or inoperable.
- (ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.
- (iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.
- (iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(C) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

- (i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.
- (ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(D) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(E) An attempt to commit a violation described in paragraphs (A) to (D).

(F) Conspiracy to commit a violation described in paragraphs (A) to (D).

(G) Solicitation to commit a violation described in paragraphs (A) to (D).

(H) A lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(I) Another violation arising out of the same transaction as a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(2) The juvenile has deserted his or her home without sufficient cause, and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile's parent, guardian, or custodian have exhausted or refused family counseling.

(3) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.

(4) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile's parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, "learning program" means an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more

before the filing of the petition.

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5) and the custody of that juvenile is subject to the prior or continuing order of another court of record of this state, the manner of notice to the other court of record and the authority of the court to proceed is governed by rule of the supreme court.

(c) Jurisdiction over juveniles under 18 years of age, jurisdiction of whom has been waived to the family division of circuit court by a circuit court under a provision in a temporary order for custody of juveniles based upon a complaint for divorce or upon a motion related to a complaint for divorce by the prosecuting attorney, in a divorce judgment dissolving a marriage between the juvenile's parents, or by an amended judgment relative to the juvenile's custody in a divorce.

(d) If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning a juvenile between the ages of 17 and 18 found within the county who is 1 or more of the following:

- (1) Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.
- (2) Repeatedly associating with criminal, dissolute, or disorderly persons.
- (3) Found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.
- (4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.
- (5) Willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.

If a juvenile is brought before the court in a county other than that in which the juvenile resides, before a hearing and with the consent of the judge of the court in the county of residence, the court may enter an order transferring jurisdiction of the matter to the court of the county of residence. Consent to transfer jurisdiction is not required if the county of residence is a county juvenile agency and satisfactory proof of residence is furnished to the court of the county of residence. The order does not constitute a legal settlement in this state that is required for the purpose of section 55 of the social welfare act, 1939 PA 280, MCL 400.55. The order and a certified copy of the proceedings in the transferring court shall be delivered to the court of the county of residence. A case designated as a case in which the juvenile shall be tried in the same manner as an adult under section 2d of this chapter may be transferred for venue or for juvenile disposition, but shall not be transferred on grounds of residency. If the case is not transferred, the court having jurisdiction of the offense shall try the case.

(e) Authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of a juvenile who does not require formal court jurisdiction but otherwise falls within subdivision (a). These services shall be used only if the juvenile and his or her parents, guardian, or custodian voluntarily accepts them.

(f) If the court operates a detention home for juveniles within the court's jurisdiction under subdivision (a)(1), authority to place a juvenile within that home pending trial if the juvenile is within the circuit court's jurisdiction under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606, and if the circuit court orders the family division of circuit court in the same county to place the juvenile in that home. The family division of circuit court shall comply with that order.

(g) Authority to place a juvenile in a county jail under section 27a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.27a, if the court designates the case under section 2d of this chapter as a case in which the juvenile is to be tried in the same manner as an adult and the court determines there is probable cause to believe that the offense was committed and probable cause to believe the juvenile committed that offense.

(h) Jurisdiction over a proceeding under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, in which a minor less than 18 years of age is the respondent, or a proceeding to enforce a valid foreign protection order issued against a respondent who is a minor less than 18 years of age. A personal protection order shall not be issued against a respondent who is a minor less than 10 years of age. Venue for an initial action under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, is proper in the county of residence of either the petitioner or respondent. If the respondent does not live in this state, venue for the initial action is proper in the petitioner's county of residence.

**MICH. COMP. LAWS ANN. § 712A.19b (2012). Termination of parental rights; notice, findings; orders**

Sec. 19b. (1) Except as provided in subsection (4), if a child remains in foster care in the temporary custody of the court following a review hearing under section 19(3) of this chapter [FN1] or a permanency planning hearing under section 19a of this chapter [FN2] or if a child remains in the custody of a guardian or limited guardian, upon petition of the prosecuting attorney, whether or not the prosecuting attorney is representing or acting as legal consultant to the agency or any other party, or petition of the child, guardian, custodian, concerned person as defined in subsection (6), agency, or children's ombudsman as authorized in section 7 of the children's ombudsman act, 1994 PA 204, MCL 722.927, the court shall hold a hearing to determine if the parental rights to a child should be terminated and, if all parental rights to the child are terminated, the child placed in permanent custody of the court. The court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated. The court shall issue an opinion or order regarding a petition for termination of parental rights within 70 days after the commencement of the initial hearing on the petition. The court's failure to issue an opinion within 70 days does not dismiss the petition.

(2) Not less than 14 days before a hearing to determine if the parental rights to a child should be terminated, written notice of the hearing shall be served upon all of the following:

- (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
- (b) The child's foster parent or custodian.
- (c) The child's parents.

- (d) If the child has a guardian, the child's guardian.
  - (e) If the child has a guardian ad litem, the child's guardian ad litem.
  - (f) If tribal affiliation has been determined, the Indian tribe's elected leader.
  - (g) The child's attorney and each party's attorney.
  - (h) If the child is 11 years of age or older, the child.
  - (i) The prosecutor.
- (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
- (a) The child has been deserted under any of the following circumstances:
    - (i) The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
    - (ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
    - (iii) The child's parent voluntarily surrendered the child to an emergency service provider under chapter XII [FN3] and did not petition the court to regain custody within 28 days after surrendering the child.
  - (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
    - (i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
    - (ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
    - (iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.
  - (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

- (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
  - (ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
- (d) The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.
- (e) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.
- (f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:
- (i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.
  - (ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.
- (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
- (h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
- (i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent 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.
- (vii) Voluntary manslaughter.
- (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter [FN4] or a similar law of another state.

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that 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.
- (vii) Voluntary manslaughter.
- (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(ii) A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(iii) A federal law or law of another state with provisions substantially similar to a crime or procedure listed or described in subparagraph (i) or (ii).

(4) If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing. If a petition to terminate parental rights to a child is filed, the court may suspend parenting time for a parent who is a subject of the petition.

(5) If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

(6) As used in this section, "concerned person" means a foster parent with whom the child is living or has lived who has specific knowledge of behavior by the parent constituting grounds for termination under subsection (3)(b) or (g) and who has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and is satisfied that none of these persons intend to file a petition under this section.

## **MINNESOTA**

### **MINN. STAT. ANN. § 260C.007 (2011). Definitions**

Subdivision 1. Scope. As used in this chapter, the terms defined in this section have the same meanings given to them.

Subd. 2. Agency. "Agency" means the responsible social services agency or a licensed child-placing agency.

Subd. 3. Case plan. "Case plan" means any plan for the delivery of services to a child and parent or guardian, or, when reunification is not required, the child alone, that is developed according to the requirements of section 245.4871, subdivision 19 or 21; 245.492, subdivision 16; 256B.092; 260C.212, subdivision 1; or 626.556, subdivision 10.

Subd. 4. Child. "Child" means an individual under 18 years of age. For purposes of this chapter, child also includes individuals under age 21 who are in foster care pursuant to section 260C.451.



Subd. 5. Child abuse. “Child abuse” means an act that involves a minor victim that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, or that is physical or sexual abuse as defined in section 626.556, subdivision 2, or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

Subd. 6. Child in need of protection or services. “Child in need of protection or services” means a child who is in need of protection or services because the child:

- (1) is abandoned or without parent, guardian, or custodian;
- (2)(i) has been a victim of physical or sexual abuse as defined in section 626.556, subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as defined in subdivision 15;
- (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term “withholding of medically indicated treatment” means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
  - (i) the infant is chronically and irreversibly comatose;
  - (ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
  - (iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;
- (6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child who entered foster care under a voluntary placement agreement between the parent and the responsible social services agency under section 260C.212, subdivision 8;
- (7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;

(10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;

(11) has engaged in prostitution as defined in section 609.321, subdivision 9;

(12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;

(13) is a runaway;

(14) is a habitual truant;

(15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense;

(16) has a parent whose parental rights to one or more other children were involuntarily terminated or whose custodial rights to another child have been involuntarily transferred to a relative and there is a case plan prepared by the responsible social services agency documenting a compelling reason why filing the termination of parental rights petition under section 260C.301, subdivision 3, is not in the best interests of the child; or

(17) is a sexually exploited youth.

Subd. 7. Child-placing agency. "Child-placing agency" means anyone licensed under sections 245A.01 to 245A.16 and 252.28, subdivision 2.

Subd. 8. Compelling reasons. "Compelling reasons" means an individualized determination by the responsible social services agency, which is approved by the court, related to a request by the agency not to initiate proceedings to terminate parental rights or transfer permanent legal and physical custody of a child to the child's relative or former noncustodial parent under section 260C.301, subdivision 3.

Subd. 9. Court. "Court" means juvenile court unless otherwise specified in this section.

Subd. 10. Custodian. "Custodian" means any person who is under a legal obligation to provide care and support for a minor or who is in fact providing care and support for a minor. This subdivision does not impose upon persons who are not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care a duty to provide that care. For an Indian child, custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been

transferred by the parent of the child, as provided in section 260.755, subdivision 10.

Subd. 11. Delinquent child. “Delinquent child” has the meaning given in section 260B.007, subdivision 6.

Subd. 12. Developmental disability. “Developmental disability” means developmental disability as defined in United States Code, title 42, section 6001(8).

Subd. 13. Domestic child abuse. “Domestic child abuse” means:

- (1) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means;
- (2) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections 609.321 to 609.324, 609.342, 609.343, 609.344, 609.345, or 617.246; or
- (3) physical or sexual abuse as defined in section 626.556, subdivision 2.

Subd. 14. Egregious harm. “Egregious harm” means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. The egregious harm need not have occurred in the state or in the county where a termination of parental rights action is otherwise properly venued. Egregious harm includes, but is not limited to:

- (1) conduct towards a child that constitutes a violation of sections 609.185 to 609.21, 609.222, subdivision 2, 609.223, or any other similar law of any other state;
- (2) the infliction of “substantial bodily harm” to a child, as defined in section 609.02, subdivision 7a;
- (3) conduct towards a child that constitutes felony malicious punishment of a child under section 609.377;
- (4) conduct towards a child that constitutes felony unreasonable restraint of a child under section 609.255, subdivision 3;
- (5) conduct towards a child that constitutes felony neglect or endangerment of a child under section 609.378;
- (6) conduct towards a child that constitutes assault under section 609.221, 609.222, or 609.223;
- (7) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under section 609.322;
- (8) conduct towards a child that constitutes murder or voluntary manslaughter as defined by United States Code, title 18, section 1111(a) or 1112(a);
- (9) conduct towards a child that constitutes aiding or abetting, attempting, conspiring, or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of United States Code,

title 18, section 1111(a) or 1112(a); or

(10) conduct toward a child that constitutes criminal sexual conduct under sections 609.342 to 609.345.

Subd. 15. Emotional maltreatment. “Emotional maltreatment” means the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, or emotional development. “Emotional maltreatment” does not include reasonable training or discipline administered by the person responsible for the child's care or the reasonable exercise of authority by that person.

Subd. 16. Emotionally disturbed. “Emotionally disturbed” means emotional disturbance as described in section 245.4871, subdivision 15.

Subd. 17. Family or household members. “Family or household members” means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Subd. 18. Foster care. “Foster care” means 24 hour substitute care for children placed away from their parents or guardian and for whom a responsible social services agency has placement and care responsibility. “Foster care” includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. “Foster care” does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction's facility not meeting requirements for title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails. Foster care is intended to provide for a child's safety or to access treatment. Foster care must not be used as a punishment or consequence for a child's behavior.

Subd. 19. Habitual truant. “Habitual truant” means a child under the age of 16 years who is absent from attendance at school without lawful excuse for seven school days if the child is in elementary school or for one or more class periods on seven school days if the child is in middle school, junior high school, or high school, or a child who is 16 or 17 years of age who is absent from attendance at school without lawful excuse for one or more class periods on seven school days and who has not lawfully withdrawn from school under section 120A.22, subdivision 8.

Subd. 20. Indian. “Indian,” consistent with section 260.755, subdivision 7, means a person who is a member of an Indian tribe or who is an Alaskan native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act, United States Code, title 43, section 1606.

Subd. 21. Indian child. “Indian child,” consistent with section 260.755, subdivision 8, means an unmarried person who is under age 18 and is:

- (1) a member of an Indian tribe; or
- (2) eligible for membership in an Indian tribe.

Subd. 22. Legal custody. “Legal custody” means the right to the care, custody, and control of a child who has been taken from a parent by the court in accordance with the provisions of section 260C.201 or 260C.317. The expenses of legal custody are paid in accordance with the provisions of section 260C.331.

Subd. 23. Minor. “Minor” means an individual under 18 years of age.

Subd. 24. Neglected and in foster care. “Neglected and in foster care” means a child:

- (1) who has been placed in foster care by court order; and
- (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
- (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Subd. 25. Parent. (a) “Parent” means a person who has a legal parent and child relationship with a child which confers or imposes on the person legal rights, privileges, duties, and obligations consistent with sections 257.51 to 257.74 or 257.75. It includes the mother and child relationship and the father and child relationship. For matters governed by the Indian Child Welfare Act, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in section 260.755, subdivision 14, and does not include the unwed father where paternity has not been acknowledged or established.

(b) A legally recognized parent and child relationship is established for purposes of this chapter between:

- (1) a child and a biological mother, by proof of her having given birth to the child, or under sections 257.51 to 257.74 or 257.75;
- (2) a child and father when:
  - (i) there is a presumption of paternity under section 257.55, subdivision 1, paragraph (a), (b), or (c), and no action has been taken to declare the nonexistence of the father and child relationship;
  - (ii) there is a presumption of paternity under section 257.55, subdivision 1, paragraph (d), and there is an adjudication of paternity under sections 257.51 to 257.74, or the father and mother have signed a recognition of parentage having the effect of an adjudication under section 257.75;
  - (iii) there is a presumption of paternity under section 257.55, subdivision 1, paragraph (e), (f), (g), or (h), and there is an adjudication of paternity under sections 257.51 to 257.74;

(iv) there is no presumption of paternity under section 257.55, but the father has been adjudicated by court order under sections 257.51 to 257.74;

(v) there is no presumption of paternity under section 257.55, but the father and mother have signed a recognition of parentage having the effect of adjudication under section 257.75;

(vi) there is a positive test result under section 257.62, subdivision 5, and the father is adjudicated as the father of the child either by court order under sections 257.51 to 257.74, or because the father and the child's mother have signed a recognition of parentage having the effect of adjudication under section 257.75; or

(vii) the parent and child relationship is established under section 260.755, subdivision 14; or

(3) a child and an adoptive parent by proof of adoption.

Subd. 26. Person. "Person" includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

Subd. 27. Relative. "Relative" means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Subd. 28. Runaway. "Runaway" means an unmarried child under the age of 18 years who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian.

Subd. 29. Secure detention facility. "Secure detention facility" means a physically restricting facility, including but not limited to a jail, a hospital, a state institution, a residential treatment center, or a detention home used for the temporary care of a child pending court action.

Subd. 30. Shelter care facility. "Shelter care facility" means a physically unrestricting facility, such as but not limited to, a hospital, a group home or a licensed facility for foster care, used for the temporary care of a child pending court action.

Subd. 31. Sexually exploited youth. "Sexually exploited youth" means an individual who:

(1) is alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct;

(2) is a victim of a crime described in section 609.342, 609.343, 609.345, 609.3451, 609.3453, 609.352, 617.246, or 617.247;

(3) is a victim of a crime described in United States Code, title 18, section 2260; 2421; 2422; 2423; 2425; 2425A; or 2256; or

(4) is a sex trafficking victim as defined in section 609.321, subdivision 7b.

**MINN. STAT. ANN. § 260C.201 (2011). Dispositions; children in need of protection or services or neglected and in foster care**

Subdivision 1. Dispositions. (a) If the court finds that the child is in need of protection or services or neglected and in foster care, it shall enter an order making any of the following dispositions of the case:

(1) place the child under the protective supervision of the responsible social services agency or child-placing agency in the home of a parent of the child under conditions prescribed by the court directed to the correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who is not adjudicated, the father must cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in the father's home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) transfer legal custody to one of the following:

(i) a child-placing agency; or

(ii) the responsible social services agency. In making a foster care placement for a child whose custody has been transferred under this subdivision, the agency shall make an individualized determination of how the placement is in the child's best interests using the consideration for relatives and the best interest factors in section 260C.212, subdivision 2, paragraph (b); or

(3) order a trial home visit without modifying the transfer of legal custody to the responsible social services agency under clause (2). Trial home visit means the child is returned to the care of the parent or guardian from whom the child was removed for a period not to exceed six months. During the period of the trial home visit, the responsible social services agency:

(i) shall continue to have legal custody of the child, which means the agency may see the child in the parent's home, at school, in a child care facility, or other setting as the agency deems necessary and appropriate;

(ii) shall continue to have the ability to access information under section 260C.208;

(iii) shall continue to provide appropriate services to both the parent and the child during the period of the trial home visit;

(iv) without previous court order or authorization, may terminate the trial home visit in order to protect the child's health, safety, or welfare and may remove the child to foster care;

(v) shall advise the court and parties within three days of the termination of the trial home visit when a visit is terminated by the responsible social services agency without a court order; and

(vi) shall prepare a report for the court when the trial home visit is terminated whether by the agency or court order which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under subdivision 11 or 11a. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanency hearing does not exceed 12 months;

(4) if the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability or emotional disturbance as defined in section 245.4871, subdivision 15, the court may order the child's parent, guardian, or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Section 62Q.535 applies to an order for mental health services directed to the child's health plan company. If the health plan, parent, guardian, or custodian fails or is unable to provide this treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

(5) if the court believes that the child has sufficient maturity and judgment and that it is in the best interests of the child, the court may order a child 16 years old or older to be allowed to live independently, either alone or with others as approved by the court under supervision the court considers appropriate, if the county board, after consultation with the court, has specifically authorized this dispositional alternative for a child.

(b) If the child was adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions authorized under paragraph (a):

(1) counsel the child or the child's parents, guardian, or custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child;



- (3) subject to the court's supervision, transfer legal custody of the child to one of the following:
- (i) a reputable person of good moral character. No person may receive custody of two or more unrelated children unless licensed to operate a residential program under sections 245A.01 to 245A.16; or
  - (ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;
- (4) require the child to pay a fine of up to \$100. The court shall order payment of the fine in a manner that will not impose undue financial hardship upon the child;
- (5) require the child to participate in a community service project;
- (6) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;
- (7) if the court believes that it is in the best interests of the child or of public safety that the child's driver's license or instruction permit be canceled, the court may order the commissioner of public safety to cancel the child's license or permit for any period up to the child's 18th birthday. If the child does not have a driver's license or permit, the court may order a denial of driving privileges for any period up to the child's 18th birthday. The court shall forward an order issued under this clause to the commissioner, who shall cancel the license or permit or deny driving privileges without a hearing for the period specified by the court. At any time before the expiration of the period of cancellation or denial, the court may, for good cause, order the commissioner of public safety to allow the child to apply for a license or permit, and the commissioner shall so authorize;
- (8) order that the child's parent or legal guardian deliver the child to school at the beginning of each school day for a period of time specified by the court; or
- (9) require the child to perform any other activities or participate in any other treatment programs deemed appropriate by the court.

To the extent practicable, the court shall enter a disposition order the same day it makes a finding that a child is in need of protection or services or neglected and in foster care, but in no event more than 15 days after the finding unless the court finds that the best interests of the child will be served by granting a delay. If the child was under eight years of age at the time the petition was filed, the disposition order must be entered within ten days of the finding and the court may not grant a delay unless good cause is shown and the court finds the best interests of the child will be served by the delay.

(c) If a child who is 14 years of age or older is adjudicated in need of protection or services because the child is a habitual truant and truancy procedures involving the child were previously dealt with by a school attendance review board or county attorney mediation program under section 260A.06 or 260A.07, the court shall order a cancellation or denial of driving privileges under paragraph (b), clause (7), for any period up to the child's 18th birthday.

(d) In the case of a child adjudicated in need of protection or services because the child has committed domestic abuse and been ordered excluded from the child's parent's home, the court shall dismiss jurisdiction if the court, at any time, finds the parent is able or willing to provide an alternative safe living arrangement for the child, as defined in Laws 1997, chapter 239, article 10, section 2.

(e) When a parent has complied with a case plan ordered under subdivision 6 and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

Subd. 2. Written findings. (a) Any order for a disposition authorized under this section shall contain written findings of fact to support the disposition and case plan ordered and shall also set forth in writing the following information:

- (1) Why the best interests and safety of the child are served by the disposition and case plan ordered;
  - (2) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;
  - (3) When legal custody of the child is transferred, the appropriateness of the particular placement made or to be made by the placing agency using the factors in section 260C.212, subdivision 2, paragraph (b);
  - (4) Whether reasonable efforts consistent with section 260.012 were made to prevent or eliminate the necessity of the child's removal and to reunify the family after removal. The court's findings must include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under section 260.012 or 260C.178, subdivision 1; and
  - (5) If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a mental disability or emotional disturbance as defined in section 245.4871, subdivision 15, the written findings shall also set forth:
    - (i) whether the child has mental health needs that must be addressed by the case plan;
    - (ii) what consideration was given to the diagnostic and functional assessments performed by the child's mental health professional and to health and mental health care professionals' treatment recommendations;
    - (iii) what consideration was given to the requests or preferences of the child's parent or guardian with regard to the child's interventions, services, or treatment; and
    - (iv) what consideration was given to the cultural appropriateness of the child's treatment or services.
- (b) If the court finds that the social services agency's preventive or reunification efforts have not been reasonable but that further preventive or reunification efforts could not permit the child to safely

remain at home, the court may nevertheless authorize or continue the removal of the child.

(c) If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review the reasonable efforts of the agency to recruit, identify, and make a placement in a home where the foster parent or relative that has committed to being the legally permanent home for the child in the event reunification efforts are not successful.

Subd. 3. Domestic child abuse. (a) If the court finds that the child is a victim of domestic child abuse, as defined in section 260C.007, subdivision 13, it may order any of the following dispositions of the case in addition to or as alternatives to the dispositions authorized under subdivision 1:

- (1) restrain any party from committing acts of domestic child abuse;
- (2) exclude the abusing party from the dwelling which the family or household members share or from the residence of the child;
- (3) on the same basis as is provided in chapter 518, establish temporary visitation with regard to minor children of the adult family or household members;
- (4) on the same basis as is provided in chapter 518 or 518A, establish temporary support or maintenance for a period of 30 days for minor children or a spouse;
- (5) provide counseling or other social services for the family or household members; or
- (6) order the abusing party to participate in treatment or counseling services.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

(b) No order excluding the abusing party from the dwelling may be issued unless the court finds that:

- (1) the order is in the best interests of the child or children remaining in the dwelling;
- (2) a remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party; and
- (3) the local welfare agency has developed a plan to provide appropriate social services to the remaining family or household members.

(c) Upon a finding that the remaining parent is able to care adequately for the child and enforce an order excluding the abusing party from the home and that the provision of supportive services by the responsible social services agency is no longer necessary, the responsible social services agency may be dismissed as a party to the proceedings. Orders entered regarding the abusing party remain in full force and effect and may be renewed by the remaining parent as necessary for the continued protection of the child for specified periods of time, not to exceed one year.

Subd. 4. Support orders. If the court issues an order for protection pursuant to section 260C.201, subdivision 3, excluding an abusing party from the dwelling who is the parent of a minor family or household member, it shall transfer the case file to the court which has jurisdiction over proceedings

under chapter 518 or 518A for the purpose of establishing support or maintenance for minor children or a spouse, as provided in chapter 518 or 518A, during the effective period of the order for protection. The court to which the case file is transferred shall schedule and hold a hearing on the establishment of support or maintenance within 30 days of the issuance of the order for protection. After an order for support or maintenance has been granted or denied, the case file shall be returned to the juvenile court, and the order for support or maintenance, if any, shall be incorporated into the order for protection.

Subd. 5. Visitation. If the court orders the child into foster care, the court shall review and either modify or approve the agency's plan for supervised or unsupervised visitation that contributes to the objectives of the court-ordered case plan and the maintenance of the familial relationship, and that meets the requirements of section 260C.212, subdivision 1, paragraph (c), clause (5). No parent may be denied visitation unless the court finds at the disposition hearing that the visitation would endanger the child's physical or emotional well-being, is not in the child's best interests, or is not required under section 260C.178, subdivision 3, paragraph (c) or (d). The court shall review and either modify or approve the agency plan for visitation for any relatives as defined in section 260C.007, subdivision 27, and with siblings of the child, if visitation is consistent with the best interests of the child.

Subd. 6. Case plan. (a) For each disposition ordered where the child is placed away from a parent or guardian, the court shall order the responsible social services agency to prepare a written out-of-home placement plan according to the requirements of section 260C.212, subdivision 1.

(b) In cases where the child is not placed out of the home or is ordered into the home of a noncustodial parent, the responsible social services agency shall prepare a plan for delivery of social services to the child and custodial parent under section 626.556, subdivision 10, or any other case plan required to meet the needs of the child. The plan shall be designed to safely maintain the child in the home or to reunite the child with the custodial parent.

(c) The court may approve the case plan as presented or modify it after hearing from the parties. Once the plan is approved, the court shall order all parties to comply with it. A copy of the approved case plan shall be attached to the court's order and incorporated into it by reference.

(d) A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change of circumstances.

Subd. 7. Order duration. Subject to subdivisions 10 and 11, all orders under this section shall be for a specified length of time set by the court not to exceed one year. However, before the order has expired and upon its own motion or that of any interested party, the court shall, after notice to the parties and a hearing, renew the order for another year or make some other disposition of the case, until the individual is no longer a minor. Any responsible social services agency receiving legal custody of a child shall report to the court at such periods as the court may direct and as required under juvenile court rules.

Subd. 8. Service of order. Any person who provides services to a child under a disposition order, or who is subject to the conditions of a disposition order, shall be served with a copy of the order in the manner provided in the rules for juvenile courts.

Subd. 9. Transfer of legal custody orders. When the court transfers legal custody of a child to any licensed child-placing agency or the responsible social services agency, it shall transmit with the

order transferring legal custody a copy of its findings and a summary of its information concerning the child.

Subd. 10. Court review of foster care. (a) If the court orders a child placed in foster care, the court shall review the out-of-home placement at least every 90 days as required in juvenile court rules to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. This review is not required if the court has returned the child home, ordered the child permanently placed away from the parent under subdivision 11, or terminated rights under section 260C.301. Court review for a child permanently placed away from a parent, including where the child is under guardianship and legal custody of the commissioner, shall be governed by subdivision 11 or section 260C.317, subdivision 3, whichever is applicable.

