

CHILD PROTECTION LAWS REGARDING VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION

(Updated February 2012)

This compilation contains legislation, session laws, and codified statutes. All statutes, laws, and bills listed in this compilation have been signed by the pertinent governor and enacted into law. This report was compiled using Westlaw Services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

Scope: This compilation contains legislation, session laws, and codified statutes which provide protection to sexually exploited children including termination of parental rights when a child has been sexually abused or exploited, protection during trial and protection from further exploitation.

ALABAMA	7
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.....	9
ALASKA	10
ALASKA STAT. § 47.17.010 (2011). PURPOSE	10
ALASKA STAT. § 47.17.030 (2011). ACTION ON REPORTS; TERMINATION OF PARENTAL RIGHTS	11
ALASKA STAT. § 47.10.088 (2011). INVOLUNTARY TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.	11
ALASKA STAT. § 47.17.069 (2011). PROTECTIVE INJUNCTIONS	14
ARIZONA	14
ARIZ. REV. STAT. ANN. § 8-800. (2011). PURPOSE OF CHILD PROTECTIVE SERVICES	14
ARIZ. REV. STAT. ANN. § 8-201. (2011). DEFINITIONS	14
ARIZ. REV. STAT. ANN. § 8-533 (2011). PETITION; WHO MAY FILE; GROUNDS.....	20
ARKANSAS.....	22
ARK. CODE ANN. § 9-27-341 (2011). TERMINATION OF PARENTAL RIGHTS	22
CALIFORNIA	27
CAL. FAM. CODE § 7825 (2011). PARENT CONVICTED OF FELONY; CONSIDERATION OF CRIMINAL RECORD PRIOR TO FELONY CONVICTION; RIGHT OF ACTION.	27
CAL. WELF. & INS. CODE § 300 (2011). CHILDREN SUBJECT TO JURISDICTION; LEGISLATIVE INTENT AND DECLARATIONS; GUARDIAN DEFINED	27
COLORADO	30
COLO. REV. STAT. § 19-3-604 (2011). CRITERIA FOR TERMINATION.....	30
COLO. REV. STAT. § 19-3-405 (2011). TEMPORARY PROTECTIVE CUSTODY.....	33
CONNECTICUT	34

National Center for Prosecution of Child Abuse
National District Attorneys Association

CONN. GEN. STAT. ANN. § 45A-717 (2011). TERMINATION OF PARENTAL RIGHTS. CONDUCT OF HEARING. INVESTIGATION AND REPORT. GROUNDS FOR TERMINATION.	34
DELEWARE	38
DEL. CODE ANN. TIT. 13, § 1103 (2011). GROUNDS FOR TERMINATION OF PARENTAL RIGHTS.	38
DISTRICT OF COLUMBIA	42
D.C. CODE § 16-2353 (2011). GROUNDS FOR TERMINATION OF PARENT AND CHILD RELATIONSHIP. ..	42
D.C. CODE § 16-2354 (2011). MOTIONS	43
FLORIDA	45
FLA. STAT. ANN. § 39.01 (2011). DEFINITIONS.....	45
FLA. STAT. ANN. § 39.806 (2011). GROUNDS FOR TERMINATION OF PARENTAL RIGHTS.....	59
FLA. STAT. ANN. § 39.303 (2011). CHILD PROTECTION TEAMS; SERVICES; ELIGIBLE CASES.....	61
FLA. STAT. ANN. § 39.402 (2011). PLACEMENT IN A SHELTER.....	65
GEORGIA	71
GA. CODE ANN. § 15-11-94 (2011). CONDITIONS AND PROCEDURS UNDER WHICH PARENTAL RIGHTS MAY BE TERMINATED	71
HAWAII	73
HAW. REV. STAT. ANN. § 571-61 (2011). TERMINATION OF PARENTAL RIGHTS; PETITION	73
IDAHO	75
IDAHO CODE ANN. § 16-1602 (2009). DEFINITIONS	75
IDAHO CODE ANN. § 16-1608 (2011). EMERGENCY REMOVAL.....	80
ILLINOIS	80
705 ILL. COMP. STAT. ANN. 405/2-21 (2011). FINDINGS AND ADJUDICATION	80
705 ILL. COMP. STAT. ANN. 405/2-3 (2011). NEGLECTED OR ABUSED MINOR.....	82
720 ILL. COMP. STAT. ANN. 5/11-14(D) (2011). PROSTITUTION.....	85
325 ILL. COMP. STAT. ANN. 15/2 (2011). DEPARTMENT OF CHILDREN AND FAMILY SERVICES; TREATMENT AND COUNSELING.....	85
INDIANA	85
IND. CODE ANN. § 31-35-3-1 (2011) APPLICATION OF CHAPTER.....	85
IND. CODE ANN. § 31-35-3-4 (2011) PETITION; CONVICTION OF CERTAIN OFFENSES.	85
IOWA	86
IOWA CODE § 232.116 (2011). GROUNDS FOR TERMINATION.....	86
KANSAS	91
KAN. STAT. ANN. § 38-2202 (2011). DEFINITIONS.	91
KAN. STAT. ANN. § 38-2217 (2011). HEALTH SERVICES.	95
KAN. STAT. ANN. § 38-2259 (2011). EMERGENCY CHANGE OF PLACEMENT; REMOVAL FROM HOME OF PARENT, FINDINGS OF COURT.	97
KENTUCKY	98
KY. REV. STAT. ANN. § 625.090 (2011). GROUNDS FOR TERMINATION	98
LOUSINANA	100
LA. CHILD. CODE. ANN. ART. 603 (2011). DEFINITIONS.....	100
LA. CHILD. CODE. ANN. ART. 601 (2011). PURPOSE	105
LA. CHILD. CODE. ANN. ART. 617 (2011). TEMPORARY RESTRAINING ORDER.....	106
LA. CHILD. CODE. ANN. ART. 618 (2011). PROTECTIVE ORDERS; CONTENT; MODIFICATION; SERVICE	107
LA. CHILD. CODE. ANN. ART. 619 (2011). INSTANTER ORDERS OF CUSTODY	108
LA. CHILD. CODE. ANN. ART. 622 (2011). PLACEMENT PENDING A CONTINUED CUSTODY HEARING..	109
MAINE	110
ME. REV. STAT. ANN. TIT. 22, § 4002 (2011). DEFINITIONS	110
ME. REV. STAT. ANN. TIT. 22, § 4003 (2011). PURPOSES	113