(b) No later than six months after the child's placement in foster care, the court shall review agency efforts pursuant to section 260C.212, subdivision 2, and order that the efforts continue if the agency has failed to perform the duties under that section.

(c) The court shall review the out-of-home placement plan and may modify the plan as provided under subdivisions 6 and 7.

(d) When the court orders transfer of custody to a responsible social services agency resulting in foster care or protective supervision with a noncustodial parent under subdivision 1, the court shall notify the parents of the provisions of subdivisions 11 and 11a as required under juvenile court rules.

(e) When a child remains in foster care pursuant to section 260C.451 and the court has jurisdiction pursuant to section 260C.193, subdivision 6, paragraph (c), the court shall annually conduct the review required under subdivision 11, paragraph (d), or sections 260C.212, subdivision 7, and 260C.317, subdivision 3.

Subd. 11. Review of court-ordered placements; permanent placement determination. (a) This subdivision and subdivision 11a do not apply to cases where the child is in foster care for treatment of the child's developmental disability or emotional disturbance under chapter 260D. Foster care placements of children for treatment are governed by chapter 260D. In all other cases where the child is in foster care or in the care of a noncustodial parent under subdivision 1, the court shall commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent. At the admit-deny hearing commencing such proceedings, the court shall determine whether there is a prima facie basis for finding that the agency made reasonable efforts, or in the case of an Indian child active efforts, required under section 260.012 and proceed according to the rules of juvenile court.

For purposes of this subdivision, the date of the child's placement in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed in foster care by the child's parent or guardian. For purposes of this subdivision, time spent by a child under the protective supervision of the responsible social services agency in the home of a noncustodial parent pursuant to an order under subdivision 1 counts towards the requirement of a permanency hearing under this subdivision or subdivision 11a. Time spent on a trial home visit counts towards the requirement of a permanency hearing under this subdivision and a permanency review for a child under eight years of age under subdivision 11a.

For purposes of this subdivision, 12 months is calculated as follows:

- (1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a child is placed in foster care or in the home of a noncustodial parent are cumulated;
  - (2) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed in foster care within the previous five years are cumulated. If a child under this clause has been in foster care for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.
- (b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to the admit-deny hearing required under paragraph (a) and the rules of juvenile court, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child, including a termination of parental rights petition, according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152.
- (c) The permanency proceedings shall be conducted in a timely fashion including that any trial required under section 260C.163 shall be commenced within 60 days of the admit-deny hearing required under paragraph (a). At the conclusion of the permanency proceedings, the court shall:
- (1) order the child returned to the care of the parent or guardian from whom the child was removed; or
  - (2) order a permanent placement or termination of parental rights if permanent placement or termination of parental rights is in the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated. Transfer of permanent legal and physical custody, termination of parental rights, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.
- (d) If the child is not returned to the home, the court must order one of the following dispositions:
- (1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:
    - (i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;
    - (ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260, and the procedures set out in the juvenile court rules;
    - (iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; and

(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights when the requirements of sections 260C. 301 to 260C.328 are met or according to the following conditions:

(i) order the social services agency to file a petition for termination of parental rights in which case all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it approves the responsible social service agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and the responsible social services agency has made reasonable efforts to locate and place the child with an adoptive family or with a fit and willing relative who will agree to a transfer of permanent legal and physical custody of the child, but such efforts have not proven successful; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home; and

(iii) at least annually, the responsible social services agency reconsiders its provision of services to the child and the child's placement in long-term foster care to ensure that:

(A) long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability, including whether there is another permanent placement option under this chapter that would better serve the child's needs and best interests;

(B) whenever possible, there is an identified long-term foster care family that is committed to being the foster family for the child as long as the child is a minor or under the jurisdiction of the court;

(C) the child is receiving appropriate services or assistance to maintain or build connections with the child's family and community;

(D) the child's physical and mental health needs are being appropriately provided for; and

(E) the child's educational needs are being met;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; or

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home agreed to by the responsible social services agency having legal custody of the child pursuant to court order under this section that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24, except that such consent executed by a parent under this item, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable unless fraud is established and an order issues permitting revocation as stated in item (vii);

(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;



(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner;

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent;

(vi) notwithstanding item (v), the commissioner of human services or the commissioner's designee must pursue adoptive placement in another home as soon as the commissioner or commissioner's designee determines that finalization of the adoption with the identified prospective adoptive parent is not possible, that the identified prospective adoptive parent is not willing to adopt the child, that the identified prospective adoptive parent is not cooperative in completing the steps necessary to finalize the adoption, or upon the commissioner's determination to withhold consent to the adoption.

(vii) unless otherwise required by the Indian Child Welfare Act, United States Code, title 25, section 1913, a consent to adopt executed under this section, following proper notice that consent given under this provision is irrevocable upon acceptance by the court, shall be irrevocable upon acceptance by the court except upon order permitting revocation issued by the same court after written findings that consent was obtained by fraud.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact. When the court has determined that permanent placement of the child away from the parent is necessary, the court shall consider permanent alternative homes that are available both inside and outside the state.

(f) Once a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if:

- (1) the placement is long-term foster care or foster care for a specified period of time;
- (2) the court orders further hearings because it has retained jurisdiction of a transfer of permanent legal and physical custody matter;
- (3) an adoption has not yet been finalized; or
- (4) there is a disruption of the permanent or long-term placement.

(g) Court reviews of an order for long-term foster care, whether under this section or section 260C.317, subdivision 3, paragraph (d), must be conducted at least yearly at an in-court appearance hearing and must review the child's out-of-home placement plan and the reasonable efforts of the agency to finalize the permanent plan for the child including the agency's efforts to:

- (1) ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child's needs and

best interests;

(2) identify a specific long-term foster home for the child, if one has not already been identified;

(3) support continued placement of the child in the identified home, if one has been identified;

(4) ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and

(5) plan for the child's independence upon the child's leaving long-term foster care living as required under section 260C.212, subdivision 1.

(h) In the event it is necessary for a child that has been ordered into foster care for a specified period of time to be in foster care longer than one year after the permanency hearing held under this section, not later than 12 months after the time the child was ordered into foster care for a specified period of time, the matter must be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child; if it is in the child's best interests to continue the order for foster care for a specified period of time past a total of 12 months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(i) An order permanently placing a child out of the home of the parent or guardian must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

(j) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child. The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanency option under this chapter and that such an option is in the child's best interests. Upon a hearing where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order

regarding the placement of the child is in the child's best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child's best interests. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests. The county attorney must file pleadings and give notice as required under the rules of juvenile court in order to modify an order for long-term foster care under this paragraph.

(k) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of the child.

(l) This paragraph applies to proceedings required under this subdivision when the child is on a trial home visit:

(1) if the child is on a trial home visit 12 months after the child was placed in foster care or in the care of a noncustodial parent as calculated in this subdivision, the responsible social services agency may file a report with the court regarding the child's and parent's progress on the trial home visit and its reasonable efforts to finalize the child's safe and permanent return to the care of the parent in lieu of filing the pleadings required under paragraph (b). The court shall make findings regarding reasonableness of the responsible social services efforts to finalize the child's return home as the permanent order in the best interests of the child. The court may continue the trial home visit to a total time not to exceed six months as provided in subdivision 1. If the court finds the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent; and

(2) if a trial home visit ordered or continued at proceedings under this subdivision terminates, the court shall recommence proceedings under this subdivision to determine the permanent status of the child not later than 30 days after the child is returned to foster care.

Subd. 11a. Permanency review for children under eight. (a) If the child was under eight years of age at the time the petition was filed alleging the child was in need of protection or services, and the child continues in placement out of the home of the parent or guardian from whom the child was removed, no later than six months after the child's placement the court shall conduct a permanency hearing to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services.

(b) Based on its assessment of the parent's or guardian's progress on the out-of-home placement plan, the responsible social services agency must ask the county attorney to file a petition for termination of parental rights, a petition for transfer of permanent legal and physical custody to a relative, or the report required under juvenile court rules.

(c)(1) If the parent or guardian has maintained contact with the child and is complying with the court-ordered out-of-home placement plan, and if the child would benefit from reunification with the parent, the court may either:

(i) return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated that it is safe and in the child's best interests to return home; or

(ii) continue the matter up to a total of six additional months. If the child has not returned home by the end of the additional six months, the court must conduct a hearing according to subdivision 11.

(2) If the court determines that the parent or guardian is not complying with the out-of-home placement plan or is not maintaining regular contact with the child as outlined in the visitation plan required as part of the out-of-home placement plan under section 260C.212, the court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent and to file a petition to support an order for the permanent placement plan.

(d) Following the review under paragraphs (b) and (c):

(1) if the court has either returned the child home or continued the matter up to a total of six additional months, the agency shall continue to provide services to support the child's return home or to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

(2) if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within 30 days of the filing of the pleadings; or

(3) if the court orders the agency to file a termination of parental rights, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed in juvenile court within 30 days of the hearing required under this subdivision and a trial on the petition held within 90 days of the filing of the petition.

Subd. 12. Continuance of case. If it is in the best interests of the child to do so and if the allegations contained in the petition have been admitted, or when a hearing has been held as provided in section 260C.163 and the allegations contained in the petition have been duly proven, before the entry of a finding of need for protection or services or a finding that a child is neglected and in foster care, the court may continue the case for a period not to exceed 90 days on any one order. Following the 90-day continuance:

(1) if both the parent and child have complied with the terms of the continuance, the case must be dismissed without an adjudication that the child is in need of protection or services or that the child is neglected and in foster care; or

(2) if either the parent or child has not complied with the terms of the continuance, the court shall adjudicate the child in need of protection or services or neglected and in foster care.

### **MINN. STAT. ANN. § 260C.301 (2011). Termination of parental rights**

Subdivision 1. Voluntary and involuntary. The juvenile court may upon petition, terminate all rights of a parent to a child:

(a) with the written consent of a parent who for good cause desires to terminate parental rights; or

(b) if it finds that one or more of the following conditions exist:

(1) that the parent has abandoned the child;

(2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable;

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth;

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated or that the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction;

(5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year, or in the case of a child under age eight, prior to six months after a child has been placed out of the home.

It is also presumed that reasonable efforts have failed under this clause upon a showing that:

(A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;

(B) the parent has been required by a case plan to participate in a chemical dependency treatment program;

(C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;

(D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and

(E) the parent continues to abuse chemicals.

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52;

(8) that the child is neglected and in foster care; or

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (g), clauses (1) to (3).

In an action involving an American Indian child, sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

Subd. 2. Evidence of abandonment. For purposes of subdivision 1, clause (b), item (1):

(a) Abandonment is presumed when:

(1) the parent has had no contact with the child on a regular basis and not demonstrated consistent interest in the child's well-being for six months and the social services agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented

the parent from making contact with the child. This presumption does not apply to children whose custody has been determined under chapter 257 or 518; or

(2) the child is an infant under two years of age and has been deserted by the parent under circumstances that show an intent not to return to care for the child.

The court is not prohibited from finding abandonment in the absence of the presumptions in clauses (1) and (2).

(b) The following are prima facie evidence of abandonment where there has been a showing that the person was not entitled to notice of an adoption proceeding under section 259.49:

(1) failure to register with the fathers' adoption registry under section 259.52; or

(2) if the person registered with the fathers' adoption registry under section 259.52:

(i) filing a denial of paternity within 30 days of receipt of notice under section 259.52, subdivision 8;

(ii) failing to timely file an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10; or

(iii) timely filing an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10, but failing to initiate a paternity action within 30 days of receiving the fathers' adoption registry notice where there has been no showing of good cause for the delay.

Subd. 3. Required termination of parental rights. (a) The county attorney shall file a termination of parental rights petition within 30 days of the responsible social services agency determining that a child has been subjected to egregious harm as defined in section 260C.007, subdivision 14, is determined to be the sibling of another child of the parent who was subjected to egregious harm, or is an abandoned infant as defined in subdivision 2, paragraph (a), clause (2), or the parent has lost parental rights to another child through an order involuntarily terminating the parent's rights, or another child of the parent is the subject of an order involuntarily transferring permanent legal and physical custody of the child to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction. The responsible social services agency shall concurrently identify, recruit, process, and approve an adoptive family for the child. If a termination of parental rights petition has been filed by another party, the responsible social services agency shall be joined as a party to the petition. If criminal charges have been filed against a parent arising out of the conduct alleged to constitute egregious harm, the county attorney shall determine which matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(b) This requirement does not apply if the county attorney determines and files with the court:

(1) a petition for transfer of permanent legal and physical custody to a relative under section 260C.201, subdivision 11, including a determination that the transfer is in the best interests of the child; or

(2) a petition alleging the child, and where appropriate, the child's siblings, to be in need of protection or services accompanied by a case plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition would not be in the best interests of the child.

Subd. 4. Current foster care children. Except for cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, where custody has not been transferred to the responsible social services agency, and where the court finds compelling reasons to continue placement, the county attorney shall file a termination of parental rights petition or a petition to transfer permanent legal and physical custody to a relative under section 260C.201, subdivision 11, for all children who have been in out-of-home care for 15 of the most recent 22 months. This requirement does not apply if there is a compelling reason approved by the court for determining that filing a termination of parental rights petition or other permanency petition would not be in the best interests of the child or if the responsible social services agency has not provided reasonable efforts necessary for the safe return of the child, if reasonable efforts are required.

Subd. 5. Adoptive parent. For purposes of subdivision 1, clause (a), an adoptive parent may not terminate parental rights to an adopted child for a reason that would not apply to a birth parent seeking termination of parental rights to a child under subdivision 1, clause (a).

Subd. 6. When prior finding required. For purposes of subdivision 1, clause (b), no prior judicial finding of need for protection or services, or neglected and in foster care is required, except as provided in subdivision 1, clause (b), item (5).

Subd. 7. Best interests of child paramount. In any proceeding under this section, the best interests of the child must be the paramount consideration, provided that the conditions in subdivision 1, clause (a), or at least one condition in subdivision 1, clause (b), are found by the court. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq. Where the interests of parent and child conflict, the interests of the child are paramount.

Subd. 8. Findings regarding reasonable efforts. In any proceeding under this section, the court shall make specific findings:

(1) that reasonable efforts to prevent the placement and to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or

(2) that reasonable efforts at reunification are not required as provided under section 260.012.

### **MINN. STAT. ANN. § 626.556 (2011). Reporting of maltreatment of minors**

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



safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

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

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

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

(b) “Investigation” means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- (5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- (6) manslaughter in the first or second degree under section 609.20 or 609.205;

- (7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
  - (8) solicitation, inducement, and promotion of prostitution under section 609.322;
  - (9) criminal sexual conduct under sections 609.342 to 609.3451;
  - (10) solicitation of children to engage in sexual conduct under section 609.352;
  - (11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;
  - (12) use of a minor in sexual performance under section 617.246; or
  - (13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).
- (d) “Sexual abuse” means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.
- (e) “Person responsible for the child's care” means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.
- (f) “Neglect” means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:
- (1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
  - (2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
  - (3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

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

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

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

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

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

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

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

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

(2) striking a child with a closed fist;

(3) shaking a child under age three;

- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
  - (5) unreasonable interference with a child's breathing;
  - (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
  - (7) striking a child under age one on the face or head;
  - (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
  - (9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
  - (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.
- (h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.
- (i) "Facility" means:
- (1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;
  - (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or
  - (3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.
- (j) "Operator" means an operator or agency as defined in section 245A.02.
- (k) "Commissioner" means the commissioner of human services.
- (l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.
- (m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.
- (n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to,

exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

- (1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;
- (2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;
- (3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or
- (4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

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

(p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

- (1) is not likely to occur and could not have been prevented by exercise of due care; and
- (2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

(q) "Nonmaltreatment mistake" means:

- (1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;
- (2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;
- (3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;
- (4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and
- (5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the

individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

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

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

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

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

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

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; [FN1] or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a

referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

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

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

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

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

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

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

(d) The commissioners of human services, public safety, and education must jointly submit a written report by January 15, 2007, to the education policy and finance committees of the legislature recommending the most efficient and effective allocation of agency responsibility for assessing or investigating reports of maltreatment and must specifically address allegations of maltreatment that currently are not the responsibility of a designated agency.

Subd. 3d. Authority to interview. The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.

Subd. 3e. Agency responsible for assessing or investigating reports of sexual abuse. The local welfare agency is the agency responsible for investigating allegations of sexual abuse if the alleged offender is the parent, guardian, sibling, or an individual functioning within the family unit as a person responsible for the child's care, or a person with a significant relationship to the child if that person

resides in the child's household.

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

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

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

(2) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19a, complying with subdivision 10d; and

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

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

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

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

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



addition, a penalty up to \$10,000.

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

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

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

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

(b) A person mandated by this section to report who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, as defined in subdivision 2, by the same perpetrator within the preceding ten years, and fails to report is guilty of a gross misdemeanor.

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

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

sheriff's office who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees.

Subd. 7. Report. (a) An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency, unless the appropriate agency has informed the reporter that the oral information does not constitute a report under subdivision 10. The local welfare agency shall determine if the report is accepted for an assessment or investigation as soon as possible but in no event longer than 24 hours after the report is received. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. If requested, the local welfare agency or the agency responsible for assessing or investigating the report shall inform the reporter within ten days after the report is made, either orally or in writing, whether the report was accepted for assessment or investigation. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff.

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

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

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

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

sections 245.91 to 245.97.

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

- (1) shall conduct an investigation on reports involving substantial child endangerment;
- (2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;
- (3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and
- (4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation.

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

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to

The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

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

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

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply

with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

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

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

(g) The commissioner of human services, the ombudsman for mental health and developmental disabilities, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

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

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

investigation;

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

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

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

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding sections 13.384 or 144.291 to 144.298, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

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

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

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

possible when collecting information:

- (1) audio recordings of all interviews with witnesses and collateral sources; and
- (2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (i) and (k), and subdivision 3d.

Subd. 10a. Law enforcement agency responsibility for investigation; welfare agency reliance on law enforcement fact-finding; welfare agency offer of services. (a) If the report alleges neglect, physical abuse, or sexual abuse by a person who is not a parent, guardian, sibling, person responsible for the child's care functioning within the family unit, or a person who lives in the child's household and who has a significant relationship to the child, in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency, which shall conduct an investigation of the alleged abuse or neglect if a violation of a criminal statute is alleged.

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

(c) The local welfare agency shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

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

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

The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local

welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

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

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

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

Subd. 10d. Notification of neglect or abuse in facility. (a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections 144.50 to 144.58; 241.021; or 245A.01 to 245A.16; or chapter 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.04, subdivision 16, and 256B.0625, subdivision 19a, the commissioner of the agency responsible for



assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

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

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

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

expert information requested within 45 days of the receipt of the report.

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

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed.

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

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

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

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

(2) neglect as defined in subdivision 2, paragraph (f);

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

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

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

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

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

local welfare agency may ensure that necessary medical services are provided to the child.

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

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

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

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

The evaluation of the facility's responsibility under clause (2) must not be based on the completeness of the risk assessment or risk reduction plan required under section 245A.66, but must be based on the facility's compliance with the regulatory standards for policies and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota Rules.

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

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

Subd. 10f. Notice of determinations. Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for assessing or

investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.

Subd. 10g. Interstate data exchange. All reports and records created, collected, or maintained under this section by a local social service agency or law enforcement agency may be disclosed to a local social service or other child welfare agency of another state when the agency certifies that:

- (1) the reports and records are necessary in order to conduct an investigation of actions that would qualify as sexual abuse, physical abuse, or neglect under this section; and
- (2) the reports and records will be used only for purposes of a child protection assessment or investigation and will not be further disclosed to any other person or agency.

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

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

- (1) the court services agency has an active case involving a common client or clients who are the subject of the data; and
- (2) the data are necessary for the court services agency to effectively process the court services' case, including investigating or performing other duties relating to the case required by law.

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

Subd. 10i. Administrative reconsideration; review panel. (a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the

decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also not be conducted when:

- (1) a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;
- (2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and
- (3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, “interested person acting on behalf of the child” means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the

maltreatment.

Subd. 10j. Release of data to mandated reporters. A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child's teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual's responsibility for caring for the child.

Subd. 10k. Release of certain investigative records to other counties. Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an investigation under this section of the subject of the records.

Subd. 10l. Documentation. When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including a description of services provided and the removal or reduction of risk to the child, if it existed.

Subd. 10m. Provision of child protective services. The local welfare agency shall create a written plan, in collaboration with the family whenever possible, within 30 days of the determination that child protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed. Child protective services for a family are voluntary unless ordered by the court.

Subd. 11. Records. (a) Except as provided in paragraph (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in

accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

(d) The investigating agency shall exchange not public data with the Child Maltreatment Review Panel under section 256.022 if the data are pertinent and necessary for a review requested under section 256.022. Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.

Subd. 11a. Disclosure of information not required in certain cases. When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes of section 13.04, subdivision 2, when the parent or guardian is the alleged perpetrator of the abuse or neglect.

Subd. 11b. Data received from law enforcement. Active law enforcement investigative data received by a local welfare agency or agency responsible for assessing or investigating the report under this section are confidential data on individuals. When this data become inactive in the law enforcement agency, the data are private data on individuals.

Subd. 11c. Welfare, court services agency, and school records maintained. Notwithstanding sections 138.163 and 138.17, records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years. Records under this paragraph may not be used for employment,



background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment, including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

Subd. 11d. Disclosure in child fatality or near-fatality cases. (a) The definitions in this paragraph apply to this section.

(1) “Child fatality” means the death of a child from suspected abuse, neglect, or maltreatment.

(2) “Near fatality” means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) “Findings and information” means a written summary described in paragraph (c) of actions taken or services rendered by a local social services agency following receipt of a report.

(b) Notwithstanding any other provision of law and subject to this subdivision, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) a person is criminally charged with having caused the child fatality or near fatality; or

(2) a county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's death.

(c) Findings and information disclosed under this subdivision consist of a written summary that includes any of the following information the agency is able to provide:

(1) the dates, outcomes, and results of any actions taken or services rendered;

(2) the results of any review of the state child mortality review panel, a local child mortality review panel, a local community child protection team, or any public agency; and

(3) confirmation of the receipt of all reports, accepted or not accepted, by the local welfare agency for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the

most recent investigation and the services rendered, and a statement of the basis for the agency's determination.

(d) Nothing in this subdivision authorizes access to the private data in the custody of a local social services agency, or the disclosure to the public of the records or content of any psychiatric, psychological, or therapeutic evaluations, or the disclosure of information that would reveal the identities of persons who provided information related to suspected abuse, neglect, or maltreatment of the child.

(e) A person whose request is denied may apply to the appropriate court for an order compelling disclosure of all or part of the findings and information of the public agency. The application must set forth, with reasonable particularity, factors supporting the application. The court has jurisdiction to issue these orders. Actions under this section must be set down for immediate hearing, and subsequent proceedings in those actions must be given priority by the appellate courts.

(f) A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Subd. 12. Duties of facility operators. Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section 609.378. The facility operator shall inform all mandated reporters employed by or otherwise associated with the facility of the duties required of mandated reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.

Subd. 13. Repealed by Laws 1988, c. 625, § 9.

Subd. 14. Conflict of interest. (a) A potential conflict of interest related to assisting in an assessment under this section resulting in a direct or shared financial interest with a child abuse and neglect treatment provider or resulting from a personal or family relationship with a party in the investigation must be considered by the local welfare agency in an effort to prevent unethical relationships.

(b) A person who conducts an assessment under this section or section 626.5561 may not have:

- (1) any direct or shared financial interest or referral relationship resulting in a direct shared financial gain with a child abuse and neglect treatment provider; or
- (2) a personal or family relationship with a party in the investigation.

If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

Subd. 15. Auditing. The commissioner of human services shall regularly audit for accuracy the data reported by counties on maltreatment of minors.

## **MISSISSIPPI**

### **MISS. CODE ANN. § 43-15-13 (2011). Individualized plans, reviews, training**

(1) For purposes of this section, “children” means persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Human Services by the youth court of the appropriate county.

(2) The Department of Human Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:

(a) Protecting and promoting the health, safety and welfare of children;

(b) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

(c) Remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;

(d) Restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

(e) Placing children in suitable adoptive homes approved by a licensed adoption agency or family protection specialist, in cases where restoration to the biological family is not safe, possible or appropriate;

(f) Assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the department shall implement concurrent planning, as described in subsection (8) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

(g) Providing a family protection specialist or worker or team of such specialists or workers for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same family protection specialist or worker or team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

(3) The Department of Human Services shall administer a system of individualized plans and reviews once every six (6) months for each child under its custody within the State of Mississippi, each child who has been adjudged a neglected, abandoned or abused child and whose custody was changed by court order as a result of that adjudication, and each public or private facility licensed by the department. The Department of Human Services administrative review shall be completed on each

child within the first three (3) months and a foster care review once every six (6) months after the child's initial forty-eight-hour shelter hearing. That system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to its natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the Department of Human Services shall be to return the child to its natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home within the time periods specified in this subsection or in subsection (4) of this section. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, the policy to include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall make all possible contact with the child's natural parent(s) and any interested relative for the first two (2) months following the child's entry into the foster care system. For any child who has been in foster care for fifteen (15) of the last twenty-two (22) months regardless of whether the foster care was continuous for all of those twenty-two (22) months, the department shall file a petition to terminate the parental rights of the child's parents. The time period starts to run from the date the court makes a finding of abuse and/or neglect or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. Before granting or denying a request by the department for an extension of time for filing a termination of parental rights action, the court shall receive a written report on the progress which a parent of the child has made in treatment, to be made to the court in writing by a mental health/substance abuse therapist or counselor.

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c) or (d), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned under the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

(5) The foster care review once every six (6) months shall be conducted by the youth court or its designee(s), and/or by personnel within the Department of Human Services or by a designee or designees of the department and may include others appointed by the department, and the review

shall include at a minimum an evaluation of the child based on the following:

- (a) The extent of the care and support provided by the parents or parent, while the child is in temporary custody;
- (b) The extent of communication with the child by parents, parent or guardian;
- (c) The degree of compliance by the agency and the parents with the social service plan established;
- (d) The methods of achieving the goal and the plan establishing a permanent home for the child;
- (e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and
- (f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The Department of Human Services shall report to the Legislature as to the number of those children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Human Services. The report shall not refer to the specific name of any child in foster care.

(6) The Department of Human Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training. The foster care training program shall be satisfactorily completed by such foster care parents before or within ninety (90) days after child placement with the parent. Record of the foster care parent's training program participation shall be filed with the court as part of a foster care child's review plan once every six (6) months.

(7) When the Department of Human Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule. In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and those requirements cannot be met in the relative's home.

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the

Department of Human Services is directed to conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. When a child is placed in foster care or relative care, the department shall first ensure and document that reasonable efforts were made to prevent or eliminate the need to remove the child from the child's home. The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful. A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

- (a) The likelihood of prompt reunification;
  - (b) The past history of the family;
  - (c) The barriers to reunification being addressed by the family;
  - (d) The level of cooperation of the family;
  - (e) The foster parents' willingness to work with the family to reunite;
  - (f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;
  - (g) The age of the child; and
  - (h) Placement of siblings.
- (9) If the department has placed a child in foster care or relative care under a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours before any such departure, and the court may conduct a review of that placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.
- (10) The Department of Human Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care

or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(11) The Department of Human Services shall extend the following rights to persons who provide foster care and relative care:

- (a) A clear understanding of their role while providing care and the roles of the birth parent(s) and the placement agency in respect to the child in care;
- (b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;
- (c) Involvement in all the agency's crucial decisions regarding the child as team members who have pertinent information based on their day-to-day knowledge of the child in care;
- (d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:
  - (i) Pertinent information about the child and the birth family;
  - (ii) Help in using appropriate resources to meet the child's needs;
  - (iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;
- (e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;
- (f) The opportunity to learn and grow in their vocation through planned education in caring for the child;
- (g) The opportunity to be heard regarding agency practices that they may question;
- (h) Reimbursement for costs of the child's care in the form of a board payment based on the age of the child as prescribed in Section 43-15-17; and
- (i) Reimbursement for property damages caused by children in the custody of the Department of Human Services in an amount not to exceed Five Hundred Dollars (\$500.00), as evidenced by written documentation. The Department of Human Services shall not incur liability for any damages as a result of providing this reimbursement.

(12) The Department of Human Services shall require the following responsibilities from participating persons who provide foster care and relative care:

- (a) Understanding the department's function in regard to the foster care and relative care program and related social service programs;
- (b) Sharing with the department any information which may contribute to the care of children;
- (c) Functioning within the established goals and objectives to improve the general welfare of the child;
- (d) Recognizing the problems in home placement that will require professional advice and assistance and that such help should be utilized to its full potential;
- (e) Recognizing that the family who cares for the child will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;
- (f) Expressing their view of agency practices which relate to the child with the appropriate staff member;
- (g) Understanding that all information shared with the persons who provide foster care or relative care about the child and his/her birth parent(s) must be held in the strictest of confidence;
- (h) Cooperating with any plan to reunite the child with his birth family and work with the birth family to achieve this goal; and
- (i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

**MISS. CODE ANN. § 43-21-105 (2011). Definitions**

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

- (a) “Youth court” means the Youth Court Division.
- (b) “Judge” means the judge of the Youth Court Division.
- (c) “Designee” means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.
- (d) “Child” and “youth” are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a “child” or “youth” for the purposes of this chapter.
- (e) “Parent” means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.
- (f) “Guardian” means a court-appointed guardian of the person of a child.



(g) “Custodian” means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) “Legal custodian” means a court-appointed custodian of the child.

(i) “Delinquent child” means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) “Delinquent act” is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) “Child in need of supervision” means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(l) “Neglected child” means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) “Abused child” means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused upon the child sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this

section.

(n) “Sexual abuse” means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) “A child in need of special care” means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

(p) A “dependent child” means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) “Custody” means the physical possession of the child by any person.

(r) “Legal custody” means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) “Detention” means the care of children in physically restrictive facilities.

(t) “Shelter” means care of children in physically nonrestrictive facilities.

(u) “Records involving children” means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) “Any person responsible for care or support” means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) “Out-of-home” setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities,

the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) “Durable legal custody” means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) “Status offense” means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

**MISS. CODE ANN. § 93-15-103 (2011). Grounds; relinquishment; alternatives**

(1) When a child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or the parent is unable or unwilling to care for the child, relatives are not appropriate or are unavailable, and when adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child's bonds to his natural parents and the effect of future contacts between them, the grounds listed in subsections (2) and (3) of this section shall be considered as grounds for the termination of parental rights. The grounds may apply singly or in combination in any given case.

(2) The rights of a parent with reference to a child, including parental rights to control or withhold consent to an adoption, and the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of the parent and child terminated by the execution of a written voluntary release, signed by the parent, regardless of the age of the parent.

(3) Grounds for termination of parental rights shall be based on one or more of the following factors:

(a) A parent has deserted without means of identification or abandoned a child as defined in Section 97-5-1, or

(b) A parent has made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year; or

(c) A parent has been responsible for a series of abusive incidents concerning one or more children; or

(d) When the child has been in the care and custody of a licensed child caring agency or the Department of Human Services for at least one (1) year, that agency or the department has made diligent efforts to develop and implement a plan for return of the child to its parents, and:

(i) The parent has failed to exercise reasonable available visitation with the child; or

(ii) The parent, having agreed to a plan to effect placement of the child with the parent, fails to implement the plan so that the child caring agency is unable to return the child to said parent; or

(e) The parent exhibits ongoing behavior which would make it impossible to return the child to the parent's care and custody:

(i) Because the parent has a diagnosable condition unlikely to change within a reasonable time such as alcohol or drug addiction, severe mental deficiencies or mental illness, or extreme physical incapacitation, which condition makes the parent unable to assume minimally, acceptable care of the child; or

(ii) Because the parent fails to eliminate behavior, identified by the child caring agency or the court, which prevents placement of said child with the parent in spite of diligent efforts of the child caring agency to assist the parent; or

(f) When there is an extreme and deep-seated antipathy by the child toward the parent or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment; or

(g) When a parent has been convicted of any of the following offenses against any child: (i) rape of a child under the provisions of Section 97-3-65, (ii) sexual battery of a child under the provisions of Section 97-3-95(c), (iii) touching a child for lustful purposes under the provisions of Section 97-5-23, (iv) exploitation of a child under the provisions of Section 97-5-31, (v) felonious abuse or battery of a child under the provisions of Section 97-5-39(2), (vi) carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, or (vii) murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; or

(h) The child has been adjudicated to have been abused or neglected and custody has been transferred from the child's parent(s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.

(4) Legal custody and guardianship by persons other than the parent as well as other permanent alternatives which end the supervision by the Department of Human Services should be considered as alternatives to the termination of parental rights, and these alternatives should be selected when, in the best interest of the child, parental contacts are desirable and it is possible to secure such placement without termination of parental rights.

(5) When a parent has been convicted of rape of a child under the provisions of Section 97-3-65, sexual battery of a child under the provisions of Section 97-3-95(c), touching a child for lustful purposes under the provisions of Section 97-5-23, exploitation of a child under the provisions of Section 97-5-31, felonious abuse or battery of a child under the provisions of Section 97-5-39(2), or carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, notice of the conviction shall be forwarded by the circuit clerk of the county in which the conviction occurred to the Mississippi Department of Human Services, Division of Social Services.

(6) In any case where a child has been removed from the parent's home due to sexual abuse or serious bodily injury to the child, the court shall treat such case for termination of parental rights as a preference case to be determined with all reasonable expedition.

## **MISSOURI**

### **MO. ANN. STAT. § 210.115 (2011). Reports of abuse, neglect, and under age eighteen deaths--persons required to report--deaths required to report--deaths required to be reported to the division or child fatality review panel, when--report made to another state, when**

1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel, teacher, principal or other school official, minister as provided by section 352.400, RSMo, peace officer or law enforcement official, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately report or cause a report to be made to the division in accordance with the provisions of sections 210.109 to 210.183. As used in this section, the term "abuse" is not limited to abuse inflicted by a person responsible for the child's care, custody and control as specified in section 210.110, but shall also include abuse inflicted by any other person.

2. Whenever such person is required to report pursuant to sections 210.109 to 210.183 in an official capacity as a staff member of a medical institution, school facility, or other agency, whether public or private, the person in charge or a designated agent shall be notified immediately. The person in charge or a designated agent shall then become responsible for immediately making or causing such report to be made to the division. Nothing in this section, however, is meant to preclude any person from reporting abuse or neglect.

3. Notwithstanding any other provision of sections 210.109 to 210.183, any child who does not receive specified medical treatment by reason of the legitimate practice of the religious belief of the child's parents, guardian, or others legally responsible for the child, for that reason alone, shall not be found to be an abused or neglected child, and such parents, guardian or other persons legally responsible for the child shall not be entered into the central registry. However, the division may accept reports concerning such a child and may subsequently investigate or conduct a family assessment as a result of that report. Such an exception shall not limit the administrative or judicial authority of the state to ensure that medical services are provided to the child when the child's health requires it.

4. In addition to those persons and officials required to report actual or suspected abuse or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such person has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or

neglect.

5. Any person or official required to report pursuant to this section, including employees of the division, who has probable cause to suspect that a child who is or may be under the age of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to the appropriate medical examiner or coroner. If, upon review of the circumstances and medical information, the medical examiner or coroner determines that the child died of natural causes while under medical care for an established natural disease, the coroner, medical examiner or physician shall notify the division of the child's death and that the child's attending physician shall be signing the death certificate. In all other cases, the medical examiner or coroner shall accept the report for investigation, shall immediately notify the division of the child's death as required in section 58.452, RSMo, and shall report the findings to the child fatality review panel established pursuant to section 210.192.

6. Any person or individual required to report may also report the suspicion of abuse or neglect to any law enforcement agency or juvenile office. Such report shall not, however, take the place of reporting or causing a report to be made to the division.

7. If an individual required to report suspected instances of abuse or neglect pursuant to this section has reason to believe that the victim of such abuse or neglect is a resident of another state or was injured as a result of an act which occurred in another state, the person required to report such abuse or neglect may, in lieu of reporting to the Missouri division of family services, make such a report to the child protection agency of the other state with the authority to receive such reports pursuant to the laws of such other state. If such agency accepts the report, no report is required to be made, but may be made, to the Missouri division of family services.

**MO. ANN. STAT. § 211.447 (2011). Petition to terminate parental rights, preliminary inquiry--juvenile officer to file petition or join as party, when--grounds for termination**

1. Any information that could justify the filing of a petition to terminate parental rights may be referred to the juvenile officer by any person. The juvenile officer shall make a preliminary inquiry and if it does not appear to the juvenile officer that a petition should be filed, such officer shall so notify the informant in writing within thirty days of the referral. Such notification shall include the reasons that the petition will not be filed. Thereupon, the informant may bring the matter directly to the attention of the judge of the juvenile court by presenting the information in writing, and if it appears to the judge that the information could justify the filing of a petition, the judge may order the juvenile officer to take further action, including making a further preliminary inquiry or filing a petition.

2. Except as provided for in subsection 4 of this section, a petition to terminate the parental rights of the child's parent or parents shall be filed by the juvenile officer or the division, or if such a petition has been filed by another party, the juvenile officer or the division shall seek to be joined as a party to the petition, when:

(1) Information available to the juvenile officer or the division establishes that the child has been in foster care for at least fifteen of the most recent twenty-two months; or

(2) A court of competent jurisdiction has determined the child to be an abandoned infant. For purposes of this subdivision, an "infant" means any child one year of age or under at the time of filing of the petition. The court may find that an infant has been abandoned if:

(a) The parent has left the child under circumstances that the identity of the child was unknown and could not be ascertained, despite diligent searching, and the parent has not come forward to claim the child; or

(b) The parent has, without good cause, left the child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so; or

(3) A court of competent jurisdiction has determined that the parent has:

(a) Committed murder of another child of the parent; or

(b) Committed voluntary manslaughter of another child of the parent; or

(c) Aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or

(d) Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent.

3. A termination of parental rights petition shall be filed by the juvenile officer or the division, or if such a petition has been filed by another party, the juvenile officer or the division shall seek to be joined as a party to the petition, within sixty days of the judicial determinations required in subsection 2 of this section, except as provided in subsection 4 of this section. Failure to comply with this requirement shall not deprive the court of jurisdiction to adjudicate a petition for termination of parental rights which is filed outside of sixty days.

4. If grounds exist for termination of parental rights pursuant to subsection 2 of this section, the juvenile officer or the division may, but is not required to, file a petition to terminate the parental rights of the child's parent or parents if:

(1) The child is being cared for by a relative; or

(2) There exists a compelling reason for determining that filing such a petition would not be in the best interest of the child, as documented in the permanency plan which shall be made available for court review; or

(3) The family of the child has not been provided such services as provided for in section 211.183.

5. The juvenile officer or the division may file a petition to terminate the parental rights of the child's parent when it appears that one or more of the following grounds for termination exist:

(1) The child has been abandoned. For purposes of this subdivision a "child" means any child over one year of age at the time of filing of the petition. The court shall find that the child has been abandoned if, for a period of six months or longer:

(a) The parent has left the child under such circumstances that the identity of the child was unknown and could not be ascertained, despite diligent searching, and the parent has not come

forward to claim the child; or

(b) The parent has, without good cause, left the child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so;

(2) The child has been abused or neglected. In determining whether to terminate parental rights pursuant to this subdivision, the court shall consider and make findings on the following conditions or acts of the parent:

(a) A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;

(b) Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control of the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control;

(c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family by the parent, including an act of incest, or by another under circumstances that indicate that the parent knew or should have known that such acts were being committed toward the child or any child in the family; or

(d) Repeated or continuous failure by the parent, although physically or financially able, to provide the child with adequate food, clothing, shelter, or education as defined by law, or other care and control necessary for the child's physical, mental, or emotional health and development.

Nothing in this subdivision shall be construed to permit discrimination on the basis of disability or disease;

(3) The child has been under the jurisdiction of the juvenile court for a period of one year, and the court finds that the conditions which led to the assumption of jurisdiction still persist, or conditions of a potentially harmful nature continue to exist, that there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future, or the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home. In determining whether to terminate parental rights under this subdivision, the court shall consider and make findings on the following:

(a) The terms of a social service plan entered into by the parent and the division and the extent to which the parties have made progress in complying with those terms;

(b) The success or failure of the efforts of the juvenile officer, the division or other agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to provide a proper home for the child;

(c) A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;



(d) Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control over the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control; or

(4) The parent has been found guilty or pled guilty to a felony violation of chapter 566 when the child or any child in the family was a victim, or a violation of section 568.020 when the child or any child in the family was a victim. As used in this subdivision, a “child” means any person who was under eighteen years of age at the time of the crime and who resided with such parent or was related within the third degree of consanguinity or affinity to such parent; or

(5) The child was conceived and born as a result of an act of forcible rape. When the biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such a plea or conviction shall be conclusive evidence supporting the termination of the biological father's parental rights; or

(6) The parent is unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse, including but not limited to, abuses as defined in section 455.010, child abuse or drug abuse before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed that a parent is unfit to be a party to the parent-child relationship upon a showing that within a three-year period immediately prior to the termination adjudication, the parent's parental rights to one or more other children were involuntarily terminated pursuant to subsection 2 or 4 of this section or subdivisions (1), (2), (3) or (4) of subsection 5 of this section or similar laws of other states.

6. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interest of the child and when it appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to subsection 2, 4 or 5 of this section.

7. When considering whether to terminate the parent-child relationship pursuant to subsection 2 or 4 of this section or subdivision (1), (2), (3) or (4) of subsection 5 of this section, the court shall evaluate and make findings on the following factors, when appropriate and applicable to the case:

(1) The emotional ties to the birth parent;

(2) The extent to which the parent has maintained regular visitation or other contact with the child;

(3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;

(4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;

(5) The parent's disinterest in or lack of commitment to the child;

(6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;

(7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

8. The court may attach little or no weight to infrequent visitations, communications, or contributions. It is irrelevant in a termination proceeding that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation.

9. In actions for adoption pursuant to chapter 453, the court may hear and determine the issues raised in a petition for adoption containing a prayer for termination of parental rights filed with the same effect as a petition permitted pursuant to subsection 2, 4, or 5 of this section.

10. The disability or disease of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the disability or disease and harm to the child.

## **MONTANA**

### **MONT. CODE ANN. § 41-3-102 (2011). Definitions**

As used in this chapter, the following definitions apply:

(1)(a) “Abandon”, “abandoned”, and “abandonment” mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) “A person responsible for a child's welfare” means:

- (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;
  - (b) a person providing care in a day-care facility;
  - (c) an employee of a public or private residential institution, facility, home, or agency; or
  - (d) any other person responsible for the child's welfare in a residential setting.
- (3) “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect.
- (4)(a) “Adequate health care” means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.
- (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.
- (5) “Best interests of the child” means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.
- (6) “Child” or “youth” means any person under 18 years of age.
- (7)(a) “Child abuse or neglect” means:
- (i) actual physical or psychological harm to a child;
  - (ii) substantial risk of physical or psychological harm to a child; or
  - (iii) abandonment.
- (b)(i) The term includes:
- (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
  - (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.
- (ii) For the purposes of this subsection (7), “dangerous drugs” means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

- (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as “serious emotional or physical damage to the child” as used in 25 U.S.C. 1912(f).
- (d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.
- (8) “Concurrent planning” means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.
- (9) “Department” means the department of public health and human services provided for in 2-15-2201.
- (10) “Family group decisionmaking meeting” means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.
- (11) “Indian child” means any unmarried person who is under 18 years of age and who is either:
- (a) a member of an Indian tribe; or
  - (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- (12) “Indian child's tribe” means:
- (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
  - (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.
- (13) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.
- (14) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:
- (a) the state of Montana; or
  - (b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.
- (15) “Limited emancipation” means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.
- (16) “Parent” means a biological or adoptive parent or stepparent.

(17) “Parent-child legal relationship” means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) “Permanent placement” means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) “Physical abuse” means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) “Physical neglect” means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21)(a) “Physical or psychological harm to a child” means the harm that occurs whenever the parent or other person responsible for the child's welfare:

- (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

- (ii) commits or allows sexual abuse or exploitation of the child;

- (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

- (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

- (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

- (vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22)(a) “Protective services” means services provided by the department:

- (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23)(a) “Psychological abuse or neglect” means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) “Qualified expert witness” as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) “Reasonable cause to suspect” means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) “Residential setting” means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27)(a) “Sexual abuse” means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) “Sexual exploitation” means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or

encouraging sexual abuse of children as described in 45-5-625.

(29)(a) “Social worker” means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) “Treatment plan” means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) “Unfounded” means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) “Unsubstantiated” means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33)(a) “Withholding of medically indicated treatment” means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions;  
or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), “infant” means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) “Youth in need of care” means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

**MONT. CODE ANN. § 41-3-609 (2011). Criteria for termination**

(1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents;
- (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);
- (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or
- (f) the child is an adjudicated youth in need of care and both of the following exist:
  - (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and
  - (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

- (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
- (b) a history of violent behavior by the parent;
- (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and
- (d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of



the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

## **NEBRASKA**

### **NEB. REV. STAT. ANN. § 43-292 (2011). Termination of parental rights; grounds**

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a

prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

(9) 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;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) 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, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

## **NEVADA**

### **NEV. REV. STAT. ANN. § 128.014 (2010). “Neglected child” defined**

“Neglected child” includes a child:

1. Who lacks the proper parental care by reason of the fault or habits of his or her parent, guardian or custodian;
2. Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being;
3. Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the child’s physical or mental condition;
4. Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or
5. Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of the child or others,

and the parent's neglect need not be willful.

**NEV. REV. STAT. ANN. § 128.018 (2010). “Unfit parent” defined**

“Unfit parent” is any parent of a child who, by reason of the parent’s fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.

**NEV. REV. STAT. ANN. § 128.105 (2010). Grounds for terminating parental rights:**

**Considerations; required findings**

The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

1. The best interests of the child would be served by the termination of parental rights; and
2. The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:
  - (a) Abandonment of the child;
  - (b) Neglect of the child;
  - (c) Unfitness of the parent;
  - (d) Failure of parental adjustment;
  - (e) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;
  - (f) Only token efforts by the parent or parents:
    - (1) To support or communicate with the child;
    - (2) To prevent neglect of the child;
    - (3) To avoid being an unfit parent; or
    - (4) To eliminate the risk of serious physical, mental or emotional injury to the child; or
  - (g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

**NEV. REV. STAT. ANN. § 128.106 (2010). Specific considerations in determining neglect by or unfitness of parent**

In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the

child has been placed outside his or her home pursuant to chapter 432B of NRS.

2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.
3. Conduct that violates any provision of NRS 200.463, 200.464 or 200.465.
4. Excessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child.
5. Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for the child's physical, mental and emotional health and development, but a person who, legitimately practicing his or her religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.
6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.
7. Unexplained injury or death of a sibling of the child.
8. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

## **NEW HAMPSHIRE**

### **N.H. REV. STAT. ANN. § 169-C:3 (2011). Definitions.**

When used in this chapter and unless the specific context indicates otherwise:

I. "Abandoned" means the child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.

II. "Abused child" means any child who has been:

- (a) Sexually abused; or
- (b) Intentionally physically injured; or
- (c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or
- (d) Physically injured by other than accidental means.

III. "Adjudicatory hearing" means a hearing to determine the truth of the allegations in the petition filed under this chapter.

IV. [Repealed].

V. “Child” means any person who has not reached his eighteenth birthday.

VI. “Child care agency” means a “child day care agency” as defined in RSA 170-E:2, IV or a “child care agency” as defined in RSA 170-E:25, II.

VII. “Child placing agency” means the department, Catholic charities of New Hampshire, or child and family services of New Hampshire, or any successor organization.

VII-a. “Concurrent plan” means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

VIII. “Consent order” means a written agreement entered into among or between the parties regarding the facts and the disposition in a neglect or abuse case, and approved by the court.

IX. “Court” means the district court, unless otherwise indicated.

X. “Custodian” means an agency or person, other than a parent or guardian, licensed pursuant to RSA 170-E to whom legal custody of the child has been given by court order.

XI. “Dispositional hearing” means a hearing held after a finding of abuse or neglect to determine what dispositional order should be made on behalf of the child.

XII. “Department” means the department of health and human services.

XIII. “Foster home” means a residential care facility licensed pursuant to RSA 170-E for child care in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage.

XIII-a. “Founded report” means a report made pursuant to this chapter for which the department finds probable cause to believe that the child who is the subject of such report is abused or neglected.

XIV. “Guardian” means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. Such duty and authority include but are not necessarily limited either in number or kind to:

(a) The authority to consent: (1) to marriage, (2) to enlistment in the armed forces of the United States, and (3) to major medical, psychiatric and surgical treatment, (4) to represent the child in legal actions; and (5) to make other decisions of substantial legal significance concerning the child;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order; and

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

XIV-a. “Household member” means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

XV. “Imminent danger” means circumstances or surroundings causing immediate peril or risk to a child's health or life.

XVI. “Institutional child abuse or neglect” means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency.

XVII. “Legal custody” means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

- (a) The right to determine where and with whom the child shall live;
- (b) The right to have the physical possession of the child;
- (c) The right and the duty to protect and constructively discipline the child; and
- (d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

XVIII. “Legal supervision” means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

XIX. “Neglected child” means a child:

- (a) Who has been abandoned by his parents, guardian, or custodian; or
- (b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian; or
- (c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

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

XX. “Notice” means communication given in person or in writing to the parent, guardian, custodian or other interested party not having custody or control of the child, of the time and place fixed for hearing; and it shall be given in all cases, unless it appears to the court that such notice will be

ineffectual.

XX-a. “Out-of-home placement” means the placement of a child in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or legal guardian.

XXI. “Parent” means mother, father, adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

XXI-a. “Party having an interest” means the child; the guardian ad litem of the child; the child's parent, guardian or custodian; the state; or any household member subject to court order.

XXI-b. “Permanency hearing” means a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan.

XXI-c. “Permanency plan” means a plan for a child in an out-of-home placement that is adopted by the court and provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XXII. “A person responsible for a child's welfare” includes the child's parent, guardian or custodian, as well as the person providing out-of-home care of the child, if that person is not the parent, guardian or custodian. For purposes of this definition, “out-of-home care” includes child day care, and any other settings in which children are given care outside of their homes.

XXIII. “Probable cause” means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

XXIV. “Protective custody” means the status of a child who has been taken into physical custody by a police officer or juvenile probation and parole officer because the child was in such circumstances or surroundings which presented an imminent danger to the child's health or life and where there was not sufficient time to obtain a court order.

XXV. “Protective supervision” means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

XXVI. “Relative” means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

XXVII. “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation and responsibilities for support.

XXVII-a. “Sexual abuse” means the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose

of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term “child” or “children” means any individual who is under the age of 18 years.

XXVIII. “Unfounded report” means a report made pursuant to this chapter for which the department finds that there is no probable cause to believe that the child is abused or neglected.

**N.H. REV. STAT. ANN. § 170-C:5 (2011). Grounds for Termination of the Parent-Child Relationship.**

The petition may be granted where the court finds that one or more of the following conditions exist:

I. The parent has abandoned the child. It shall be presumed that the parent intends to abandon the child who has been left by his parent without provision for his identification or who has been left by his parent in the care and custody of another without any provision for his support, or without communication from such parent for a period of 6 months. If in the opinion of the court the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned.

II. That, although the parents are financially able, they have substantially and continuously neglected to provide the child with necessary subsistence, education or other care necessary for his mental, emotional, or physical health or have substantially and continuously neglected to pay for such subsistence, education or other care when legal custody is lodged with others; provided, however, it shall not be grounds for the termination of the parent-child relationship for the sole reason the parent of said child relies upon spiritual means through prayer in accordance with a recognized religious method of healing in lieu of medical treatment for the healing of said child.

III. The parents, subsequent to a finding of child neglect or abuse under RSA 169-C, have failed to correct the conditions leading to such a finding within 12 months of the finding despite reasonable efforts under the direction of the district court to rectify the conditions.

IV. Because of mental deficiency or mental illness, the parent is and will continue to be incapable of giving the child proper parental care and protection for a longer period of time than would be wise or prudent to leave the child in an unstable or impermanent environment. Mental deficiency or mental illness shall be established by the testimony of either 2 licensed psychiatrists or clinical psychologists or one of each acting together.

V. The parent knowingly or willfully caused or permitted another to cause severe sexual, physical, emotional, or mental abuse of the child. Subsequent to a finding of such abuse pursuant to RSA 169-C, the parent-child relationship may be terminated if return of the child to the parent would result in a substantial possibility of harm to the child. A substantial possibility of harm to the child shall be established by testimony of at least 2 of the following factors:

- (a) The parent's conduct toward the child has resulted in severe harm to the child.
- (b) The parent's conduct toward the child has continued despite the reasonable efforts of authorized agencies in obtaining or providing services for the parent to reduce or alleviate such conduct.
- (c) The parent's conduct has continued to occur either over a period of time, or many times, or to such a degree so as to indicate a pattern of behavior on the part of the parent which indicates a



complete disregard for the child's health and welfare.

(d) Such conduct is likely to continue with no change in parental behavior, attitude or actions.

Testimony shall be provided by any combination of at least 2 of the following people: a licensed psychiatrist, a clinical psychologist, a physician, or a social worker who possesses a master's degree in social work and is a member of the Academy of Certified Social Workers.

VI. If the parent or guardian is, as a result of incarceration for a felony offense, unable to discharge his responsibilities to and for the child and, in addition, has been found pursuant to RSA 169-C to have abused or neglected his child or children, the court may review the conviction of the parent or guardian to determine whether the felony offense is of such a nature, and the period of incarceration imposed of such duration, that the child would be deprived of proper parental care and protection and left in an unstable or impermanent environment for a longer period of time than would be prudent. Placement of the child in foster care shall not be considered proper parental care and protection for purposes of this paragraph. Incarceration in and of itself shall not be grounds for termination of parental rights.

VII. The parent has been convicted of one or more of the following offenses:

(a) Murder, pursuant to RSA 630:1-a or 630:1-b, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(b) Manslaughter, pursuant to RSA 630:2, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(c) Attempt, pursuant to RSA 629:1, solicitation, pursuant to RSA 629:2, or conspiracy, pursuant to RSA 629:3, to commit any of the offenses specified in subparagraphs VII(a) and VII(b).

(d) A felony assault under RSA 631:1, 631:2, 632-A:2, or 632-A:3 which resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

## **NEW JERSEY**

### **N.J. STAT. ANN. § 30:4C-15 (2011). Guardianship; petition**

Whenever

(a) it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child; or

(b) (Deleted by amendment, P.L.1991, c. 275);

(c) it appears that the best interests of any child under the care or custody of the division require that he be placed under guardianship; or

(d) it appears that a parent or guardian of a child, following the acceptance of such child by the division pursuant to section 11 or 12 of P.L. 1951, c. 138 (C.30:4C-11 or 12), or following the placement or commitment of such child in the care of an authorized agency, whether in an institution or in a resource family home, and notwithstanding the reasonable efforts of such agency to encourage and strengthen the parental relationship, has failed for a period of one year to remove the circumstances or conditions that led to the removal or placement of the child, although physically and financially able to do so, notwithstanding the division's reasonable efforts to assist the parent or guardian in remedying the conditions; or

(e) the parent has abandoned the child; or

(f) the parent of a child has been found by a criminal court of competent jurisdiction to have committed murder, aggravated manslaughter or manslaughter of another child of the parent; to have aided or abetted, attempted, conspired, or solicited to commit such murder, aggravated manslaughter or manslaughter of the child or another child of the parent; or to have committed, or attempted to commit, an assault that resulted, or could have resulted, in the significant bodily injury to the child or another child of the parent; or the parent has committed a similarly serious act which resulted, or could have resulted, in the death or significant bodily injury to the child or another child of the parent; a petition to terminate the parental rights of the child's parents, setting forth the facts in the case, shall be filed by the division with the Family Part of the Chancery Division of the Superior Court in the county where such child may be at the time of the filing of such petition. A petition shall be filed as soon as any one of the circumstances in subsections (a) through (f) of this section is established, but no later than when the child has been in placement for 15 of the most recent 22 months, unless the division establishes an exception to the requirement to seek termination of parental rights in accordance with section 31 of P.L.1999, c. 53 (C.30:4C-15.3). Upon filing the petition, the division shall initiate concurrent efforts to identify, recruit, process and approve a qualified family to adopt the child.

A petition as provided in this section may be filed by any person or any association or agency, interested in such child in the circumstances set forth in subsections (a) and (f) of this section. The division shall seek to be joined as a party to a petition filed to terminate the parental rights of a child in the care and custody of the division unless the division has established an exception to the requirement to seek termination of parental rights in accordance with section 31 of P.L.1999, c. 53 (C.30:4C-15.3).

#### **N.J. STAT. ANN. § 30:4C-15.1 (2011). Termination of parental rights; standards to be met**

a. The division shall initiate a petition to terminate parental rights on the grounds of the “best interests of the child” pursuant to subsection (c) of section 15 of P.L.1951, c. 138 (C.30:4C-15) if the following standards are met:

(1) The child's safety, health or development has been or will continue to be endangered by the parental relationship;

(2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child;

(3) The division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and

(4) Termination of parental rights will not do more harm than good.

b. The division shall initiate a petition to terminate parental rights on the ground that the “parent has abandoned the child” pursuant to subsection (e) of section 15 of P.L.1951, c. 138 (C.30:4C-15) if the following standards are met:

(1) a court finds that for a period of six or more months:

(a) the parent, although able to have contact, has had no contact with the child, the child's resource family parent or the division; and

(b) the parent's whereabouts are unknown, notwithstanding the division's reasonable efforts to locate the parent; or

(2) where the identities of the parents are unknown and the division has exhausted all reasonable methods of attempting identification, the division may immediately file for termination of parental rights upon the completion of the law enforcement investigation; or

(3) where the parent voluntarily delivered the child to and left the child at, or voluntarily arranged for another person to deliver the child to and leave the child at a State, county or municipal police station or at an emergency department of a licensed general hospital in this State when the child is or appears to be no more than 30 days old, without expressing an intent to return for the child, as provided in section 4 of P.L.2000, c. 58 (C.30:4C-15.7), the division shall file for termination of parental rights no later than 21 days after the day the division assumed care, custody and control of the child.

c. As used in this section and in section 15 of P.L.1951, c. 138 (C.30:4C-15) “reasonable efforts” mean attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, but not limited to:

(1) consultation and cooperation with the parent in developing a plan for appropriate services;

(2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;

(3) informing the parent at appropriate intervals of the child's progress, development and health; and

(4) facilitating appropriate visitation.

d. The division shall not be required to provide “reasonable efforts” as defined in subsection c. of this section prior to filing a petition for the termination of parental rights if an exception to the requirement to provide reasonable efforts to reunify the family has been established pursuant to section 25 of P.L.1999, c. 53 (C.30:4C-11.3).

## **NEW MEXICO**

### **N.M. STAT. ANN. § 32A-4-2 (2011). 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.

**N.M. STAT. ANN. § 32A-4-28 (2011). Termination of parental rights; adoption decree**

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

B. The court shall terminate parental rights with respect to a child when:

(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

(a) there is a clear showing that the efforts would be futile; or

(b) the parent has subjected the child to aggravated circumstances; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

(e) the substitute family desires to adopt the child; and

(f) a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.

C. A finding by the court that all of the conditions set forth in Subparagraphs (a) through (f) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights when the sole factual basis for the motion is that a child's parent is incarcerated.

E. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 [FN1] shall comply with the requirements of that act.

F. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree.

## **NEW YORK**

### **N.Y. FAM. CT. ACT § 614 (2011). Originating proceeding for the commitment of the guardianship and custody of a permanently neglected child**

1. A proceeding for the commitment of the guardianship and custody of a child on the ground of permanent neglect is originated by a petition, alleging:

(a) the child is a person under eighteen years of age;

- (b) the child is in the care of an authorized agency;
- (c) the authorized agency has made diligent efforts to encourage and strengthen the parental relationship and specifying the efforts made or that such efforts would be detrimental to the best interests of the child and specifying the reasons therefor;
- (d) the parent or custodian, notwithstanding the agency's efforts, has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so; and
- (e) the best interests of the child require that the guardianship and custody of the child be committed to an authorized agency or to a foster parent authorized to originate this proceeding under section one thousand eighty-nine of this act.

2. Where the petitioner is not the authorized agency, allegations relating to the efforts of the authorized agency may be made upon information and belief.

**N.Y. SOC. SERV. LAW § 384-b (2011). Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights**

1. Statement of legislative findings and intent.

(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

- (i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;
- (ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;
- (iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and
- (iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in



appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, (a) “child” shall mean a person under the age of eighteen years; and, (b) “parent” shall include an incarcerated parent unless otherwise qualified.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section one thousand eighty-nine of the family court act or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.

(c) Where a child was placed or continued in foster care pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to section one thousand fifty-five or one thousand eighty-nine of the family court act, all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten or ten-A of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing

an attorney for the child, appoint an attorney who has previously represented the child.

(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this title. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act. When the

proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of section one thousand fifty-five of the family court act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g)(i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three

hundred eighty-four of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(l)(i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D) the parent or parents are incarcerated, or participating in a residential substance abuse treatment program, or the prior incarceration or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;

(B) the child has a permanency goal other than adoption;

(C) the child is fourteen years of age or older and will not consent to his or her adoption;

(D) there are insufficient grounds for filing a petition to terminate parental rights; or

(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court

act.

(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.

(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, law guardian, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, law guardian, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(d) The child is a permanently neglected child; or

(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly

abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.

5. (a) For the purposes of this section, a child is “abandoned” by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6. (a) For the purposes of this section, “mental illness” means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, “mental retardation” means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in section 730.10 of the criminal procedure law in the case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, “permanently neglected child” shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least

one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a "permanently neglected child" as defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with paragraph (b) of subdivision three of section three hundred fifty-eight-a of this chapter or section one thousand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b) of section one thousand fifty-two, paragraph (b) of subdivision two of section seven hundred fifty-four or paragraph (c) of subdivision two of section 352.2 of the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:

(i) The parent has failed for a period of six months to keep the agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child's progress, development and health;

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential



substance abuse treatment program shall return.

8. (a) For the purposes of this section a child is “severely abused” by his or her parent if (i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the penal law; or

(ii) the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate

diligent efforts as set forth in this section.

(b) For the purposes of this section a child is “repeatedly abused” by his or her parent if:

(i) the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law; and

(ii) (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of paragraph (g) of subdivision three of this section shall be satisfied if one of the findings of abuse pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that the child was a severely abused child as defined in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused [FN1] as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have

committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with section six hundred thirty-three of the family court act, upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to section one thousand eighty-nine of the family court act.

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to section one thousand eighty-nine of the family court act.

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

12. If the court determines to commit the custody and guardianship of the child pursuant to this section, or if the court determines to suspend judgment pursuant to section six hundred thirty-three of the family court act, the court in its order shall determine if there is any parent to whom notice of

an adoption would be required pursuant to section one hundred eleven-a of the domestic relations law. In its order the court shall indicate whether such person or persons were given notice of the proceeding and whether such person or persons appeared. Such determinations shall be conclusive in all subsequent proceedings relating to the custody, guardianship or adoption of the child.

13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.

## **NORTH CAROLINA**

### **N.C. GEN. STAT. ANN. § 7B-101 (2011). Definitions**

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; 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.

(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.

(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. ANN. § 7B-1111 (2011). Grounds for terminating parental rights**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or has committed murder or voluntary manslaughter of the other parent of the child. The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of plea. If the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(10) Where the juvenile has been relinquished to a county department of social services or a licensed child-placing agency for the purpose of adoption or placed with a prospective adoptive parent for adoption; the consent or relinquishment to adoption by the parent has become irrevocable except upon a showing of fraud, duress, or other circumstance as set forth in G.S. 48-3-609 or G.S. 48-3-707; termination of parental rights is a condition precedent to adoption in the jurisdiction where the adoption proceeding is to be filed; and the parent does not contest the termination of parental rights.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence.



# **NORTH DAKOTA**

## **N.D. CENT. CODE § 27-20-02 (2011). Definitions**

As used in this chapter:

1. “Abandon” means:

a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:

(1) To communicate with the child; or

(2) To provide for the care and support of the child as required by law; or

b. As to a parent of a child in that parent's custody:

(1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;

(2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or

(3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.

2. “Abandoned infant” means a child who has been abandoned before reaching the age of one year.

3. “Aggravated circumstances” means circumstances in which a parent:

a. Abandons, tortures, chronically abuses, or sexually abuses a child;

b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:

(1) One year; or

(2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;

c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;

d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;

(2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or

(3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;

e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;

f. Has been incarcerated under a sentence for which the latest release date is:

(1) In the case of a child age nine or older, after the child's majority; or

(2) In the case of a child, after the child is twice the child's current age, measured in days;

g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or

h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.

4. "Child" means an individual who is:

a. Under the age of eighteen years and is not married; or

b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.

5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection 19.

7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

8. "Deprived child" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned by the child's parents, guardian, or other custodian;

- d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
  - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
  - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
10. "Director" means the director of juvenile court or the director's designee.
11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
13. "Juvenile court" means the district court of this state.
14. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.
15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
- a. Whether and, if applicable, when the child will be returned to the parent;
  - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
  - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
  - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;

e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;

f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;

g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether out-of-state placements have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and

h. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

16. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

17. "Relative" means:

a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;

b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;

c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or

d. The child's stepparent.

18. "Shelter care" means temporary care of a child in physically unrestricted facilities.

19. "Unruly child" means a child who:

a. Is habitually and without justification truant from school;

b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;

c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;

- d. Has committed an offense in violation of section 5-01-08; or
- e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

20. “Willfully” has the meaning provided in section 12.1-02-02.

**N.D. CENT. CODE § 27-20-44 (2011). Termination of parental rights**

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:

- a. The parent has abandoned the child;
- b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
- c. The child is a deprived child and the court finds:
  - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
  - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or
- d. The written consent of the parent acknowledged before the court has been given.

2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

## **OHIO**

**OHIO REV. CODE ANN. § 2151.03 (2011). “Neglected child” defined**

(A) As used in this chapter, “neglected child” includes any child:

- (1) Who is abandoned by the child's parents, guardian, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for

the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

#### **OHIO REV. CODE ANN. § 2151.04 (2011). “Dependent child” defined**

As used in this chapter, “dependent child” means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

#### **OHIO REV. CODE ANN. § 2151.05 (2011). Child without proper parental care**

Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected,

abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

**OHIO REV. CODE ANN. § 2151.353 (2011). Disposition of abused, neglected, or dependent child**

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:
  - (a) That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child;
  - (b) That the person understands that legal custody of the child in question is intended to be permanent in nature and that the person will be responsible as the custodian for the child until the child reaches the age of majority. Responsibility as custodian for the child shall continue beyond the age of majority if, at the time the child reaches the age of majority, the child is pursuing a diploma granted by the board of education or other governing authority, successful completion of the curriculum of any high school, successful completion of an individualized education program developed for the student by any high school, or an age and schooling certificate. Responsibility beyond the age of majority shall terminate when the child ceases to continuously pursue such an education, completes such an education, or is excused from such an education under standards adopted by the state board of education, whichever occurs first.
  - (c) That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support;
  - (d) That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have.
- (4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with

Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

(B) No order for permanent custody or temporary custody of a child or the placement of a child in a planned permanent living arrangement shall be made pursuant to this section unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement as desired, the summons served on the parents of the child contains as is appropriate a full explanation that the granting of an order for permanent custody permanently divests them of their parental rights, a full explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or a full explanation that the granting of an order for a planned permanent living arrangement will result in the removal of the child from their legal custody if any of the conditions listed in divisions (A)(5)(a) to (c) of this section are found to exist, and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.



If after making disposition as authorized by division (A)(2) of this section, a motion is filed that requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 of the Revised Code.

(C) If the court issues an order for protective supervision pursuant to division (A)(1) of this section, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or custodian, or any other person, including, but not limited to, any of the following:

- (1) Order a party, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time;
- (2) Order a party, a parent of the child, or a physical custodian of the child to prevent any particular person from having contact with the child;
- (3) Issue an order restraining or otherwise controlling the conduct of any person which conduct would not be in the best interest of the child.

(D) As part of its dispositional order, the court shall journalize a case plan for the child. The journalized case plan shall not be changed except as provided in section 2151.412 of the Revised Code.

(E)(1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 or 2151.415 of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 or 2151.415 of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.

(2) Any public children services agency, any private child placing agency, the department of job and family services, or any party, other than any parent whose parental rights with respect to the child have been terminated pursuant to an order issued under division (A)(4) of this section, by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section or section 2151.414 or 2151.415 of the Revised Code. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties to the action and the guardian ad litem notice of the hearing pursuant to the Juvenile Rules. If applicable, the court shall comply with section 2151.42 of the Revised Code.

(F) Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. In resolving the motion, the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any

extensions have been previously ordered pursuant to division (D) of section 2151.415 of the Revised Code.

(G)(1) No later than one year after the earlier of the date the complaint in the case was filed or the child was first placed in shelter care, a party may ask the court to extend an order for protective supervision for six months or to terminate the order. A party requesting extension or termination of the order shall file a written request for the extension or termination with the court and give notice of the proposed extension or termination in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. If a public children services agency or private child placing agency requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time it files the request with the court. If no party requests extension or termination of the order, the court shall notify the parties that the court will extend the order for six months or terminate it and that it may do so without a hearing unless one of the parties requests a hearing. All parties and the guardian ad litem shall have seven days from the date a notice is sent pursuant to this division to object to and request a hearing on the proposed extension or termination.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall extend the order for six months.

(b) If it does not receive a timely request for a hearing, the court may extend the order for six months or terminate it without a hearing and shall journalize the order of extension or termination not later than fourteen days after receiving the request for extension or termination or after the date the court notifies the parties that it will extend or terminate the order. If the court does not extend or terminate the order, it shall schedule a hearing to be held no later than thirty days after the expiration of the applicable fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the child's guardian ad litem. At the hearing, the court shall determine whether extension or termination of the order is in the child's best interest. If termination is in the child's best interest, the court shall terminate the order. If extension is in the child's best interest, the court shall issue an order extending the order for protective supervision six months.

(2) If the court grants an extension of the order for protective supervision pursuant to division (G)(1) of this section, a party may, prior to termination of the extension, file with the court a request for an additional extension of six months or for termination of the order. The court and the parties shall comply with division (G)(1) of this section with respect to extending or terminating the order.

(3) If a court grants an extension pursuant to division (G)(2) of this section, the court shall terminate the order for protective supervision at the end of the extension.

(H) The court shall not issue a dispositional order pursuant to division (A) of this section that removes a child from the child's home unless the court complies with section 2151.419 of the Revised Code and includes in the dispositional order the findings of fact required by that section.

(I) If a motion or application for an order described in division (A)(6) of this section is made, the court shall not issue the order unless, prior to the issuance of the order, it provides to the person all of the following:

- (1) Notice and a copy of the motion or application;
- (2) The grounds for the motion or application;
- (3) An opportunity to present evidence and witnesses at a hearing regarding the motion or application;
- (4) An opportunity to be represented by counsel at the hearing.

(J) The jurisdiction of the court shall terminate one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, the date of the latest further action subsequent to the award, if the court awards legal custody of a child to either of the following:

- (1) A legal custodian who, at the time of the award of legal custody, resides in a county of this state other than the county in which the court is located;
- (2) A legal custodian who resides in the county in which the court is located at the time of the award of legal custody, but moves to a different county of this state prior to one year after the date of the award or, if the court takes any further action in the matter subsequent to the award, one year after the date of the latest further action subsequent to the award.

The court in the county in which the legal custodian resides then shall have jurisdiction in the matter.

## **OKLAHOMA**

### **OKLA. STAT. ANN. tit. 10A, § 1-1-105 (2011). 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 Oklahoma 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 Oklahoma 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. "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;

23. "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;

24. “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;

25. “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;

26. “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; [FN1]

27. “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;

28. “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;

29. “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;

30. “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;

31. “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;

32. “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;

33. “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;

34. “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;

35. “Infant” means a child who is twelve (12) months of age or younger;

36. “Institution” means a residential facility offering care and treatment for more than twenty residents;

37. 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 -- Court intervention recommended” means a report that is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the health, safety, or welfare of the child is threatened,

(2) “Substantiated -- Services recommended” means a report that is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention- and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required,

(3) “Unsubstantiated -- Services recommended” means a report in which a child protective services worker, after an investigation, determines there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the family of the child could benefit from receiving child abuse and neglect prevention- and intervention-related services, or

(4) “Ruled out” means a report in which a child protective services worker, after an investigation, determines that no child abuse or neglect has occurred;

38. “Kinship care” means full-time care of a child by a kinship relation;

39. “Kinship guardianship” means a permanent guardianship as defined in this section;

40. “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 [FN2] applies, the definitions contained in 25 U.S.C., Section 1903 shall control;

41. “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; [FN3]

42. “Minor” means the same as the term “child” as defined in this section;

43. “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;

44. “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;

45. “Near death” means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

46. “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;

47. “Permanency hearing” means a hearing by the court pursuant to Section 1-4-811 of this title;

48. “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;

49. “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;

50. “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;

51. “Protective custody” means custody of a child taken by a law enforcement officer or designated employee of the court without a court order;
52. “Putative father” means an alleged father as that term is defined in Section 7700-102 of Title 10 of the Oklahoma Statutes;
53. “Relative” means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child;
54. “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;
55. “Review hearing” means a hearing by the court pursuant to Section 1-4-807 of this title;
56. “Risk” means the likelihood that an incident of child abuse or neglect will occur in the future;
57. “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;
58. “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;
59. “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;
60. “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;
61. “Sibling” means a biologically or legally related brother or sister of a child;
62. “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;
63. “Temporary custody” means court-ordered custody of an adjudicated deprived child;

64. “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;

65. “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

66. “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.

**OKLA. STAT. ANN. tit. 10A, § 1-4-904 (2011). Termination of parental rights in certain situations**

A. A court shall not terminate the rights of a parent to a child unless:

1. The child has been adjudicated to be deprived either prior to or concurrently with a proceeding to terminate parental rights; and
2. Termination of parental rights is in the best interests of the child.

B. The court may terminate the rights of a parent to a child based upon the following legal grounds:

1. Upon the duly acknowledged written consent of a parent, who voluntarily agrees to termination of parental rights.
  - a. The voluntary consent for termination of parental rights shall be signed under oath and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that the consent was translated into a language that the parent understood.
  - b. A voluntary consent for termination of parental rights is effective when it is signed and may not be revoked except upon clear and convincing evidence that the consent was executed by reason of fraud or duress.
  - c. However, notwithstanding the provisions in this paragraph, in any proceeding for a voluntary termination of parental rights to an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination. Any consent given prior to, or within ten (10) days after, the birth of an Indian child shall not be valid;
2. A finding that a parent who is entitled to custody of the child has abandoned the child;
3. A finding that the child is an abandoned infant;

4. A finding that the parent of a child:

- a. has voluntarily placed physical custody of the child with the Department of Human Services or with a child-placing agency for out-of-home placement,
- b. has not complied with the placement agreement, and
- c. has not demonstrated during such period a firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child;

5. A finding that:

- a. the parent has failed to correct the condition which led to the deprived adjudication of the child, and
- b. the parent has been given at least three (3) months to correct the condition;

6. A finding that:

- a. the rights of the parent to another child have been terminated, and
- b. the conditions that led to the prior termination of parental rights have not been corrected;

7. A finding that a parent who does not have custody of the child has, for at least six (6) out of the twelve (12) months immediately preceding the filing of the petition for termination of parental rights, willfully failed or refused or has neglected to contribute to the support of the child:

- a. as specified by an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
- b. where an order of child support does not exist, according to the financial ability of the parent to contribute to the child's support.

Incidental or token support shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child;

8. A finding that the parent has been convicted in a court of competent jurisdiction in any state of any of the following acts:

- a. permitting a child to participate in pornography,
- b. rape, or rape by instrumentation,
- c. lewd molestation of a child under sixteen (16) years of age,
- d. child abuse or neglect,
- e. enabling child abuse or neglect,

f. causing the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child,

g. causing the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of the child's sibling,

h. murder of any child or aiding or abetting, attempting, conspiring, or soliciting to commit murder of any child,

i. voluntary manslaughter of any child,

j. a felony assault that has resulted in serious bodily injury to the child or another child of the parents, or

k. murder or voluntary manslaughter of the child's parent or aiding or abetting, attempting, conspiring, or soliciting to commit murder of the child's parent;

9. A finding that the parent has abused or neglected the child or a sibling of the child or failed to protect the child or a sibling of the child from abuse or neglect that is heinous or shocking;

10. A finding that the parent has previously abused or neglected the child or a sibling of the child or failed to protect the child or a sibling of the child from abuse or neglect and the child or a sibling of the child has been subjected to subsequent abuse;

11. A finding that the child was conceived as a result of rape perpetrated by the parent whose rights are sought to be terminated;

12. A finding that the parent whose rights are sought to be terminated is incarcerated, and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others:

a. the duration of incarceration and its detrimental effect on the parent/child relationship,

b. any previous convictions resulting in involuntary confinement in a secure facility,

c. the parent's history of criminal behavior, including crimes against children,

d. the age of the child,

e. any evidence of abuse or neglect or failure to protect from abuse or neglect of the child or siblings of the child by the parent,

f. the current relationship between the parent and the child, and

g. the manner in which the parent has exercised parental rights and duties in the past.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of parental rights;

13. A finding that all of the following exist:

- a. the parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health which renders the parent incapable of adequately and appropriately exercising parental rights, duties, and responsibilities within a reasonable time considering the age of the child, and
- b. allowing the parent to have custody would cause the child actual harm or harm in the near future.

A parent's refusal or pattern of noncompliance with treatment, therapy, medication, or assistance from outside the home can be used as evidence that the parent is incapable of adequately and appropriately exercising parental rights, duties, and responsibilities.

A finding that a parent has a diagnosed cognitive disorder, an extreme physical incapacity, or a medical condition, including behavioral health or substance dependency shall not in and of itself deprive the parent of parental rights; and

14. A finding that:

- a. the condition that led to the deprived adjudication has been the subject of a previous deprived adjudication of this child or a sibling of this child, and
- b. the parent has been given an opportunity to correct the conditions which led to the determination of the initial deprived child.

C. An order directing the termination of parental rights is a final appealable order.

D. The provisions of this section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma Adoption Code. [FN1]

## **OREGON**

### **OR. REV. STAT. ANN. § 419B.502 (2011). 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.

**OR. REV. STAT. ANN. § 419B.504 (2011). Termination for conduct seriously detrimental to child; 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 conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

- (1) Emotional illness, mental illness or mental retardation of the parent of such nature and duration as to render the parent incapable of providing proper care for the child or ward for extended periods of time.
- (2) Conduct toward any child of an abusive, cruel or sexual nature.
- (3) Addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired.
- (4) Physical neglect of the child or ward.
- (5) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make it possible for the child or ward to safely return home within a reasonable time or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.
- (6) Criminal conduct that impairs the parent's ability to provide adequate care for the child or ward.

**OR. REV. STAT. ANN. § 419B.506 (2011). Termination for failure to provide for basic physical and psychological needs of child; 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 have failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child or ward for six months prior to the filing of a



petition. In determining such failure or neglect, the court shall disregard any incidental or minimal expressions of concern or support and shall consider but is not limited to one or more of the following:

- (1) Failure to provide care or pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others.
- (2) Failure to maintain regular visitation or other contact with the child or ward that was designed and implemented in a plan to reunite the child or ward with the parent.
- (3) Failure to contact or communicate with the child or ward or with the custodian of the child or ward. In making this determination, the court may disregard incidental visitations, communications or contributions.

## **PENNSYLVANIA**

### **23 PA. CONS. STAT. ANN. § 2511 (2011). Grounds for involuntary termination**

(a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (3) The parent is the presumptive but not the natural father of the child.
- (4) The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search and the parent does not claim the child within three months after the child is found.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (6) In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain

substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.

(7) The parent is the father of a child conceived as a result of a rape or incest.

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

(9) The parent has been convicted of one of the following in which the victim was a child of the parent:

(i) an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

(ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault);

(iii) an offense in another jurisdiction equivalent to an offense in subparagraph (i) or (ii); or

(iv) an attempt, solicitation or conspiracy to commit an offense in subparagraph (i), (ii) or (iii).

(b) Other considerations.--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

(c) Right to file personal and medical history information.--At the time the decree of termination is transmitted to the parent whose rights have been terminated, the court shall advise the parent, in writing, of his or her continuing right to place and update personal and medical history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare pursuant to Subchapter B of Chapter 29 [FN1] (relating to records and access to information).

### **23 PA. CONS. STAT. ANN. § 6303 (2011). Definitions**

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accept for service.” Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

“Child.” Includes a newborn.

“Child-care services.” Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and

alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

“Child protective services.” Those services and activities provided by the Department of Public Welfare and each county agency for child abuse cases.

“Children's advocacy center.” A local public agency in this Commonwealth or a not-for-profit entity incorporated in this Commonwealth which:

(1) is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)); and

(2) operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse that, at a minimum, either onsite or through a partnership with another entity or entities, assists county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.

“Cooperation with an investigation or assessment.” Includes, but is not limited to, a school or school district which permits authorized personnel from the Department of Public Welfare or county agency to interview a student while the student is in attendance at school.

“County agency.” The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L. 2017, No. 396), known as the County Institution District Law, [FN1] or its successor, and supervised by the Department of Public Welfare under Article IX of the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code. [FN2]

“Department.” The Department of Public Welfare of the Commonwealth.

“Expunge.” To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

“Family members.” Spouses, parents and children or other persons related by consanguinity or affinity.

“Founded report.” A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

“Founded report for school employee.” A report under Subchapter C.1 (relating to students in public and private schools) if there has been any judicial adjudication based on a finding that the victim has suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances

involved in the allegations of the report.

“General protective services.” Those services and activities provided by each county agency for nonabuse cases requiring protective services, as defined by the Department of Public Welfare in regulations.

“Indicated report.” A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following:

- (1) Available medical evidence.
- (2) The child protective service investigation.
- (3) An admission of the acts of abuse by the perpetrator.

“Indicated report for school employee.” A report made under Subchapter C.1 (relating to students in public and private schools) if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on any of the following:

- (1) Available medical evidence.
- (2) The county agency's investigation.
- (3) An admission of the acts of abuse by the school employee.

“Individual residing in the same home as the child.” An individual who is 14 years of age or older and who resides in the same home as the child.

“Near fatality.” An act that, as certified by a physician, places a child in serious or critical condition.

“Newborn.” As defined in section 6502 (relating to definitions).

“Nonaccidental.” An injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.

“Perpetrator.” A person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

“Person responsible for the child's welfare.” A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school.

“Private agency.” A children and youth social service agency subject to the requirements of 55 Pa. Code Ch. 3680 (relating to administration and operation of a children and youth social service

agency).

“Protective services.” Those services and activities provided by the Department of Public Welfare and each county agency for children who are abused or are alleged to be in need of protection under this chapter.

“Recent acts or omissions.” Acts or omissions committed within two years of the date of the report to the Department of Public Welfare or county agency.

“Resource family.” A family which provides temporary foster or kinship care for children who need out-of-home placement and may eventually provide permanency for those children, including an adoptive family.

“Risk assessment.” A Commonwealth-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child.

“School employee.” An individual employed by a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor and employees. The term excludes an individual who has no direct contact with students.

“Secretary.” The Secretary of Public Welfare of the Commonwealth.

“Serious bodily injury.” Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

“Serious mental injury.” A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

- (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or
- (2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

“Serious physical injury.” An injury that:

- (1) causes a child severe pain; or
- (2) significantly impairs a child's physical functioning, either temporarily or permanently.

“Sexual abuse or exploitation.” Any of the following:

- (1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.
- (2) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of

producing visual depiction, including photographing, videotaping, computer depicting and filming.

(3) Any of the following offenses committed against a child:

- (i) Rape.
- (ii) Sexual assault.
- (iii) Involuntary deviate sexual intercourse.
- (iv) Aggravated indecent assault.
- (v) Molestation.
- (vi) Incest.
- (vii) Indecent exposure.
- (viii) Prostitution.
- (ix) Sexual abuse.
- (x) Sexual exploitation.

“Student.” An individual enrolled in a public or private school, intermediate unit or area vocational-technical school who is under 18 years of age.

“Subject of the report.” Any child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator or school employee named in a report made to the Department of Public Welfare or a county agency under this chapter.

“Substantial evidence.” Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

“Substantiated child abuse.” Child abuse as to which there is an indicated report or founded report.

“Under investigation.” A child abuse report pursuant to this chapter which is being investigated to determine whether it is “founded,” “indicated” or “unfounded.”

“Unfounded report.” Any report made pursuant to this chapter unless the report is a “founded report” or an “indicated report.”

(b) Child abuse.--

(1) The term “child abuse” shall mean any of the following:

- (i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(3) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.

## **RHODE ISLAND**

### **R.I. GEN. LAWS § 15-7-7 (2011). Termination of parental rights**

(a) The court shall, upon a petition duly filed by a governmental child placement agency or licensed child placement agency after notice to the parent and a hearing on the petition, terminate any and all legal rights of the parent to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the court finds as a fact by clear and convincing evidence that:

(1) The parent has willfully neglected to provide proper care and maintenance for the child for a period of at least one year where financially able to do so. In determining whether the parent has willfully neglected to provide proper care and maintenance for the child, the court may disregard contributions to support which are of an infrequent and insubstantial nature; or

(2) The parent is unfit by reason of conduct or conditions seriously detrimental to the child; such as, but not limited to, the following:

(i) Institutionalization of the parent, including imprisonment, for a duration as to render it improbable for the parent to care for the child for an extended period of time;

(ii) Conduct toward any child of a cruel or abusive nature;

(iii) The child has been placed in the legal custody or care of the department for children, youth, and families and the parent has a chronic substance abuse problem and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide care for a child for a period of twelve (12) months due to substance abuse shall constitute prima facie evidence of a chronic substance abuse problem;

(iv) The child has been placed with the department for children, youth, and families and the court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child's age and the need for a permanent home;

(v) The parent has subjected the child to aggravated circumstances, which circumstances shall be abandonment, torture, chronic abuse and sexual abuse;

(vi) The parent has committed murder or voluntary manslaughter on another of his or her children or has committed a felony assault resulting in serious bodily injury on that child or another of his or her children or has aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or

(vii) The parent has exhibited behavior or conduct that is seriously detrimental to the child, for a duration as to render it improbable for the parent to care for the child for an extended period of time;

(3) The child has been placed in the legal custody or care of the department for children, youth, and families for at least twelve (12) months, and the parents were offered or received services to correct the situation which led to the child being placed; provided, that there is not a substantial probability that the child will be able to return safely to the parents' care within a reasonable period of time considering the child's age and the need for a permanent home; or

(4) The parent has abandoned or deserted the child. A lack of communication or contact with the child for at least a six (6) month period shall constitute prima facie evidence of abandonment or desertion. In the event that parents of an infant have had no contact or communication with the infant for a period of six (6) months the department shall file a petition pursuant to this section and the family court shall conduct expedited hearings on the petition.

(b)(1) In the event that the petition is filed pursuant to subdivisions (a)(1), (a)(2)(i), (a)(2)(iii), or (a)(2)(vii) of this section, the court shall find as a fact that, prior to the granting of the petition, such parental conduct or conditions must have occurred or existed notwithstanding the reasonable efforts which shall be made by the agency prior to the filing of the petition to encourage and strengthen the parental relationship so that the child can safely return to the family. In the event that a petition is filed pursuant to subdivision (a)(2)(ii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi) or (a)(4) of this section, the department has no obligation to engage in reasonable efforts to preserve and reunify a family.



(2) Any duty or obligation on the part of a licensed or governmental child placing agency to make reasonable efforts to strengthen the parental relationship shall cease upon the filing of a petition under this section. This provision shall not be construed and is not intended to limit or affect in any way the parents' right to see or visit with the child during the pendency of a petition under this section.

(3) Upon the filing of a termination of parental rights petition, the agency has an affirmative duty to identify, recruit, process and approve a qualified family for adoption or other permanent living arrangement for the child.

(c)(1) In considering the termination of rights as pursuant to subsection (a), the court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions of this chapter.

(2) The consideration shall include the following: If a child has been placed in foster family care, voluntarily or involuntarily, the court shall determine whether the child has been integrated into the foster family to the extent that the child's familial identity is with the foster family and whether the foster family is able and willing to permanently integrate the child into the foster family; provided, that in considering integrating into a foster family, the court should consider:

(i) The length of time child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child; and

(ii) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

(d) If the court finds that the parental rights of the parent should be terminated as specified in subsection (a), it shall by decree duly entered, appoint some suitable person to give or withhold consent in any subsequent adoption proceedings. In the case of petitions filed by licensed or governmental child placement agencies, the court shall appoint the agency to be the sole party to give or withhold consent to the adoption of the child and further vest the agency with all rights of guardianship over the child.

(e) Nothing in this section shall be construed to prohibit the introduction of expert testimony with respect to any illness, medical or psychological condition, trauma, incompetency, addiction to drugs, or alcoholism of any parent who has exhibited behavior or conduct that is seriously detrimental to a child, to assist the court in evaluating the reason for the conduct or its probable duration.

(f) The record of the testimony of the parties adduced in any proceeding terminating parental rights to a child shall be entitled to the confidentiality provided for in § 8-10-21 and more specifically shall not be admissible in any civil, criminal, or other proceeding in any court against a person named a defendant or respondent for any purpose, except in subsequent proceedings involving the same child or proceedings involving the same respondent.

(g) In the event any child, the parental rights to whom have been finally terminated, has not been placed by the agency in the home of a person or persons with the intention of adopting the child within thirty (30) days from the date of the final termination decree, the family court shall review the status of the child and the agency shall file a report that documents the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an

adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, this documentation shall include child specific recruitment efforts, such as the use of state, regional and national adoption exchanges, including electronic exchange system.

## **SOUTH CAROLINA**

### **S.C. CODE ANN. § 63-7-20 (2011). Definitions.**

When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

(1) “Abandonment of a child” means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.

(2) “Affirmative determination” means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:

(a) the court;

(b) the Department of Social Services upon a final agency decision in its appeals process; or

(c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court's finding must be the affirmative determination.

(3) “Child” means a person under the age of eighteen.

(4) “Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

(i) is administered by a parent or person in loco parentis;

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

(iii) is reasonable in manner and moderate in degree;

(iv) has not brought about permanent or lasting damage to the child; and

(v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

(5) "Child protective investigation" means an inquiry conducted by the department in response to a report of child abuse or neglect made pursuant to this chapter.

(6) "Child protective services" means assistance provided by the department as a result of indicated reports or affirmative determinations of child abuse or neglect, including assistance ordered by the family court or consented to by the family. The objectives of child protective services are to:

(a) protect the child's safety and welfare; and

(b) maintain the child within the family unless the safety of the child requires placement outside the home.

(7) "Court" means the family court.

(8) "Department" means the Department of Social Services.

(9) "Emergency protective custody" means the right to physical custody of a child for a temporary period of no more than twenty-four hours to protect the child from imminent danger.

Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

(10) "Guardianship of a child" means the duty and authority vested in a person by the family court to make certain decisions regarding a child, including:

- (a) consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment;
  - (b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and
  - (c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.
- (11) “Indicated report” means a report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.
- (12) “Institutional child abuse and neglect” means situations of known or suspected child abuse or neglect where the person responsible for the child’s welfare is the employee of a public or private residential home, institution, or agency.
- (13) “Legal custody” means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.
- (14) “Mental injury” means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child’s ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional.
- (15) “Party in interest” includes the child, the child’s attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.
- (16) “Person responsible for a child’s welfare” includes the child’s parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.
- (17) “Physical custody” means the lawful, actual possession and control of a child.

(18) “Physical injury” means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

(19) “Preponderance of evidence” means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

(20) “Probable cause” means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

(21) “Protective services unit” means the unit established within the Department of Social Services which has prime responsibility for state efforts to strengthen and improve the prevention, identification, and treatment of child abuse and neglect.

(22) “Subject of the report” means a person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

(23) “Suspected report” means all initial reports of child abuse or neglect received pursuant to this chapter.

(24) “Unfounded report” means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise.

**S.C. CODE ANN. § 63-7-1660 (2011). Services with removal.**

(A) Upon investigation of a report received under Section 63-7-310 or at any time during the delivery of services by the department, the department may petition the family court to remove the child from custody of the parent, guardian, or other person legally responsible for the child's welfare if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be safely maintained in the home in that he cannot be protected from unreasonable risk of harm affecting the child's life, physical health, safety, or mental well-being without removal. If a noncustodial parent is not named as a party in the removal petition, the agency shall exercise every reasonable effort to promptly notify the noncustodial parent that a removal proceeding has been initiated and of the date and time of any hearings scheduled pursuant to this section.

(B)(1) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including facts supporting the department's allegation that the child is an abused or neglected child as defined in Section 63-7-20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child's life, physical health or safety, or mental well-being and the child cannot reasonably be protected from this harm without being removed, a description of the condition of the child, any previous efforts to work with the parent or guardian, in-home treatment programs which have been offered and proven inadequate, and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition also shall contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child that may result upon removal.

(2) The petition for removal may include a petition for termination of parental rights. The petition for removal must include a petition for termination of parental rights if court records or other evidence indicate the existence of one or more of the conditions set forth in Section 63-7-1640(C)(1) through (8), unless there are compelling reasons for believing that termination of parental rights would be contrary to the best interests of the child.

(C)(1) Whether or not the petition for removal includes a petition for termination of parental rights, the petition shall contain a notice informing the parents of the potential effect of the hearing on their parental rights and a notice to all interested parties that objections to the sufficiency of a placement plan, if ordered, or of any recommendations for provisions in the plan or court order must be raised at the hearing. The notice must be printed in boldface print or in all upper case letters and set off in a box.

(2) If the petition includes a petition for termination of parental rights, the notice shall state: “As a result of this hearing, you could lose your rights as a parent”.

(3) If the petition does not include a petition for termination of parental rights, the notice shall state: “At this hearing the court may order a treatment plan. If you fail to comply with the plan, you could lose your rights as a parent”.

(D) Upon receipt of a removal petition under this section, the family court shall schedule a hearing to be held within thirty-five days of the date of receipt to determine whether removal is necessary. The parties to the petition must be served with a summons and notices of right to counsel and the hearing date and time along with the petition. Personal jurisdiction over the parties is effected if they are served at least seventy-two hours before the hearing. No responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty-five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) The court shall not order that a child be removed from the custody of the parent or guardian unless the court finds that the allegations of the petition are supported by a preponderance of evidence including a finding that the child is an abused or neglected child as defined in Section 63-7-20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child's life, physical health or safety, or mental well-being and the child cannot reasonably be protected from this harm without being removed.

(F)(1) It is presumed that a newborn child is an abused or neglected child as defined in Section 63-7-20 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

(a) a blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant, or

(b) the child has a medical diagnosis of fetal alcohol syndrome; and

(c) a blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a

metabolite of a controlled substance unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant, or

(d) another child of the mother has the medical diagnosis of fetal alcohol syndrome.

(2) This presumption may be rebutted by proof that the father or another adult who will assume the role of parent is available and suitable to provide care for the child in the home of the mother. The father or the other adult must be made a party to the action and subject to the court's order establishing the conditions for maintaining the child in the mother's home. This statutory presumption does not preclude the court from ordering removal of a child upon other proof of alcohol or drug abuse or addiction by the parent or person responsible for the child who has harmed the child or threatened the child with harm.

(G) If the court removes custody of the child, the court's order shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

(1) the services made available to the family before the removal of the child and how they related to the needs of the family;

(2) the efforts of the agency to provide these services to the family before removal;

(3) why the efforts to provide services did not eliminate the need for removal; and

(4) whether the efforts to eliminate the need for removal were reasonable including, but not limited to, whether they were reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances. If the department's first contact with the child occurred under such circumstances that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.

#### **S.C. CODE ANN. § 63-7-2570 (2011). Grounds.**

The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

(1) The child or another child while residing in the parent's domicile has been harmed as defined in Section 63-7-20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child may be considered.

(2) The child has been removed from the parent pursuant to Subarticle 3 or Section 63-7-1660, has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal.

(3) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to

incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child's placement from the parent's home must be taken into consideration when determining the ability to visit.

(4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent's means. The court may consider all relevant circumstances in determining whether or not the parent has wilfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.

(5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of the parental rights of the presumptive legal father.

(6) 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. It is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

(7) The child has been abandoned as defined in Section 63-7-20.

(8) The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months.

(9) The 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 an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or the common law offense of assault and battery of a high and aggravated nature.

(10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.

(11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.



## **SOUTH DAKOTA**

### **S.D. CODIFIED LAWS § 26-8A-2 (2011). Abused or neglected child defined**

In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
- (5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
- (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;
- (9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
- (10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

### **S.D. Codified Laws § 26-8A-26 (2011). Termination of parental rights--Return of child to parents or continued placement--Annual permanency hearing for child in foster care**

If an adjudicated, abused, or neglected child whose parental rights have not been terminated has been in the custody of the Department of Social Services and it appears at a dispositional or review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents and the court shall enter an order terminating parental rights. If the court does not find at the hearing, which shall be conducted in the same manner as a dispositional hearing, that good cause exists for termination of parental

rights, the court may make further disposition of the child as follows:

(1) Return custody of the child to the child's parents, guardian, or custodian, with or without supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the department and may require the parent, guardian, custodian, and any other adult residing in the home, to submit, at the request of the department, to tests for alcohol, marijuana, or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol, marijuana, or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol, marijuana, or any controlled drug or substance. If a positive test for alcohol, marijuana, or any controlled drug or substance is obtained, or if the person fails to submit to the test as required, the department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior court order subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used herein, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;

(2) Continue foster care placement of the child for a specified period of time, and, if the child is sixteen years of age or older, direct the department to determine the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child;

(3) Place the child in the custody of the department or a child placement agency, with or without guardianship of the child, in another planned permanent living arrangement following a determination that a compelling reason exists that the placement is more appropriate than adoption or with a relative or with a legal guardian other than the department and under a court-approved plan that determines visitation rights of the child's parents, guardian, or custodian. Under this subdivision, the court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights if termination of parental rights is the least restrictive alternative available in keeping with the best interests of the child.

In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree setting forth one of the above options. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.

#### **S.D. CODIFIED LAWS § 26-8A-26.1 (2011). 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) Committed a crime defined in § 22-18-1.1 against the child or another child of such parent, or committed conduct described by that section that violated the law or ordinance of another jurisdiction having elements similar to the offense described by that section;

(3) 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;

(4) 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;

(5) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;

(6) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;

(7) 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;

(8) 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; or

(9) 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.

## **TENNESSEE**

### **TENN. CODE ANN. § 36-1-102 (2011). Definitions**

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

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, “abandonment” means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully

failed to make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

(iii) A biological or legal father has either willfully failed to visit or willfully failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child; provided, that in no instance shall a final order terminating the parental rights of a parent as determined pursuant to this subdivision (1)(A)(iii) be entered until at least thirty (30) days have elapsed since the date of the child's birth;

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child; or

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant;

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), “willfully failed to support” or “willfully failed to make reasonable payments toward such child's support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child;

(E) For purposes of this subdivision (1), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;

(G) “Abandonment” and “abandonment of an infant” do not have any other definition except that which is set forth in this section, it being the intent of the general assembly to establish the only grounds for abandonment by statutory definition. Specifically, it shall not be required that a parent be shown to have evinced a settled purpose to forego all parental rights and responsibilities in order for a determination of abandonment to be made. Decisions of any court to the contrary are hereby legislatively overruled; and

(H) Every parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children;

(2) “Abandonment of an infant” means, for purposes of terminating parental or guardian rights, “abandonment” of a child under the age of one (1) year;

(3) “Adopted person” means:

(A) Any person who is or has been adopted under this part or under the laws of any state, territory, or foreign country; and

(B) For purposes of the processing and handling of, and access to, any adoption records, sealed adoption records, sealed records, post-adoption records, or adoption assistance records pursuant to this part, “adopted person” also includes a person for whom any of those records is maintained by the court, other persons or entities or persons authorized to conduct a surrender or revocation of surrender pursuant to this part, or which records are maintained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or the department of health or other information source, whether an adoption petition was ever filed, whether an adoption order was ever entered, whether the adoption was ever dismissed, whether the adoption was ever finalized, or whether the adoption was attempted or was otherwise never completed due to the abandonment of any necessary activity related to the completion of the adoption;

(4) “Adoption” means the social and legal process of establishing by court order, other than by paternity or legitimation proceedings or by voluntary acknowledgment of paternity, the legal relationship of parent and child;

(5) “Adoption assistance” means the federal or state programs that exist to provide financial assistance to adoptive parents to enable them to provide a permanent home to a special needs child as defined by the department;

(6) “Adoption record” means:

(A)(i) The records, reports, or other documents maintained in any medium by the judge or clerk of the court, or by any other person pursuant to this part who is authorized to witness the execution of surrenders or revocations of surrenders, which records, reports, or documents relate to an adoption petition, a surrender or parental consent, a revocation of a surrender or parental consent, or which reasonably relate to other information concerning the adoption of a person, and which information in such records, reports, or documents exists during the pendency of an adoption or a termination of parental rights proceeding, or which records, reports, or documents exist subsequent to the conclusion of those proceedings, even if no order of adoption or order of dismissal is entered, but which records, reports or documents exist prior to those records, reports, or documents becoming a part of a sealed record or a sealed adoption record pursuant to § 36-1-126; or

(ii) The records, reports, or documents maintained in any medium by the department's social services division, or by a licensed or chartered child-placing agency or licensed clinical social worker, and which records, reports, or documents contain any social, medical, legal, or other information concerning an adopted person, a person who has been placed for adoption or a person for whom adoptive placement activities are currently occurring, and which information in such records, reports, or documents exists during the pendency of an adoption or termination of parental rights proceeding, or which exists subsequent to the conclusion of those proceedings, even if no order of adoption or dismissal of an adoption has been entered, but which records, reports, or documents exist prior to those records, reports, or documents becoming sealed records or sealed adoption records pursuant to § 36-1-126;

(B) The adoption record is confidential and is not subject to disclosure by the court, by a licensed child-placing agency, by a licensed clinical social worker or by any other person or entity, except as otherwise permitted by this part; however, prior to the record's becoming a sealed record or a sealed adoption record pursuant to § 36-1-126, the adoption record may be disclosed as may be necessary for purposes directly related to the placement, care, treatment, protection, or supervision by the legal custodian, legal guardian, conservator, or other legally authorized caretaker of the person who is the subject of the adoption proceeding, or as may be necessary for the purposes directly related to legal proceedings involving the person who is subject to the jurisdiction of a court in an adoption proceeding or other legal proceeding related to an adoption, including terminations of parental rights, or as may otherwise be necessary for use in any child or adult protective services proceedings concerning the person about whom the record is maintained pursuant to titles 37 and 71;

(C) The adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127--36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(7) “Adoptive parent(s)” means the person(s) who have been made the legal parents of a child by the entry of an order of adoption under this part or under the provisions of the laws of any state, territory or foreign country;

(8) “Adult” means any person who is eighteen (18) years of age or older. An adult may be adopted as provided in this part;

(9) “Aggravated circumstances” means abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse, as defined at § 37-1-102;

(10) “Biological parents” means the woman and man who physically or genetically conceived the child who is the subject of the adoption or termination proceedings or who conceived the child who has made a request for information pursuant to this part;

(11) “Biological relative” means:

(A) For adopted persons for whom any adoption records, sealed adoption records, sealed records, or post-adoption records are maintained: the biological parents or child of an adopted person or person for whom any adoption record, sealed record, sealed adoption record or post-adoption record is maintained, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, the blood aunts or uncles, or the blood cousins of the first degree, of such persons; and

(B) For persons about whom any background information is sought as part of the surrender or parental consent process: the biological parents of the child, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, or the blood aunts or uncles;

(12) “Chartered child-placing agency” means an agency that had received a charter from the state of Tennessee through legislative action or by incorporation for the operation of an entity or a program of any type that engaged in the placement of children for foster care or residential care as part of a plan or program for which those children were or could have been made available for adoptive placement and that may have, at sometime during its existence, become subject to any licensing requirements by the department or its predecessors;

(13) “Child” or “children” means any person or persons under eighteen (18) years of age;

(14) “Child caring agency” means any agency authorized by law to care for children outside their own homes for twenty-four (24) hours per day;

(15) “Consent” means:

(A) The written authorization to relinquish a child for adoption, which is given by an agency such as the department or a public child care agency of another state or country or licensed child-placing agency of this or another state, which agency has the authority, by court order or by surrender or by operation of law or by any combination of these, to place a child for adoption and to give permission for the adoption of that child by other persons;

(B) The written permission of a parent pursuant to § 36-1-117(f) to permit the adoption of that parent's child by that parent's relative or by the parent's spouse who is the child's stepparent;

(C) The process as described in § 36-1-117(g) by which a parent co-signs an adoption petition, with the prospective adoptive parents, for the purpose of agreeing to make the child available for adoption by the co-petitioning prospective adoptive parents, and that permits the court to enter an order of guardianship to give the adoptive parents custody and supervision of the child pending the completion or dismissal of the adoption proceedings or pending revocation of the consent by the parent. This process shall be called a “parental consent”;

(D) The permission of a child fourteen (14) years of age or older given to the court, in chambers, before the entry of an order of adoption of such child;

(E) The permission of a guardian ad litem for a disabled child or an adult permitting the adoption of those persons pursuant to the procedures of § 36-1-117(i) and (j);

(F) The sworn, written permission of an adult person filed with the court where the adoption petition is filed that seeks the adoption of the adult; or

(G) The agreement for contact by the parties to the post-adoption records search procedures that may be required in §§ 36-1-127--36-1-141;

(16)(A) “Court” means the chancery or circuit court; provided, that “court” includes the juvenile court for purposes of the authority to accept the surrender or revocation of surrenders of a child and to issue any orders of reference, orders of guardianship, or other orders resulting from a surrender or revocation that it accepts and for purposes of authorizing the termination of parental rights pursuant to § 36-1-113; title 37, chapter 1, part 1; and title 37, chapter 2, part 4;

(B) All appeals of any orders relative to the juvenile court's actions in taking a surrender or revocation or in terminating parental rights shall be made to the court of appeals as provided by law; or

(C) A juvenile court magistrate, appointed by the juvenile judge pursuant to the provisions of title 37, shall have authority to take a surrender of a child and to take a revocation of such surrender, and no order of confirmation by the juvenile judge of the orders concerning surrenders and revocations shall be required; provided, that the magistrate's order recommending termination of parental rights shall require an order of confirmation by the juvenile judge;

(17) “Court report” means the report to the adoption or surrender court in response to an order of reference that describes to the court the status of the child and the prospective adoptive parents or the persons to whom the child is surrendered. Such a report may be preliminary, supplementary, or final in nature. The court report shall not include the home study or preliminary home study, but instead shall include a summary of such study;

(18) “Department” means the department of children's services or any of its divisions or units;

(19) “Eligible person” means, for purposes of §§ 36-1-125--36-1-141, a person who is verified by the department as being in the class of individuals who is permitted by this part to receive access to



records;

(20) “Final court report” means a written document completed by the department or a licensed child-placing agency or licensed clinical social worker after submission of any prior court reports in response to the court's order of reference. It gives information concerning the status of the child in the home of the prospective adoptive parents and gives a full explanation to the court of the suitability of the prospective adoptive parent(s) to adopt the child who is the subject of the adoption petition. The final court report is designed to bring the status of the proposed adoptive home and the child up to date immediately prior to finalization of the adoption and should be the last report the court receives before finalization of the adoption by entry of an order of adoption;

(21) “Financially able” means that the petitioners for adoption of a child are able, by use of any and all income and economic resources of the petitioners, including, but not limited to, assistance from public or private sources, to ensure that any physical, emotional, or special needs of the child are met;

(22) “Foster care” has the meaning given to that term in § 37-1-102; provided, that no plan or permanency plan, as defined in § 37-2-402, shall be required in the case of foster care provided by or in any agency, institution or home in connection with an adoption of a child, so long as a petition for the adoption of that child by an individual or individuals to whom care of that child has been given is filed in a court of competent jurisdiction within six (6) months of the time that child first comes into the care of the agency, institution or home;

(23) “Foster parent” has the meaning given to that term in § 37-1-102;

(24)(A) “Guardian(s)” or “co-guardian(s)” means a person or persons or an entity, other than the parent of a child, appointed by a court or defined by law specifically as “guardian” or “co-guardian” or “conservator” to provide supervision, protection for and care for the person or property, or both, of a child or adult;

(B) “Guardian” or “co-guardian” also means a person or entity appointed as guardian(s) as the result of a surrender, parental consent, or termination of parental rights;

(C) The rights of the individual guardian or co-guardian or conservator of the person of a minor child or of an adult must be terminated by a surrender or court action before an order of adoption can be entered; provided, that an individual or individuals who receive(s) guardianship pursuant to a surrender, parental consent, or termination of parental rights pursuant to this part or title 37 need not give consent to the adoption when that individual is the petitioner in an adoption;

(D) When the department, a licensed child-placing agency, or a child-caring agency is the guardian of the child, its rights must be terminated by court action or it must provide consent as defined in subdivision (15)(A) before an adoption can be ordered;

(25)(A) “Guardianship” or “co-guardianship” means, for purposes of subdivision (24), a person or entity having the status of being a guardian or co-guardian who or which is responsible for the provision of supervision, protection, and assistance to the person of a child under this part or under other provisions of the law of this or any other jurisdiction;

(B) Guardianship as a result of a surrender, consent, or termination of parental rights pursuant to this part or title 37 or the law of any other jurisdiction may be “complete” or “partial”;

(C)(i) A person or entity has “complete” guardianship for the purpose of permitting a court to order an adoption when all necessary parental or guardianship rights have been terminated by surrender, by consent, by waiver of interest, or by involuntary termination of parental rights proceedings by a court or otherwise, and the court(s) with jurisdiction to do so enters an order or orders granting guardianship status to the person or entity;

(ii) Complete guardianship pursuant to a surrender or consent under this part or pursuant to the termination of the rights of a parent or guardian of a child under this part or under title 37, and pursuant to the entry of an order of guardianship as provided in this part, shall entitle the person or entity to the right to care for the child as provided under § 37-1-140 or as otherwise provided by the court order, and shall permit the entity to place the child for adoption and to consent to the adoption, or shall permit the individual to be granted an adoption of the child, and shall authorize the court to proceed with and grant an adoption, without further termination of parental or guardian rights;

(D)(i) A person or entity has “partial guardianship” when a surrender or consent has been received from at least one (1), but not all, parents or guardians of the child, or when a court-ordered termination of parental or guardianship rights has been obtained against at least one (1), but not all, parents or guardians of the child, and the court has entered an order granting guardianship of the child to the petitioning person or entity, and the remaining parent or guardian of the child has not executed a surrender or consent or the child's parental or guardianship rights have not been terminated by waiver of interest pursuant to this part, court order, or otherwise;

(ii) Partial guardianship obtained pursuant to a surrender or consent or pursuant to an order terminating less than all parental rights, and an order of partial guardianship pursuant to this part or pursuant to title 37 shall entitle the person or entity to provide care, supervision, and protection of the child pursuant to the provisions of § 37-1-140, or to the extent permitted by the court order granting partial guardianship, but it shall not be effective to allow full consent to an adoption by an entity without termination by surrender or court order or otherwise of the remaining parental or guardianship rights of other parents or guardians, and shall not authorize the court to grant an adoption to an individual until all remaining parental or guardianship rights have been surrendered, terminated, or otherwise ended; provided, that the department or licensed child-placing entity may place a child for adoption with prospective adoptive parents and may consent to the adoption of the child by those prospective adoptive parents when the department or the licensed child-placing agency has partial guardianship, and the prospective adoptive parents then shall be required to obtain complete guardianship of the child by surrender, termination of parental rights, waiver of interest, or parental consent to effect the adoption of the child;

(26) “Home study” means the product of a preparation process in which individuals or families are assessed by themselves and the department or licensed child-placing agency, or a licensed clinical social worker as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study shall conform to the requirements set forth in the rules of the department and it becomes a written document that is used in the decision to approve or deny a particular home for adoptive placement. The home study may be the basis on which the court report recommends approval or denial to the court of the family as adoptive parents. A court report based upon any home study conducted by a licensed child-placing agency, licensed clinical social worker or the department

that has been completed or updated within one (1) year prior to the date of the surrender or order of reference shall be accepted by the court for purposes of §§ 36-1-111 and 36-1-116. The home study shall be confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(27) “Interstate Compact on the Placement of Children (ICPC)” means the provisions of §§ 37-4-201-37-4-207 relating to the placement of a child between states for the purposes of foster care or adoption. The ICPC is administered in Tennessee by the department through its state office in Nashville;

(28) “Legal parent” means:

(A) The biological mother of a child;

(B) A man who is or has been married to the biological mother of the child if the child was born during the marriage or within three hundred (300) days after the marriage was terminated for any reason, or if the child was born after a decree of separation was entered by a court;

(C) A man who attempted to marry the biological mother of the child before the child's birth by a marriage apparently in compliance with the law, even if the marriage is declared invalid, if the child was born during the attempted marriage or within three hundred (300) days after the termination of the attempted marriage for any reason;

(D) A man who has been adjudicated to be the legal father of the child by any court or administrative body of this state or any other state or territory or foreign country or who has signed, pursuant to §§ 24-7-113, 68-3-203(g), 68-3-302 or 68-3-305(b), an unrevoked and sworn acknowledgment of paternity under the provisions of Tennessee law, or who has signed such a sworn acknowledgment pursuant to the law of any other state, territory, or foreign country;

(E) An adoptive parent of a child or adult; or

(F) A man shall not be a legal parent of a child based solely on blood, genetic, or DNA testing determining that he is the biological parent of the child without either a court order or voluntary acknowledgement of paternity pursuant to § 24-7-113. Such test may provide a basis for an order establishing paternity by a court of competent jurisdiction, pursuant to the requirements of § 24-7-112;

(29) “Legal relative” means the person who is included in the class of persons set forth in the definition of “biological relative” or “legal parent”, and who, at the time a request for search services or information is made pursuant to §§ 36-1-127--36-1-131 and 36-1-133--36-1-138, is related to the adopted person by any legal relationship established by law, court order, or by marriage, but specifically includes, in addition, a step-parent or the spouse of any legal relative;

(30)(A) “Legal representative” means:

(i) The conservator, guardian, legal custodian, or other person or entity with legal authority to make decisions for an individual with a disability or an attorney-in-fact, an attorney at law representing a person for purposes of obtaining information pursuant to this part, or the legally

appointed administrator, executor, or other legally appointed representative of a person's estate;  
or

(ii) Any person acting under any durable power of attorney for health care purposes or any person appointed to represent a person and acting pursuant to a living will;

(B) For purposes of subdivision (30)(A), “disability” means that the individual is a minor pursuant to any state, territorial, or federal law, or the law of any foreign country, or that the individual has been determined by any such laws to be in need of a person or entity to care for the individual due to that individual's physical or mental incapacity or infirmity;

(31) “Licensed child-placing agency” means any agency operating under a license to place children for adoption issued by the department, or operating under a license from any governmental authority from any other state or territory or the District of Columbia, or any agency that operates under the authority of another country with the right to make placement of children for adoption and that has, in the department's sole determination, been authorized to place children for adoption in this state;

(32) “Licensed clinical social worker” means an individual who holds a license as an independent practitioner from the board of social worker certification and licensure pursuant to title 63, chapter 23, and, in addition, is licensed by the department to provide adoption placement services;

(33) “Lineal ancestor” means any degree of grandparent or great-grandparent, either by birth or adoption;

(34) “Lineal descendant” means a person who descended directly from another person who is the biological or adoptive ancestor of such person, such as the daughter of the daughter's mother or granddaughter of the granddaughter's grandmother;

(35) “Order of reference” means the order from the court where the surrender is executed or filed or where the adoption petition is filed that directs the department or a licensed child-placing agency or licensed clinical social worker to conduct a home study or preliminary home study or to complete a report of the status of the child who is or may be the subject of an adoption proceeding, and that seeks information as to the suitability of the prospective adoptive parents to adopt a child;

(36) “Parent(s)” means any biological, legal, adoptive parent(s) or, for purposes of §§ 36-1-127--36-1-141, stepparents;

(37) “Parental consent” means the consent described in subdivision (15)(C);

(38) “Parental rights” means the legally recognized rights and responsibilities to act as a parent, to care for, to name, and to claim custodial rights with respect to a child;

(39) “Post-adoption record” means:

(A) The record maintained in any medium by the department, separately from the sealed record or sealed adoption record and subsequent to the sealing of an adoption record or that is maintained about any sealed record or sealed adoption record. The post-adoption record contains information, including, but not limited to, adopted persons or the legal or biological relatives of adopted persons, or about persons for whom sealed records or sealed adoption records are maintained, or about

persons who are seeking information about adopted persons, or persons on whom a sealed record or sealed adoption record is maintained. The post-adoption record contains information concerning, but not limited to, the contact veto registry established by this part, the written inquiries from persons requesting access to records, the search efforts of the department pursuant to the requirements of the contact veto process, the response to those search efforts by those persons sought, information that has been requested to be transmitted from or on behalf of any person entitled to access to records pursuant to this part, any updated medical information gathered pursuant to this part, court orders related to the opening of any sealed adoption records or sealed records, and personal identifying information concerning any persons subject to the provisions of this part;

(B) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2), that indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and such person's last known address, with whom the child was placed and such person's or entity's last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed; and

(C) This record is confidential and shall be opened only as provided in this part;

(40)(A) “Preliminary home study” means an initial home study conducted prior to or, in limited situations, immediately after, the placement of a child with prospective adoptive parents who have not previously been subject to a home study that was conducted or updated not less than six (6) months prior to the date a surrender is sought to be executed to the prospective adoptive parents or prior to the date of the filing of the adoption petition;

(B) The preliminary home study is designed to obtain an early and temporary initial assessment of the basic ability of prospective adoptive parents to provide adequate care for a child who is proposed to be adopted by those prospective adoptive parents, and is utilized only for the purpose of approval of surrenders or for purposes of responding to an order of reference pursuant to § 36-1-116(e)(2), or for purposes of entering a guardianship order under § 36-1-116(f)(3);

(C) The preliminary home study shall consist of a minimum of two (2) visits with the prospective adoptive parents, at least one (1) of which shall be in the home of the prospective adoptive parents, and the study shall support the conclusion that no apparent reason exists why the prospective adoptive parents would not be fit parents for the child who is the subject of the adoption. To be valid for use as the basis for a court report in connection with a surrender or a parental consent, the preliminary home study must have been completed or updated within thirty (30) days prior to the date the surrender is accepted or the parental consent is executed or confirmed or the guardianship order is entered. The home study shall be confidential, and, at the conclusion of the adoption proceeding, shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(41) “Prospective adoptive parents” means a non-agency person or persons who are seeking to adopt a child and who have made application with a licensed child-placing agency or licensed clinical social worker or the department for approval, or who have been previously approved, to receive a child for adoption, or who have received or who expect to receive a surrender of a child, or who have filed a petition for termination or for adoption;

(42) “Related” means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or step-parent, or cousins of the first degree or any siblings of the whole or half degree or any spouse of the above listed relatives;

(43)(A) “Sealed adoption record” means:

(i) The adoption record as it exists subsequent to its transmittal to the department, or subsequent to its sealing by the court, pursuant to the requirements of § 36-1-126; or

(ii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127--36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(44)(A) “Sealed record” means:

(i) Any records, reports, or documents that are maintained at any time by a court, a court clerk, a licensed or chartered child-placing agency, licensed clinical social worker, the department, the department of health, or any other information source concerning the foster care or agency care placement, or placement for adoption, of a person by any branch of the Tennessee children's home society authorized by Public Chapter 113 (1919); or

(ii) Any records, reports, or documents maintained by a judge, a court clerk, the department, a licensed or chartered child-placing agency, a licensed clinical social worker, the department of health, or any other information source that consist of adoption records or information about an adoption proceeding or a termination of parental rights proceeding about an adopted person, or that contain information about a person who was placed for adoption but for whom no adoption order was entered or for whom an adoption proceeding was dismissed or for whom an adoption was not otherwise completed, or that contain information concerning persons in the care of any person or agency, and which records have otherwise been treated and maintained by those persons or entities under prior law, practice, policy, or custom as confidential, nonpublic adoption records, sealed adoption records, or post-adoption records of the person, or that may be otherwise currently treated and maintained by those persons or entities as confidential, nonpublic adoption records, sealed adoption records or post-adoption records of the person; or

(iii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed record shall not, for purposes of release of the records pursuant to §§ 36-1-127--36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(45) “Sibling” means anyone having a sibling relationship;

(46) “Sibling relationship” means the biological or legal relationship between persons who have a common biological or legal parent;

(47) “Surrender” means a document executed under the provisions of § 36-1-111, or under the laws of another state or territory or country, by the parent or guardian of a child, by which that parent or guardian relinquishes all parental or guardianship rights of that parent or guardian to a child, to another person or public child care agency or licensed child-placing agency for the purposes of making that child available for adoption; and

(48)(A) “Surrogate birth” means:

(i) The union of the wife's egg and the husband's sperm, which are then placed in another woman, who carries the fetus to term and who, pursuant to a contract, then relinquishes all parental rights to the child to the biological parents pursuant to the terms of the contract; or

(ii) The insemination of a woman by the sperm of a man under a contract by which the parties state their intent that the woman who carries the fetus shall relinquish the child to the biological father and the biological father's wife to parent;

(B) No surrender pursuant to this part is necessary to terminate any parental rights of the woman who carried the child to term under the circumstances described in this subdivision (48) and no adoption of the child by the biological parent(s) is necessary;

(C) Nothing in this subdivision (48) shall be construed to expressly authorize the surrogate birth process in Tennessee unless otherwise approved by the courts or the general assembly.

### **TENN. CODE ANN. § 36-1-113 (2011). Termination of parental rights**

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights

permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.

(b) The prospective adoptive parent or parents, including extended family members caring for a related child, any licensed child-placing agency having custody of the child, the child's guardian ad litem, or the department shall have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The prospective adoptive parents, including extended family members caring for a related child, shall have standing to request termination of parental or guardianship rights in the adoption petition filed by them pursuant to this part.

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

(d)(1) The petition, or allegations in the adoption petition, to terminate parental rights may be made upon information and belief and shall be verified. If a parent whose parental rights are proposed for termination is the legal parent of the child, as defined in § 36-1-102, and if such parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death of such parent.

(2) The petition, or allegations in the adoption petition, shall state:

(A) The child's birth name;

(B) The child's age or date of birth;

(C) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency; and

(D) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court.

(3)(A) The petition, or allegations in the adoption petition, shall contain a verified statement that:

(i) The putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

(ii) Indicates if there exists any other claim or potential claim to the paternity of the child;

(iii) Describes whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise, and whether any other such rights must be terminated before the child can be made available for adoption;

(iv) Any notice required pursuant to subdivision (d)(4) has been given; and



(v) The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Any person or persons entitled to notice pursuant to the provisions of § 36-1-117 shall be named as defendants in the petition to terminate parental rights or in the adoption petition and shall be served with a copy of the petition as provided by law.

(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent(s) or guardian(s) to the child who is the subject of the order, and of the child to those parent(s) or guardian(s);

(ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and

(iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child.

(4) The petition, if filed separately from the adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

(f) Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time of an action or proceeding is initiated, it must be affirmatively shown to the court that such incarcerated parent or guardian received actual notice of the following:

(1) The time and place of the hearing to terminate parental rights;

(2) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(3) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the

circumstances;

(4) That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian:

(A) If indigent, will be provided with a court-appointed attorney to assist the parent or guardian in contesting the allegation; and

(B) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and

(5) If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving notice of such rights, the court may proceed with such action without the parent's or guardian's participation.

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court

hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), “sentenced” shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

(7) The parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

(9)(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child, is not the legal parent or guardian of such child or who is described in § 36-1-117(b) or (c) may also be terminated based upon any one (1) or more of the following additional grounds:

(i) The person has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child in accordance with the person's financial means promptly upon the person's receipt of notice of the child's impending birth;

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in §

36-1-102(1)(C);

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity by the child's mother, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

(B)(i) For purposes of this subdivision (g)(9), "notice" means the mailing, postage pre-paid, or the sending by, express mail, courier, or other conveyance, to the person charged with notice at such person's address a statement that such person is believed to be the biological parent of a child. Notice shall be deemed received if the statement sent is not returned undelivered or evidence is not otherwise received by the sender that the statement was not delivered; and

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father of the biological mother's child; and

(10) The parent has been convicted of aggravated rape pursuant to § 39-13-502 or rape pursuant to § 39-13-503, from which the child was conceived.

(h)(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) In the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) If a court of competent jurisdiction has determined a child to be an abandoned infant as defined at § 36-1-102; or

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the

United States; or

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

(A) The child is being cared for by a relative;

(B) The department has documented in the permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(C) The department has not made reasonable efforts under § 37-1-166 to provide to the family of the child, consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and

supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

(j) In the hearing on the petition, the circuit, chancery, or juvenile court shall, in addition to the Tennessee Rules of Evidence, admit evidence as permitted under the Tennessee Rules of Juvenile Procedure, and shall recognize the exemptions to privileges as provided pursuant to §§ 37-1-411 and 37-1-614.

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. If such a case has not been completed within six (6) months from the date the petition was served, the petitioner or respondent shall have grounds to request that the court of appeals grant an order expediting the case at the trial level.

(l)(1) An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted; provided, that the entry of an order terminating the parental rights shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the entry of the order terminating parental rights.

(2) Notwithstanding the provisions of subdivision (l)(1), a child who is the subject of the order for termination shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered.

(m) Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship of the child to a licensed child-placing agency or the department. Such guardianship shall include the right to place the child for adoption and the right to consent to the child's adoption. Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship to any prospective adoptive parent or parents with the right to adopt the child, or to any permanent guardian who has been appointed pursuant to title 37, chapter 1, part 8. In any of these cases, such guardianship is subject to the remaining rights, if any, of any other parent or guardian of the child. Before guardianship or partial guardianship can be awarded to a permanent guardian, the court shall find that the department or licensed child-placing agency currently having custody of the child has made reasonable efforts to place the child for adoption and that permanent guardianship is in the best interest of the child.

(n) An order of guardianship or partial guardianship entered by the court pursuant to this section shall supersede prior orders of custody or guardianship of that court and of other courts, except those prior orders of guardianship or partial guardianship of other courts entered as the result of validly executed surrenders or revocations pursuant to § 36-1-111 or § 36-1-112, or except as provided pursuant to §

36-1-111(r)(4)(D) and (E), or except an order of guardianship or partial guardianship of a court entered pursuant to § 36-1-116; provided, that orders terminating parental rights entered by a court under this section prior to the filing of an adoption petition shall be effective to terminate parental rights for all purposes.

(o) If the court terminates parental or guardianship rights, under the provisions of this part or title 37 or a consent is given pursuant to § 36-1-117(f) or (g), or if there have been surrenders of parental or guardianship rights of all other necessary parties, then no further surrender or consent of that parent or guardian shall be necessary to authorize an adoption; provided, that the adoption court may review and confirm the validity of any denials of parentage made by persons under any statutory provisions from outside the state of Tennessee.

(p) A copy of the order or orders obtained by the prospective adoptive parents terminating parental or guardianship rights under this section shall be filed with the petition for adoption.

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

#### **TENN. CODE ANN. § 37-1-102 (2011). Definitions**

(a) As used in this chapter, any reference to the department of correction is construed to mean the department of children's services, unless the reference is clearly intended to designate the department of correction.

(b) As used in this part, unless the context otherwise requires:

(1) "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;

(2) "Administrative hearing" is an action by the judge or magistrate of the juvenile court in conformity with legislative intent in terminating the home placement of a juvenile;

(3) "Adult" means any person eighteen (18) years of age or older;

(4) "Child" means:

(A) A person under eighteen (18) years of age; or

(B) A person under nineteen (19) years of age for the limited purpose of:

(i) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person's eighteenth birthday;

(ii) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department of children's services with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person's eighteenth birthday; or

(iii) Remaining under the jurisdiction of the juvenile court for resolution of a delinquent offense or offenses committed prior to a person's eighteenth birthday but considered by the juvenile court after a person's eighteenth birthday with the court having the option of retaining jurisdiction for adjudication and disposition or transferring the person to criminal court under § 37-1-134;

(C) In no event shall a person eighteen (18) years of age or older be committed to or remain in the custody of the department of children's services by virtue of being adjudicated dependent and neglected, unruly or in need of services pursuant to § 37-1-175, except as provided in § 37-1-173;

(D) This subdivision (4) shall in no way be construed as limiting the court's jurisdiction to transfer a person to criminal court under § 37-1-134;

(E) A person eighteen (18) years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under this subsection (b) through its contempt power under § 37-1-158;

(F) No exception shall be made for a child who may be emancipated by marriage or otherwise; and

(G) A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417;

(5) "Commissioner" means commissioner of children's services;

(6) "Court order" means any order or decree of a judge, magistrate or court of competent jurisdiction. A "valid court order" is one that is authorized by law, and any order entered in the minutes of a court of record is presumed to be valid;

(7) "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom temporary legal custody of the child has been given by order of a court;

(8) "Custody" means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, moral and emotional well-being of the child. "Custody," as herein defined, relates to those rights and responsibilities as exercised either by the parents or by a person or organization granted custody by a court of competent jurisdiction. "Custody" shall not be construed as the termination of parental rights set forth in § 37-1-147. "Custody" does not exist by virtue of mere physical possession of the child;

(9) "Delinquent act" means an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(23)(A)(iii) and the crime is not a traffic offense as



defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony;

(10) “Delinquent child” means a child who has committed a delinquent act and is in need of treatment or rehabilitation;

(11) “Department” means the department of children's services;

(12) “Dependent and neglected child” means a child:

(A) Who is without a parent, guardian or legal custodian;

(B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;

(C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

(G) Who is suffering from abuse or neglect;

(H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;

(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or

(J)(i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;

(ii) For the purposes of this subdivision (b)(12)(J):

(a) A related caregiver shall include the child's biological, step or legal grandparent, great grandparent, sibling, aunt, uncle or any other person who is legally or biologically related to

the child; and

(b) A child willfully left with a related caregiver as defined in subdivision (b)(12)(J)(ii)(a) because of the parent's military service shall not be subject to action pursuant to § 37-1-183;

(13) "Detention" means confinement in a secure or closed type of facility that is under the direction or supervision of the court or a facility that is designated by the court or other authority as a place of confinement for juveniles;

(14) Deleted by 2011 Pub.Acts, c. 486, § 1, eff. July 1, 2011.

(15) "Foster care" means the temporary placement of a child in the custody of the department of children's services or any agency or institution, whether public or private, for care outside the home of a parent or relative, by blood or marriage, of the child, whether the placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise;

(16) "Foster parent" means, for purposes other than § 37-2-414, a person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care at a private residence for a child or children who have been placed in foster care, or in the case of a child or children placed for adoption, a person who has provided care for the child or children for a period of six (6) months or longer in the absence of a power of attorney or court order;

(17) Deleted by 2011 Pub.Acts, c. 486, § 1, eff. July 1, 2011.

(18) "Juvenile court" means the general sessions court in all counties of this state, except in those counties and municipalities in which special juvenile courts are provided by law, and "judge" means judge of the juvenile court;

(19) "Nonjudicial days" means Saturdays, Sundays and legal holidays. Nonjudicial days begin at four thirty p.m. (4:30 p.m.) on the day preceding a weekend or holiday, and end at eight o'clock a.m. (8:00 a.m.) on the day after a weekend or holiday;

(20) "Probation" means casework service as directed by the court, as a measure for the protection, guidance and well-being of the child and such child's family. Probation methods shall be directed to the discovery and correction of the basic causes of maladjustment;

(21) "Protective supervision" means supervision ordered by the court of children found to be dependent or neglected or unruly;

(22) "Restitution" means compensation that is accomplished through actual monetary payment to the victim of the offense by the child who committed the offense, or symbolically, through unpaid community service work by the child, for property damage or loss incurred as a result of the delinquent offense;

(23) "Severe child abuse" means:

(A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a

child that is likely to cause serious bodily injury or death;

(ii) “Serious bodily injury” shall have the same meaning given in § 39-15-402(d).

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;

(C) The commission of any act towards the child prohibited by §§ 39-13-502--39-13-504, 39-13-522, 39-15-302, 39-15-402, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring;

(24) “Shelter care” means temporary care of a child in physically unrestricted facilities; and

(25)(A) “Unruly child” means a child in need of treatment and rehabilitation who:

(i) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007;

(ii) Habitually is disobedient of the reasonable and lawful commands of the child's parent(s), guardian or other legal custodian to the degree that such child's health and safety are endangered;

(iii) Commits an offense that is applicable only to a child; or

(iv) Is away from the home, residence or any other residential placement of the child's parent(s), guardian or other legal custodian without their consent. Such child shall be known and defined as a “runaway;”

(B) The definition in subdivision (b)(25)(A) shall be effective July 1, 1996, before which date the definition of “unruly” shall be the definition found in former § 37-1-102(b)(21).

### **TENN. CODE ANN. § 37-1-147 (2011). Termination of parental rights**

(a) The juvenile court shall be authorized to terminate the rights of a parent or guardian to a child upon the grounds and pursuant to the procedures set forth in title 36, chapter 1, part 1.

(b) Upon entering an order to terminate parental or guardian rights to a child, the court shall award guardianship or partial guardianship of the child as provided in the relevant provisions of title 36, chapter 1, part 1.

(c) The effect of the court's order terminating parental or guardian rights shall be as provided in § 36-1-113.

## **TEXAS**

### **TEX. FAM. CODE ANN. § 161.001 (2011). Involuntary Termination of Parent-Child Relationship**

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

- (i) Section 19.02 (murder);
- (ii) Section 19.03 (capital murder);
- (iii) Section 19.04 (manslaughter);
- (iv) Section 21.11 (indecent with a child);
- (v) Section 22.01 (assault);
- (vi) Section 22.011 (sexual assault);
- (vii) Section 22.02 (aggravated assault);
- (viii) Section 22.021 (aggravated sexual assault);
- (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (x) Section 22.041 (abandoning or endangering child);
- (xi) Section 25.02 (prohibited sexual conduct);
- (xii) Section 43.25 (sexual performance by a child);
- (xiii) Section 43.26 (possession or promotion of child pornography);
- (xiv) Section 21.02 (continuous sexual abuse of young child or children);
- (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
- (xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months, and:

- (i) the department or authorized agency has made reasonable efforts to return the child to the parent;
  - (ii) the parent has not regularly visited or maintained significant contact with the child; and
  - (iii) the parent has demonstrated an inability to provide the child with a safe environment;
- (O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;
- (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
- (i) failed to complete a court-ordered substance abuse treatment program; or
  - (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
- (Q) knowingly engaged in criminal conduct that has resulted in the parent's:
- (i) conviction of an offense; and
  - (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;
- (R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by Section 261.001;
- (S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child; or
- (T) been convicted of:
- (i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
  - (ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i); or
  - (iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the

- offense described by Subparagraph (i); and
- (2) that termination is in the best interest of the child.

## **UTAH**

### **UTAH CODE ANN. § 78A-6-105 (2011). Definitions**

As used in this chapter:

(1)(a) “Abuse” means:

- (i) nonaccidental harm of a child;
- (ii) threatened harm of a child;
- (iii) sexual exploitation; or
- (iv) sexual abuse.

(b) “Abuse” does not include:

- (i) reasonable discipline or management of a child, including withholding privileges;
- (ii) conduct described in Section 76-2-401; or
- (iii) the use of reasonable and necessary physical restraint or force on a child:
  - (A) in self-defense;
  - (B) in defense of others;
  - (C) to protect the child; or
  - (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) “Abused child” means a child who has been subjected to abuse.

(3) “Adjudication” means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(4) “Adult” means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

- (5) “Board” means the Board of Juvenile Court Judges.
- (6) “Child” means a person under 18 years of age.
- (7) “Child placement agency” means:
- (a) a private agency licensed to receive a child for placement or adoption under this code; or
  - (b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.
- (8) “Clandestine laboratory operation” is as defined in Section 58-37d-3.
- (9) “Commit” means, unless specified otherwise:
- (a) with respect to a child, to transfer legal custody; and
  - (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- (10) “Court” means the juvenile court.
- (11) “Dependent child” includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- (12) “Deprivation of custody” means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.
- (13) “Detention” means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:
- (a) pending court disposition or transfer to another jurisdiction; or
  - (b) while under the continuing jurisdiction of the court.
- (14) “Division” means the Division of Child and Family Services.
- (15) “Formal referral” means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.
- (16) “Group rehabilitation therapy” means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.
- (17) “Guardianship of the person” includes the authority to consent to:
- (a) marriage;
  - (b) enlistment in the armed forces;



- (c) major medical, surgical, or psychiatric treatment; or
  - (d) legal custody, if legal custody is not vested in another person, agency, or institution.
- (18) “Habitual truant” is as defined in Section 53A-11-101.
- (19) “Harm” means:
- (a) physical, emotional, or developmental injury or damage;
  - (b) sexual abuse; or
  - (c) sexual exploitation.
- (20)(a) “Incest” means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator’s ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.
- (b) The relationships described in Subsection (20)(a) include:
- (i) blood relationships of the whole or half blood, without regard to legitimacy;
  - (ii) relationships of parent and child by adoption; and
  - (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.
- (21) “Legal custody” means a relationship embodying the following rights and duties:
- (a) the right to physical custody of the minor;
  - (b) the right and duty to protect, train, and discipline the minor;
  - (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
  - (d) the right to determine where and with whom the minor shall live; and
  - (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- (22) “Minor” means:
- (a) a child; or
  - (b) a person who is:
    - (i) at least 18 years of age and younger than 21 years of age; and
    - (ii) under the jurisdiction of the juvenile court.

(23) “Molestation” means that a person, with the intent to arouse or gratify the sexual desire of any person:

- (a) touches the anus or any part of the genitals of a child;
- (b) takes indecent liberties with a child; or
- (c) causes a child to take indecent liberties with the perpetrator or another.

(24) “Natural parent” means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(25)(a) “Neglect” means:

- (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
- (ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;
- (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; or
- (iv) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d)(i) Notwithstanding Subsection (25)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(26) “Neglected child” means a child who has been subjected to neglect.

(27) “Nonjudicial adjustment” means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

- (a) the assigned probation officer; and
  - (b)(i) the minor; or
  - (ii) the minor and the minor's parent, legal guardian, or custodian.
- (28) “Physical abuse” means abuse that results in physical injury or damage to a child.
- (29) “Probation” means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.
- (30) “Protective supervision” means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.
- (31)(a) “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:
- (i) the responsibility for support;
  - (ii) the right to consent to adoption;
  - (iii) the right to determine the child's religious affiliation; and
  - (iv) the right to reasonable parent-time unless restricted by the court.
- (b) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to:
- (i) marriage;
  - (ii) enlistment; and
  - (iii) major medical, surgical, or psychiatric treatment.
- (32) “Secure facility” means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.
- (33) “Severe abuse” means abuse that causes or threatens to cause serious harm to a child.
- (34) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.
- (35) “Sexual abuse” means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness or sexual battery, Section 76-9-702;

(v) lewdness involving a child, Section 76-9-702.5; or

(vi) voyeurism, Section 76-9-702.7.

(36) “Sexual exploitation” means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(37) “Shelter” means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(38) “State supervision” means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(39) “Substance abuse” means the misuse or excessive use of alcohol or other drugs or substances.

(40) “Substantiated” is as defined in Section 62A-4a-101.

(41) “Supported” is as defined in Section 62A-4a-101.

(42) “Termination of parental rights” means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(43) “Therapist” means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(44) “Unsubstantiated” is as defined in Section 62A-4a-101.

(45) “Without merit” is as defined in Section 62A-4a-101.

**UTAH CODE ANN. § 78A-6-507 (2011). Grounds for termination of parental rights--  
Findings regarding reasonable efforts**

(1) The court may terminate all parental rights with respect to a parent if the court finds any one of the following:

(a) that the parent has abandoned the child;

(b) that the parent has neglected or abused the child;

(c) that the parent is unfit or incompetent;

(d)(i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

- (iv) to avoid being an unfit parent;
  - (g)(i) that the parent has voluntarily relinquished the parent's parental rights to the child; and
  - (ii) that termination is in the child's best interest;
  - (h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or
  - (i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.
- (2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.
- (3)(a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
- (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:
- (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or
  - (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law.

## **VERMONT**

### **VT. STAT. ANN. tit. 15A, § 3-504 (2011). Grounds for terminating relationship of parent and child**

(a) If a respondent answers or appears at the hearing and asserts parental rights, the court shall proceed with the hearing expeditiously. If the court finds, upon clear and convincing evidence, that any one of the following grounds exists and that termination is in the best interest of the minor, the court shall order the termination of any parental relationship of the respondent to the minor:

- (1) In the case of a minor under the age of six months at the time the petition is filed, the respondent did not exercise parental responsibility once he or she knew or should have known of the minor's birth or expected birth. In making a determination under this subdivision, the court shall consider all relevant factors, which may include the respondent's failure to:

(A) pay reasonable prenatal, natal, and postnatal expenses in accordance with his or her financial means;

(B) make reasonable and consistent payments, in accordance with his or her financial means, for the support of the minor;

(C) regularly communicate or visit with the minor; or

(D) manifest an ability and willingness to assume legal and physical custody of the minor.

(2) In the case of a minor over the age of six months at the time the petition is filed, the respondent did not exercise parental responsibility for a period of at least six months immediately preceding the filing of the petition. In making a determination under this subdivision, the court shall consider all relevant factors, which may include the respondent's failure to:

(A) make reasonable and consistent payments, in accordance with his or her financial means, for the support of the minor, although legally obligated to do so;

(B) regularly communicate or visit with the minor; or

(C) during any time the minor was not in the physical custody of the other parent, to manifest an ability and willingness to assume legal and physical custody of the minor.

(3) The respondent has been convicted of a crime of violence or has been found by a court of competent jurisdiction to have committed an act of violence which violated a restraining or protective order, and the facts of the crime or violation indicate that the respondent is unfit to maintain a relationship of parent and child with the minor.

(b) If the respondent has proved by a preponderance of the evidence that he or she had good cause for not complying with subdivision (a)(1) or (2) of this section or that, for compelling reasons, termination is not justified under subdivision (a)(3) of this section, the court may not terminate the respondent's parental rights to a minor except upon a finding by clear and convincing evidence that any one of the following grounds exists and that termination is in the best interest of the minor:

(1) Once the respondent no longer had good cause for not complying with the requirements of subdivisions (a)(1) or (2), he or she failed to assume parental responsibilities as promptly and fully as circumstances permitted.

(2) The respondent, after being afforded a reasonable opportunity to do so, would not have the ability and disposition to:

(A) provide the child with love, affection and guidance;

(B) meet the child's present and future physical and emotional needs; or

(C) provide the child with adequate food, clothing, medical care, other material needs, education, and a safe environment.

(3) At the time of the hearing the respondent has a relationship with another person who would significantly and adversely affect the child.

(4) Placing the minor in the respondent's legal or physical custody would pose a risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minor's conception, or the respondent's behavior during the pregnancy or since the minor's birth indicates that he or she is unfit to maintain a relationship of parent and child with the minor.

(c) At the time of the hearing under this section the court shall consider the best interests of the child in accordance with the following criteria:

(1) the likelihood that the respondent will be able to assume or resume his or her parental duties within a reasonable period of time;

(2) the child's adjustment to his or her home, school, and community;

(3) the interaction and interrelationship of the child with his or her parents, siblings, and any other person who may significantly affect the child's best interests; and

(4) whether the parent or alleged parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

(d) If the respondent does not answer or appear or, in the case of an alleged father, file a claim of paternity as provided in subdivision 3-503(b)(2) of this title, or cannot be notified because the person's identity or whereabouts is unknown, the court may order the termination of any parental relationship to the minor.

**VT. STAT. ANN. tit. 33, § 5102 (2011). Definitions and provisions of general application**

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

(1) "Care provider" means a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.

(2) "Child" means any of the following:

(A) An individual who is under the age of 18 and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant).

(B)(i) An individual who is under the age of 18, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under the age of 16 at the time the petition was filed; or

(ii) an individual who is between the ages of 16 to 17.5, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.



(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming ten years of age and prior to becoming 18 years of age; provided, however:

(i) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 10 but not the age of 14 may be treated as an adult as provided therein;

(ii) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14 but not the age of 16 shall be subject to criminal proceedings as in cases commenced against adults, unless transferred to the court in accordance with the juvenile judicial proceedings chapters;

(iii) that an individual who is alleged to have committed an act before attaining the age of 10 which would be murder as defined in section 2301 of Title 13 if committed by an adult may be subject to delinquency proceedings; and

(iv) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

(3) “Child in need of care or supervision (CHINS)” means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

(4) “Commissioner” means the commissioner of the department for children and families or the commissioner's designee.

(5) “Conditional custody order” means an order issued by the court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the court may deem necessary to provide for the safety and welfare of the child. Any conditions and limitations shall apply only to the individual to whom custody is granted.

(6) “Court” means the family division of the superior court.

(7) “Custodial parent” means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the child.

The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child.

(8) “Custodian” means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont superior court or a similar court in another jurisdiction.

(9) “Delinquent act” means an act designated a crime under the laws of this state, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) Snowmobile offenses in subchapter 1 and motorboat offenses in subchapter 2 of chapter 29 of Title 23, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323.

(B) Motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of subchapter 13 of chapter 13 and of section 1091 of Title 23.

(10) “Delinquent child” means a child who has been adjudicated to have committed a delinquent act.

(11) “Department” means the department for children and families.

(12) “Guardian” means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont court or a court in another jurisdiction.

(13) “Judge” means a judge of the family division of the superior court.

(14) “Juvenile judicial proceedings chapters” means this chapter and chapters 52 and 53 of this title.

(15) “Juvenile proceeding” means a proceeding in the family division of the superior court under the authority of the juvenile judicial proceedings chapters.

(16)(A) “Legal custody” means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(i) The right to routine daily care and control of the child and to determine where and with whom the child shall live.

(ii) The authority to consent to major medical, psychiatric, and surgical treatment for a child.

(iii) The responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care.

(iv) The authority to make decisions which concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the armed forces of the United States, and the authority to represent the child in legal actions.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) “Listed crime” means the same as defined in 13 V.S.A. § 5301.

(18) “Noncustodial parent” means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) “Officer” means a law enforcement officer, including a state police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the criminal justice training council pursuant to section 2358 of Title 20.

(20) “Parent” means a child's biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both and parents whose rights have never been adjudicated.

(21) “Parent-child contact” means the right of a parent to have visitation with the child by court order.

(22) “Party” includes the following persons:

(A) The child with respect to whom the proceedings are brought.

(B) The custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition.

(C) The noncustodial parent for the purposes of custody, visitation, and such other issues which the court may determine are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance.

(D) The state's attorney.

(E) The commissioner.

(F) Such other persons as appear to the court to be proper and necessary to the proceedings.

(23) “Probation” means the legal status created by order of the family division of the superior court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the department under conditions specified in the court's juvenile probation certificate and subject to return to and change of legal status by the family division of the superior court for violation of conditions of probation at any time during the period of probation.

(24) “Protective supervision” means the authority granted by the court to the department in a juvenile proceeding to take reasonable steps to monitor compliance with the court's conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) “Reasonable efforts” means the exercise of due diligence by the department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the court makes written

findings that aggravated circumstances are present, the court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

- (A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;
- (B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;
- (C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or
- (D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) “Shelter” means a shelter designated by the commissioner where a child taken into custody pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) “Youth” shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

#### **Vt. STAT. ANN. tit. 33, § 5318 (2011). Disposition order**

(a) Custody. At disposition, the court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the court determines are in the best interest of the child, including:

- (1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. Following disposition, the court may issue a conditional custody order for a fixed period of time not to exceed two years. The court shall schedule regular review hearings to determine whether the conditions continue to be necessary.
- (2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. Following disposition, the court may issue a conditional custody order for a fixed period of time not to exceed two years. The court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the juvenile court are necessary.
- (3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the court's own motion, the court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the

child.

(4) An order transferring legal custody to the commissioner.

(5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the commissioner without limitation as to adoption.

(6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to periodic review as determined by the court.

(b) Case plan. If the court orders the transfer of custody pursuant to subdivision (a)(2), (4), or (5) of this section, the court shall establish a permanency goal for the minor child and adopt a case plan prepared by the department which is designed to achieve the permanency goal. If the court determines that the plan proposed by the department does not adequately support the permanency goal for the child, the court may reject the plan proposed by the department and order the department to prepare and submit a revised plan for court approval.

(c) Sixteen- to 17.5-year-olds. In the event that custody of a 16- to 17.5-year-old is transferred to the department pursuant to a petition filed under subsection 5309(d) of this title services to the child and to his or her family shall be provided through a coordinated effort by the agency of human services, the department of education, and community-based interagency teams.

(d) Modification. A disposition order is a final order which may only be modified based on the stipulation of the parties or pursuant to a motion to modify brought under section 5113 of this title.

(e) Findings. Whenever the court orders the transfer of legal custody to a noncustodial parent, a relative, or a person with a significant relationship with the child, such orders shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement.

## **VIRGINIA**

### **VA. CODE ANN. § 16.1-228 (2011). Definitions**

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

“Abused or neglected child” means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I

or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

“Adoptive home” means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

“Adult” means a person 18 years of age or older.

“Ancillary crime” or “ancillary charge” means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

“Boot camp” means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

“Child,” “juvenile,” or “minor” means a person less than 18 years of age.

“Child in need of services” means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14

whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

“Child in need of supervision” means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or
2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

“Child welfare agency” means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

“The court” or the “juvenile court” or the “juvenile and domestic relations court” means the juvenile and domestic relations district court of each county or city.

“Delinquent act” means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

“Delinquent child” means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been

terminated under the provisions of § 16.1-269.6.

“Department” means the Department of Juvenile Justice and “Director” means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

“Family abuse” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

“Family or household member” means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

“Foster care services” means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

“Independent living arrangement” means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

“Independent living services” means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. “Independent living services” may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.



“Intake officer” means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

“Jail” or “other facility designed for the detention of adults” means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

“The judge” means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

“This law” or “the law” means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

“Legal custody” means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

“Permanent foster care placement” means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

“Residual parental rights and responsibilities” means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

“Secure facility” or “detention home” means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

“Shelter care” means the temporary care of children in physically unrestricting facilities.

“State Board” means the State Board of Juvenile Justice.

“Status offender” means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

“Status offense” means an act prohibited by law which would not be an offense if committed by an adult.

“Violent juvenile felony” means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

**VA. CODE ANN. § 16.1-278.2 (2011). Abused, neglected, or abandoned children or children without parental care**

A. Within seventy-five days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;
4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

- a. A relative or other interested individual subject to the provisions of subsection A1 of this section;
- b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or
- c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subdivision A 5 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 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.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the

parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

**VA. CODE ANN. § 16.1-283 (2011). 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 of this section. 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 of this section 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 hereof:

- a. The parent or parents are suffering from a mental or emotional illness or mental deficiency 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 twelve 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 this 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 this 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 fourteen 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 fourteen 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.

## **WASHINGTON**

### **WASH. REV. CODE ANN. § 13.34.030 (2012). Definitions**

For purposes of this chapter:

(1) “Abandoned” means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) “Child,” “juvenile,” and “youth” means:

- (a) Any individual under the age of eighteen years; or
- (b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a “child” under any other statute or for any other purpose.
- (3) “Current placement episode” means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.
- (4) “Department” means the department of social and health services.
- (5) “Dependency guardian” means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.
- (6) “Dependent child” means any child who:
- (a) Has been abandoned;
  - (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
  - (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or
  - (d) Is receiving extended foster care services, as authorized by RCW 74.13.031.
- (7) “Developmental disability” means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.
- (8) “Extended foster care services” means residential and other support services the department is authorized to provide under RCW 74.13.031.
- (9) “Guardian” means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term “guardian” does not include a “dependency guardian” appointed pursuant to a proceeding under this chapter.
- (10) “Guardian ad litem” means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a



proceeding under this chapter. A “court-appointed special advocate” appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(11) “Guardian ad litem program” means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(12) “Housing assistance” means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, “housing assistance” is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(13) “Indigent” means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(14) “Out-of-home care” means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(15) “Preventive services” means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(16) “Shelter care” means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(17) “Sibling” means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(18) “Social study” means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

- (a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;
- (b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;
- (c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;
- (d) A statement of the likely harms the child will suffer as a result of removal;
- (e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and
- (f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(19) “Supervising agency” means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

**WASH. REV. CODE ANN. § 13.34.180 (2012). Order terminating parent and child relationship--Petition--Filing--Allegations (as amended by 2009 c 477)**

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

“NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) .”

**WASH. REV. CODE ANN. § 13.34.180 (2011). Order terminating parent and child relationship--Petition--Filing--Allegations(as amended by 2009 c 520)**

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

“NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.
2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .
3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) .”

**WASH. REV. CODE ANN. § 26.44.020. Definitions**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) “Abuse or neglect” means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.
- (2) “Child” or “children” means any person under the age of eighteen years of age.
- (3) “Child protective services” means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.
- (4) “Child protective services section” means the child protective services section of the department.

(5) “Children’s advocacy center” means a child-focused facility in good standing with the state chapter for children’s advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children’s advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) “Clergy” means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) “Court” means the superior court of the state of Washington, juvenile department.

(8) “Department” means the state department of social and health services.

(9) “Founded” means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(10) “Inconclusive” means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(11) “Institution” means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(12) “Law enforcement agency” means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(13) “Malice” or “maliciously” means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(14) “Negligent treatment or maltreatment” means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child’s health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent’s substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(15) “Pharmacist” means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(16) “Practitioner of the healing arts” or “practitioner” means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term

“practitioner” includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(17) “Professional school personnel” include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(18) “Psychologist” means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(19) “Screened-out report” means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(20) “Sexual exploitation” includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(21) “Sexually aggressive youth” means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(22) “Social service counselor” means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(23) “Supervising agency” means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(24) “Unfounded” means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

## **WEST VIRGINIA**

### **W.VA. CODE ANN. § 49-1-3 (2011). Definitions relating to abuse and neglect**

As used in this chapter:

(1) “Abused child” means a child whose health or welfare is harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the



child or another child in the home; or

(B) Sexual abuse or sexual exploitation; or

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(2) “Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(3) “Battered parent” means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(4) “Child abuse and neglect” or “child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(5) “Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(6) “Child advocacy center” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the

following program components:

- (A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.
  - (B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.
  - (C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.
  - (D) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.
  - (E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact finding nature and coordinated to avoid duplicative interviewing.
  - (F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.
  - (G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.
  - (H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.
  - (I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.
  - (J) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.
- (7) “Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:
- (A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

- (B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
- (C) Nutritional deprivation;
- (D) Abandonment by the parent, guardian or custodian;
- (E) Inadequate treatment of serious illness or disease;
- (F) Substantial emotional injury inflicted by a parent, guardian or custodian;
- (G) Sale or attempted sale of the child by the parent, guardian or custodian; or
- (H) The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance as defined in section one-hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety.
- (8) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.
- (9) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.
- (10)(A) "Neglected child" means a child:
- (i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or
  - (ii) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;
- (B) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.
- (11) "Parent" means an individual defined as a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

(12) “Parental rights” means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(13) “Parenting skills” means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(14) “Sexual abuse” means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact.

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(15) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(16) “Sexual exploitation” means an act whereby:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to

display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(17) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(18) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(19) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

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

(21) “Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(22) “Time-limited reunification services” means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

#### **W.VA. CODE ANN. § 49-6-5 (2011). 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.

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

(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.

## **WISCONSIN**

### **WIS. STAT. ANN. § 48.02 (2011). Definitions**

In this chapter, unless otherwise defined:

(1) “Abuse”, other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02, 948.025, or 948.085.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(g) Manufacturing methamphetamine in violation of s. 961.41(1)(e) under any of the following circumstances:

1. With a child physically present during the manufacture.
2. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home.
3. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1e) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1m) "Alcoholism" has the meaning given in s. 51.01(1m).

(1s) "Approved treatment facility" has the meaning given in s. 51.01(2).

(2) "Child", when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

(2d) "Controlled substance" has the meaning given in s. 961.01(4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01(4m).

(2f) "Coordinated services plan of care" has the meaning given in s. 46.56(1)(cm).

(2g) "County department" means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) "Court intake worker" means any person designated to provide intake services under s. 48.067.

(4) "Department" means the department of children and families.

(5) “Developmentally disabled” means having a developmental disability, as defined in s. 51.01(5).

(5g) “Drug dependent” has the meaning given in s. 51.01(8).

(5j) “Emotional damage” means harm to a child's psychological or intellectual functioning. “Emotional damage” shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(5m) “Foreign jurisdiction” means a jurisdiction outside of the United States.

(6) “Foster home” means any facility that is operated by a person required to be licensed by s. 48.62(1) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) “Group home” means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625(1).

(8) “Guardian” means the person named by the court having the duty and authority of guardianship.

(8d) “Indian” means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8g) “Indian child” means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe in any of the following ways:

(a) As a member of the Indian tribe.

(b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) “Indian child’s tribe” means one of the following:

(a) The Indian tribe in which an Indian child is a member or eligible for membership.

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(8p) “Indian custodian” means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

(8r) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(10r) “ Juvenile detention facility” means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(11) “Legal custodian” means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) “Legal custody” means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12g) “Neglect” means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(12m) “Nonidentifying social history information” means information about a person's birth parent that may aid the person in establishing a sense of identity. “Nonidentifying social history information” may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person's birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.
- (f) Talents, hobbies and special interests.
- (h) Reason for placing the child for adoption or for the termination of parental rights.
- (i) Religion.
- (k) Family history.
- (m) Personality traits of each parent.

(13) “Parent” means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, “parent” includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the

biological father. “Parent” does not include any person whose parental rights have been terminated. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian child, including an adoption under tribal law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.805, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but does not include any person whose parental rights have been terminated.

(14) “Physical custody” means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) “Physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22(14).

(15) “Relative” means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, steppaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “relative” includes an extended family member, as defined in s. 48.028(2)(am), whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(15d) “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(16) “Secretary” means the secretary of children and families.

(17) “Shelter care facility” means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66(1)(a).

(17m) “Special treatment or care” means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. “Special treatment or care” also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(18) “Trial” means a fact-finding hearing to determine jurisdiction.

(18j) “Tribal court” means a court that has jurisdiction over Indian child custody proceedings, and that is either a court of Indian offenses or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of an Indian tribe that is vested with authority

over Indian child custody proceedings.

(18m) “Tribal school” has the meaning given in s. 115.001(15m).

(19) “Unborn child” means a human being from the time of fertilization to the time of birth.

**WIS. STAT. ANN. § 48.13 (2011). Jurisdiction over children alleged to be in need of protection or services**

Except as provided in s. 48.028(3), the court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

(2m) Whose parent has relinquished custody of the child under s. 48.195(1);

(3) Who has been the victim of abuse, as defined in s. 48.02(1)(a), (b), (c), (d), (e), (f), or (g), including injury that is self-inflicted or inflicted by another;

(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02(1)(a), (b), (c), (d), (e), (f), or (g), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;

(4m) Whose guardian is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

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

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or

shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

**WIS. STAT. ANN. § 48.415 (2011). Grounds for involuntary termination of parental rights**

At the fact-finding hearing the court or jury shall determine whether grounds exist for the termination of parental rights. If the child is an Indian child, the court or jury shall also determine at the fact-finding hearing whether continued custody of the Indian child by the Indian child's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child under s. 48.028(4)(e)1. and whether active efforts under s. 48.028(4)(e)2. have been made to prevent the breakup of the Indian child's family and whether those efforts have proved unsuccessful, unless partial summary judgment on the grounds for termination of parental rights is granted, in which case the court shall make those determinations at the dispositional hearing. Grounds for termination of parental rights shall be one of the following:

(1) Abandonment. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

1. That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent.

1m. That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), or death.

1r. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a)2 or 3. The time periods under par. (a)2 or 3 shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) Abandonment is not established under par. (a)2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.
2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.
3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:
  - a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a)2. or 3., whichever is applicable, or, if par. (a)2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a)2.
  - b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a)2. or 3., whichever is applicable.

(1m) Relinquishment. Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13(2m) that the parent has relinquished custody of the child under s. 48.195(1) when the child was 72 hours old or younger.

(2) Continuing need of protection or services. Continuing need of protection or services, which shall be established by proving any of the following:

- (a)1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).
2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.
- b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.
3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the



parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 9-month period following the fact-finding hearing under s. 48.424.

(am)1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) Continuing parental disability. Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33(2)(a), (b) or (c), licensed treatment facilities as defined in s. 51.01(2) or state treatment facilities as defined in s. 51.01(15) on account of mental illness as defined in s. 51.01(13)(a) or (b), developmental disability as defined in s. 55.01(2), or other like incapacities, as defined in s. 55.01(5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) Continuing denial of periods of physical placement or visitation. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) Child abuse. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13(3) or (3m).

(6) Failure to assume parental responsibility. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have not had a substantial parental relationship with the child.

(b) In this subsection, “substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(7) Incestuous parenthood. Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(8) Homicide or solicitation to commit homicide of parent. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

(9) Parenthood as a result of sexual assault. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225(1), (2) or (3), 948.02(1) or (2), 948.025, or 948.085. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02(1) or (2) or 948.085, the mother of the child may be heard on her desire for the termination of the father's parental rights.

(9m) Commission of a serious felony against one of the person's children. (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, “serious felony” means any of the following:

1. The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. a. The commission of a violation of s. 940.19(3), 1999 stats., a violation of s. 940.19(2), (4) or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, 948.03(2)(a) or (3)(a), 948.05, 948.051, 948.06 or 948.08, or a violation of s. 940.302(2) if s. 940.302(2)(a)1. b. applies.

b. A violation of the law of any other state or federal law, if that violation would be a violation listed under subd. 2.a. if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(10) Prior involuntary termination of parental rights to another child. Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13(2), (3) or (10); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child.

(b) That, within 3 years prior to the date the court adjudged the child to be in need of protection or services as specified in par. (a) or, in the case of a child born after the filing of a petition as specified in par. (a), within 3 years prior to the date of birth of the child, a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

## **WYOMING**

### **WYO. STAT. ANN. § 14-2-308 (2011). Definitions**

(a) As used in this act:

(i) “Abuse” means as defined by W.S. 14-3-202(a)(ii);

(ii) “Authorized agency” means:

(A) A public social service agency authorized to care for and place children; or

(B) A private child welfare agency certified by the state for such purposes pursuant to W.S. 14-6-201 through 14-6-243, 14-4-101 through 14-4-116, 1-22-101 through 1-22-114;

(iii) “Child” or “minor” means an individual who is under the age of majority;

(iv) “Court” means the district court in the district where the child resides or is found or the district court which has previously retained jurisdiction of the child because of a previous order entered by that court;

(v) “Mental health professional” means a person with an advanced degree in one of the behavioral sciences including a psychologist, social worker or clinical counselor;

(vi) “Neglect” means as defined by W.S. 14-3-202(a)(vii);

(vii) “Parent” means a natural parent or a parent by adoption;

(viii) “Indigent party” means a person whose financial resources and income are insufficient to enable him to pay the reasonable fees and expenses of an attorney licensed to practice in this state;

(ix) “This act” means W.S. 14-2-308 through 14-2-319.

**WYO. STAT. ANN. § 14-2-309 (2011). 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 by clear and convincing evidence that:

(i) The parental rights of the parent to any other child have been terminated involuntarily;

(ii) The parent abandoned, chronically abused, tortured or sexually abused the child; or

(iii) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

#### **WYO. STAT. ANN. § 14-3-202 (2011). Definitions**

(a) As used in W.S. 14-3-201 through 14-3-216:

(i) “A person responsible for a child's welfare” includes the child's parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child;

(ii) “Abuse” means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, unless the abandonment is a relinquishment substantially in accordance with W.S. 14-11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

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

(B) “Physical injury” means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition;

- (C) “Substantial risk” means a strong possibility as contrasted with a remote or insignificant possibility;
- (D) “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. “Imminent danger” includes violation of W.S. 31-5-233(m).
- (iii) “Child” means any person under the age of eighteen (18);
- (iv) “Child protective agency” means the field or regional offices of the department of family services;
- (v) “Court proceedings” means child protective proceedings which have as their purpose the protection of a child through an adjudication of whether the child is abused or neglected, and the making of an appropriate order of disposition;
- (vi) “Institutional child abuse and neglect” means situations of child abuse or neglect where a foster home or other public or private residential home, institution or agency is responsible for the child's welfare;
- (vii) “Neglect” means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone;
- (viii) “State agency” means the state department of family services;
- (ix) “Subject of the report” means any child reported under W.S. 14-3-201 through 14-3-216 or the child's parent, guardian or other person responsible for the child's welfare;
- (x) “Unsubstantiated report” means any report made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is not supported by a preponderance of the evidence;
- (xi) “Substantiated report” means any report of child abuse or neglect made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is supported by a preponderance of the evidence;
- (xii) to (xiv) Repealed by Laws 2002, Sp. & Bud. Sess., Ch. 86, § 3.
- (xv) “Collaborative” means the interagency children's collaborative created by W.S. 14-3-215;
- (xvi) “Department” means the state department of family services and its local offices;
- (xvii) “Transportation” means the provision of a means to convey the child from one place to another by the custodian or someone acting on his behalf in the performance of required duties, but does not require the state to provide incidental travel or to purchase a motor vehicle for the child's own use to travel.

## **FEDERAL LEGISLATION**

### **42 U.S.C.S. § 5106i (2012). Rule of construction**

#### **(a) In general**

Nothing in this subchapter and subchapter III of this chapter shall be construed--

- (1) as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian; and
- (2) to require that a State find, or to prohibit a State from finding, child abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

#### **(b) State requirement**

Notwithstanding subsection (a) of this section, a State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life threatening conditions, case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.

## **AMERICAN SAMOA**

### **AM. SAMOA CODE ANN. § 45.0103 (2011). Definitions.**

As used in this title, unless the context otherwise requires, the following definitions apply:

- (1) “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition under paragraph (a)(1) or (a)(2) of 45.0115 are supported by evidence beyond a reasonable doubt or the allegations of a petition under paragraph (a)(3) of 45.0115 are supported by a preponderance of the evidence.
- (2) “Adult” means a person 18 years of age or older. However, any person 18 years of age or over falling under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his 18th birthday, or concerning whom a petition has been filed for his adoption other than under this title, shall be referred to as a child.
- (3) “Child” means a person under 18 years of age or a mentally retarded or developmentally disabled person regardless of age.

(4) “Child care center” means a facility approved under law: if the facility is located in another State or Territory, it shall be licensed or approved as required by law in that state or territory.

(5) “Child in need of supervision” means any child:

(A) who is repeatedly absent from school in violation of the requirements of 16.0302;

(B) who has run away from home or is otherwise beyond the control of his parent, guardian, or other legal custodial or

(C) whose behavior or condition is such as to endanger his own or other welfare.

(6) “Child placement agency” means an agency approved under law. If the agency is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.

(7) “Commit” means to transfer legal custody.

(8) “Court” means the Trial Division of the High Court of American Samoa, except for uncontested adoptions under 45.0420 through 45.0431 then court means the District Court;

(9) (A) “Delinquent child” means any child 10 years of age or older who, regardless of where the violation occurred, has violated:

(I) any federal, state, or territorial law;

(II) any ordinance, the penalty for which may be a jail sentence; or

(III) any lawful order of the court made under this title.

(B) This definition does not apply to:

(I) children 14 years of age or older who allegedly commit crimes of violence; or

(II) children who within the previous 2 years have been adjudicated a delinquent child, and the act for which the child was adjudicated a delinquent would have been a felony if committed by an adult or punishable by a maximum punishment of life imprisonment or death;

(III) children 14 years of age or older who allegedly commit any felony subsequent to any other felony which was the subject of a hearing in which the child was certified for criminal proceedings as an adult.

(C) A child who violates any traffic law or regulation shall be designated a “juvenile traffic offender” and shall not be designated a delinquent unless it be so ordered by the court after hearing the evidence.

(10) “Deprivation of custody” means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency or institution.



- (11) “Detention” means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment. Juvenile detention facilities are designated by the Court.
- (12) “Diagnostic and evaluation centers” means places for the examination and study of persons committed to the custody of the Department of Public Safety, Corrections Bureau.
- (13) “Dispositional hearing” means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision, or neglected or dependent. The hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.
- (14) “Family care home” means a facility approved under law. If the facility is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.
- (15) “Group care facilities and homes” means places other than foster family care homes providing care for small groups of children.
- (16) “Guardianship of the person” means the duty and authority vested by Court action to make major decisions affecting a child including, but not limited to:
- (A) the authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;
  - (B) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;
  - (C) the authority to consent to the adoption of a child when parental rights have been terminated by judicial decree; and
  - (D) the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution;
- (17) “Half-way houses” means group care facilities for children who have been placed on probation or parole under the terms of this title.
- (18) (A) “Legal custody” means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by Court action.
- (B) For purposes of determining the residence of a child, guardianship is in the person to whom legal custody has been granted by the Court.
- (19) “Neglected or dependent child” means a child:
- (A) whose parent, guardian, or legal custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian, or legal custodian has suffered or allowed another to

mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and to prevent it from recurring;

(B) who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(C) whose environment is injurious to his welfare;

(D) whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being; or

(E) who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian through no fault of his parent, guardian, or legal custodian.

(20) “Normal parental discipline” means all actions by parents, such as administration of blows by hand, strap, or light switch upon the buttocks, or any firm handling, scolding or light taps, insufficient to seriously bruise or produce medical injury or disability.

(21) “Parent” means either a natural parent of a legitimate child, or a parent by adoption, or the natural parent of an illegitimate child. A child born to a woman married at the time of its conception or birth is presumed to be the legitimate child of her husband. In the event that the mother is legally married to a different man at the time of birth than she was at the time of conception, the child is presumed to be the legitimate child of her husband at the time of conception. If this presumption is legally rebutted and no contrary determination is made, the man to whom the mother is married at the time of the child’s birth is presumed to be the legitimate father of the child. The father of an illegitimate child has no parental rights to the child unless he, prior to entry of a decree of adoption, has acknowledged the child as his own by affirmatively asserting paternity as follows:

(A) causing his name to be affixed to the birth certificate of the child;

(B) paying medical or hospital bills associated with the birth of the child;

(C) paying support for the child; or

(D) otherwise asserting his paternity in writing.

(22) “Protective supervision” means a legal status created by Court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the Court, Department of Health or other agency designated by the Court.

(23) “Receiving center” means a facility used to provide temporary detention and care for children by the Corrections Bureau pending placement in a training school, camp, or other facility.

(24) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not limited to: the responsibility for support, the right to

consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

(25) "Shelter" means the temporary care of a child in physically unrestricting facilities pending Court disposition or execution of a court order for placement. Juvenile shelter facilities are designated by the Court.

(26) "Termination of parental rights" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and responsibilities.

(27) "Training schools" means institutions providing care, education, treatment, and rehabilitation for children in a closed setting.

**AM. SAMOA CODE ANN. § 45.0355 (2011). Neglected or dependent child-Termination of parental rights.**

In a disposition as provided in 45.0354:

(a) The Court may enter a decree terminating all parental rights of 1 or both parents in the child when it finds that the best interests and welfare of the child so require.

(b) Upon the entry of a decree terminating the legal rights of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:

(1) vest the Department of Health or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(2) make any other disposition provided under (a)(2), (3), or (4) above that the Court finds appropriate.

(c) Upon the entry of a decree terminating the parental rights of 1 parent, the Court may:

(1) leave the child in. the legal custody of the other parent and discharge the proceedings; or

(2) make any other disposition under (a) above that the Court finds appropriate.

## **GUAM**

**GUAM CODE ANN. tit. 19, § 4302 (2011). Definitions.**

When used in this Article, unless the text otherwise requires:

(a) The words and terms court, child, division, legal custody, guardianship of the person, guardian ad litem, parent, parent-child relationship, residual parental rights and responsibilities and protective supervision shall have the same meaning as in Article 2 of this Chapter.

(b) Neglected used with respect to a child refers to a situation in which the child lacks proper parental care necessary for his health, morals and well-being.

(c) Parties includes the child and the petitioners.

**GUAM CODE ANN. tit. 19, § 4303 (2011). Petition, Grounds.**

(a) A petition may be filed by a parent either directly or through the Division. The parent-child relationship may be terminated with respect to the parent by whom or on whose behalf such petition has been filed, where the court finds that such termination is in the best interest of the parent and the child.

(b) A petition for termination of the parent-child relationship with respect to a parent who is not the petitioner may be filed by a petitioner designated in Subsection (c). The petition may be granted where the court finds that one or more of the following conditions exists:

- (1) that the parent has abandoned the child in that the parent has made no effort to maintain a parental relationship with such child;
- (2) that the parent has substantially and continuously or repeatedly neglected the child;
- (3) that the presumptive parent is not a natural parent of the child;
- (4) that the parent is unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.

(c) The petition under Subsection (b) may be filed by the following:

- (1) either parent when termination of the parent-child relationship is sought with respect to the other parent;
- (2) the guardian of the person or the legal custodian of the child or the person standing in loco parentis to the child;
- (3) the Division;
- (4) any other person having a legitimate interest in the matter.

## **PUERTO RICO**

**P.R. LAWS ANN. tit. 31, § 634a (2009). Grounds on which a person is deprived, restricted or suspended from exercising patria potestas**

The grounds, be it by commission or omission, for which a person may be deprived restricted or suspended of the patria potestas of a son or daughter are the following:

- (1) To cause or put the minor at substantial risk of suffering predictable harm or injury of his/her

physical, mental, emotional and moral health.

(2) To permit or tolerate another person to incur the above first grounds [sic].

(3) To fail to comply with the duties or exercise the powers provided in § 601(1) of this title. These duties include, but are not limited to the duty of having the minor in his/her company according to law, of supervising his/her education and development, of adequately providing sustenance, clothing, shelter, education or health care, according to his/her wealth or with the means provided by the Commonwealth or any natural or juridical person. Health care includes any treatment or preventive measure required to attend to or prevent any condition involving the physical, mental or emotional health of the minor. No person may be deprived of patria potestas for the legitimate practice of their religious beliefs. However, when due to the above, the person fails to provide the minor with specifically prescribed health care, the court shall provide the adequate remedies to attend to the health of the minor, and in appropriate cases, shall deprive the person of his/her de jure or de facto guardianship, or even of patria potestas as may be best for the minor's health.

(4) To fail in his/her duty to supervise and care for the minor under the de jure or de facto guardianship of another person:

(a) If having the capacity and the means to do so, he/she has not assumed the care and the guardianship of the minor in his/her own home.

(b) If he/she has failed to provide a reasonable amount for the support of the minor according to his/her financial means.

(c) If he/she has failed to visit the minor or regularly maintained contact or communication with the minor or with his/her de jure or de facto guardian. The mere fact of being confined to a penal or health institution, or of residing outside of Puerto Rico, situations which limit the physical access and the communication of a father or mother, shall not constitute as such, a violation of the provisions stated herein; without prejudice of the provisions of subsections (3) and (6) of this section.

(5) To incur the unjustified voluntary abandonment of the minor, requiring the intervention of a Commonwealth or municipal agency or the court, or any other person, because he/she has failed to comply with his/her obligations as a father or mother. Abandonment shall be presumed to occur when the minor is found under circumstances which make it impossible to ascertain the identity of his/her parents or when knowing their identity, their whereabouts are unknown in spite of the steps taken to locate them, and said parents fail to claim the minor within thirty (30) days after the minor has been found.

(6) To exploit the minor by forcing him/her to commit any act with the purpose of obtaining a profit or any other benefit.

(7) To fail to comply with the service plan to return a minor to his/her home, effectively offered and provided by the Commonwealth agency in charge of the protection of minors, or by another person designated by said agency, for the parents of minors whom the Commonwealth has had to deprive of their de jure or de facto guardianship. To deprive a person of patria potestas under this paragraph, the court shall determine that the conditions which led to the separation of the minor from the home of his/her parents still exist, or that similar conditions exist which represent a grave risk to the welfare of

the minor.

(8) To incur conduct which, if criminally prosecuted, would constitute any of crimes listed below:

(a) Murder, manslaughter or involuntary manslaughter and attempt thereof, §§ 4001-4005 of Title 33.

(i) Child abuse, §§ 436a and 436b of Title 8.

(b) Crimes against the life and physical integrity, §§ 4008, 4009 and 4031-4034 of Title 33.

(c) Rape, §§ 4061 and 4062 of Title 33.

(d) Sodomy, § 4065 of Title 33.

(e) Lewd acts, § 4067 of Title 33.

(f) Indecent exposure, § 4068 of Title 33.

(g) Prostitution of a son or daughter, whether biological or adopted, §§ 4072 and 4073 of Title 33.

(h) Obscene behavior as prohibited in § 4077 of Title 33.

(i) Non-compliance of the obligation to provide child support, § 4241 of Title 33.

(j) Abandonment of a child, § 4242 of Title 33.

(k) Sexual perversion of minors, § 4246 of Title 33; public begging, § 4247 of Title 33.

(l) Abuse (§ 631 of Title 8); aggravated abuse (§ 632 of Title 8); abuse by threat (§ 633 of Title 8); abuse by restriction of liberty (§ 634 of Title 8) and conjugal sexual assault (§ 635 of Title 8) part of the law known as the 'Domestic Violence Prevention and Intervention Act'.

For the purposes of this section the words 'material,' 'distribute,' 'knowingly,' 'obscene acts,' and 'sexual behavior' shall have the meaning established in § 4074 of Title 33.

No determination of a court under this subsection shall affect a subsequent criminal procedure for the same acts.

(9) Have been convicted of any of the crimes listed in subsection (8) of this section.

## **VIRGIN ISLANDS**

### **V.I. CODE ANN. tit. 5, § 2502 (2011). Definitions**

As used in this chapter, unless it is otherwise provided or the context requires a different construction, application or meaning:

(1) ‘Abandoned child’ means a child whose parents, guardian, or custodian desert him for such a length of time and under such circumstances as to show an intent to evade the duty of rearing him or a reckless disregard for his needs. It shall be a rebuttable presumption that the parent intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned. Abandonment is a form of neglect.

(2) ‘Abuse’ means any physical or mental injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which injury causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health or loss or protracted impairment of the function of any bodily organ. ‘Abuse’ includes the sexual abuse of a child, as defined by law, or the sexual exploitation, including the prostituting of a child and the photographing or other depiction of a child for pornographic purposes, or a persistent course of sexual conduct that causes a child’s health or welfare to be harmed or threatened.

(3) ‘Adjudicatory hearing’ means a hearing conducted in accordance with sections 2517 and 2548 of this chapter in which the court makes its findings of fact and enters an appropriate order dismissing the case, withholding adjudication, or adjudicating the child to be a delinquent child, person in need of supervision, an abused or neglected child.

(4) ‘Adult’ means an individual 18 years of age or older.

(5) ‘Attorney General’ means the Attorney General of the Virgin Islands, or his designee.

(6) ‘Case involving abuse’ means any proceeding under this chapter in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children.

(7) ‘Child’ means an individual under the age of 18 years.

(8) ‘Commit’ means to transfer legal and physical custody.

(9) ‘Consent decree’ means a decree, entered after the filing of a petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision in the child’s own home, under specific terms and conditions.

(10) ‘Custodian’ means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis.

(11) ‘Delinquent act’ means an act which, if committed by an adult, would constitute a crime under the laws of the Virgin Islands.

(12) ‘Delinquent child’ means a child who has been adjudicated to have committed a delinquent act.

(13) ‘Detention care’ means the temporary care of children alleged to be delinquent and held in custody pending disposition.

(14) ‘Detention hearing’ means a hearing at which the court determines whether it is necessary that the child be held in detention care, shelter care, some other placement outside his home, or in his own home under court imposed restrictions, pending a hearing to adjudicate delinquency, abuse or neglect or determine whether the child is a person in need of supervision.

(15) ‘Detention home’ means a facility to be used for the care of children alleged to be or adjudicated delinquent. A detention home may provide secure or nonsecure custody.

(16) ‘Father’ means, for purpose of this chapter only, a male parent of a child when:

(a) he is married to a mother of the child when the child was conceived or when the child was born, unless a court of competent jurisdiction has, through court order, ruled to the contrary; or

(b) it has been so determined by a court of competent jurisdiction; or

(c) he has been given an order of adoption of the child by a court of competent jurisdiction; or

(d) Paternity has otherwise been established pursuant to Title 16, chapter 11 of this Code; or

(e) he otherwise makes a formal or unequivocal acknowledgment;

(f) but does not mean a man whose parental rights have been terminated by a court of competent jurisdiction.

(17) ‘Imminent danger to that child's life or health’ means danger which involves:

(a) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct;

(b) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care;

(c) actual or attempted sexual abuse;

(d) substantial physical pain;

(e) serious bodily injury resulting in physical disfigurement;

(f) substantial impairment of the function of a bodily member or organ;

(g) injury which may result in death.

(18) ‘Intake’ means the acceptance of complaints and the screening of them to eliminate those which do not require action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to another public or private agency when appropriate, and the instigation of court action when necessary.

(19) ‘Legal custody’ means in delinquency, person in need of supervision, abuse and neglect matters, a legal status created by court order which vests in a custodian the right to have physical custody of



the child and to determine where and with whom he shall live within the territory, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities given to a guardian by the court and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

(20) 'Neglect' means the failure by those responsible for the care and maintenance of the child to provide the necessary support, maintenance, education as required by law; and medical or mental health care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.

(21) 'Parent' means the father or mother of a child and includes any adoptive parent. It does not include a person whose parental rights in respect to the child have been terminated in any manner provided by law.

(22) 'Person responsible for a child's care' includes the child's parent, guardian, custodian or other person or agency responsible for the child's welfare or care, whether the child is in his own home, shelter care, detention home, a relative's home, a foster home or a residential institution.

(23) 'Person in need of supervision' means a child who:

- (a) being subject to compulsory school attendance is habitually truant from school; or
- (b) habitually disobeys the reasonable demands of the person responsible for the child's care and is beyond their control; or
- (c) has run away from the person responsible for the child's care; or
- (d) habitually or unlawfully uses or consumes alcoholic beverages or controlled substances or habitually misuses other substances to his serious detriment.

(24) 'Probation' means the legal status created by court order following an adjudication of delinquency, or a person in need of supervision, whereby a minor is permitted to remain in a community environment, subject to supervision and to being returned to the court for violation of probation at any time during the period of probation.

(25) 'Protective supervision' means a legal status created by court order in neglect or abuse cases whereby the child is permitted to remain in his home.

(26) 'Residential institution' means a secure facility administered by the Youth Services Administration for the care of children adjudicated delinquent.

(27) 'Residual parental rights and responsibilities' means the rights and responsibilities remaining with the parent after transfer of legal custody or appointment of a guardian, including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.

(28) 'Respondent' means a party to an action, and is any parent, guardian or other person alleged to have abused or neglected such child in their care.

(29) 'Shelter care' means the temporary care of children in physically unrestricting facilities, including group homes.

(30) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter. The terms 'child', 'juvenile' and 'minor' are used interchangeably throughout this chapter and carry the same definition as 'child', indicated above.

**V.I. CODE ANN. tit. 5, § 2550 (2011). Termination of parental rights**

(a) A proceeding to terminate parental rights shall be instituted with the filing of a written petition giving with particularity all factual and other allegations relied upon in asserting that parental rights should be terminated.

(b) The Family Division of the court shall terminate parental rights when it finds by clear and convincing evidence that a child has been removed from his home pursuant to section 2549 of this title, and has remained in an out-of-home placement for six months or more and that during that time the Department of Social Welfare has made continuous diligent, but unsuccessful efforts to reasonably insure that the child will not be subject to further abuse and neglect if returned home and the parent has not made a good-faith and diligent effort at rehabilitation.

(c) If a child is neglected or abused by one parent, the rights of only such parent with reference to such child may be terminated as provided in subsection (b) of this section without affecting the rights of the other parent; Provided, That if the rights of one parent are terminated, the court shall make an order of protection under paragraph (1) of subsection (a), section 2552 of this subchapter.

(d) Every order of the court transferring the care, control and custody of the child, or terminating the rights of the parents or of a parent with reference to a child, shall be in writing and shall recite the relevant facts.