ME. REV. STAT. ANN. TIT. 22, § 4032 (2011). CHILD PROTECTION PETITION; PETITIONERS; CONTENT; FILING	114
ME. REV. STAT. ANN. TIT. 22, § 4036-B (2011). REMOVAL OF CHILD FROM HOME	115
MARYLAND	116
MD. CODE ANN., HEALTH-GEN. § 15-127 (2011). RAPE AND ABUSE VICTIMS SERVICES	116
MD. CODE ANN. FAM. LAW § 5-323 (2011). GRANT OF GUARDIANSHIP-- NONCONSENSUAL	117
MASSCHUSETTS	121
H.B.3808, 187 TH GEN. ASS. (MASS. 2011). AN ACT RELATIVE TO THE COMMERCIAL SEXUAL EXPLOITATION OF PEOPLE— SIGNED BY GOVERNOR NOVEMBER 21, 2011	121
MICHIGAN	137
MICH. COMP. LAWS SERV. § 722.622 (2011). DEFINITIONS.	137
MICH. COMP. LAWS § 712A.19B (2011). TERMINATION OF PARENTAL RIGHTS; NOTICE, FINDINGS, ORDERS	140
MICH. COMP. LAWS SERV. § 722.626 (2011). DETENTION OF CHILD IN TEMPORARY PROTECTIVE CUSTODY; PRELIMINARY HEARING; EXAMINATIONS; REPORT; MEDICAL EVALUATION.	145
MINNESOTA	145
MINN. STAT. ANN. § 260C.301 (2011). TERMINATION OF PARENTAL RIGHTS	145
MINN. STAT. ANN. § 260C.007 (2011). DEFINITIONS	150
MISSISSIPPI	157
MISS. CODE ANN. § 93-15-103 (2011). GROUNDS; RELINQUISHMENT; ALTERNATIVES	157
MISS. CODE ANN. § 13-1-405 (2011). USE OF CLOSED CIRCUIT TELEVISION.....	159
MISS. CODE ANN. § 99-1-27 (2011). SEX OFFENSE VICTIMS; INVESTIGATIONS; POLYGRAPH TESTS...	160
MISSOURI	160
MO. REV. STAT. §566.212 (2011). PETITION TO TERMINATE PARENTAL RIGHTS, PRELIMINARY INQUIRY— JUVENILE OFFICER TO FILE PETITION OR JOIN AS PARTY, WHEN—GROUNDS FOR TERMINATION	160
MO. REV. STAT. §566.223 (2011). VICTIM RIGHTS AND PROTECTION—DEFENSE-IDENTIFICATION OF VICTIMS OF TRAFFICKING, PROCEDURES, SERVICES—VICTIM OF TRAFFICKING, CIVIL ACTION— ATTORNEY GENERAL, CIVIL ACTION.....	164
MO. REV. STAT. § 491.015 (2011). PROSECUTING WITNESS IN CERTAIN CASES NOT TO BE INTERROGATED AS TO PRIOR SEXUAL CONDUCT.....	166
MONTANA	166
MONT. CODE ANN. § 41-3-609 (2011). CRITERIA FOR TERMINATION	166
MONT. CODE ANN. § 41-3-423 (2011). REASONABLE EFFORTS REQUIRED TO PREVENT REMOVAL OF CHILD OR TO RETURN—EXEMPTION—FINDINGS—PERMANENCY PLAN	168
MONT. CODE ANN. § 41-3-102 (2011). DEFINITIONS.....	170
MONT. CODE ANN. § 45-5-511 (2011). PROVISIONS GENERALLY APPLICABLE TO SEXUAL CRIMES ...	176
NEBRASKA	176
NEB. REV. STAT. ANN. § 43-292 (2011). TERMINATION OF PARENTAL RIGHTS; GROUNDS.....	176
NEB. REV. STAT. ANN. § 27-412 (2011). SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM’S PAST SEXUAL BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION.	178
NEVADA	179
NEV. REV. STAT. ANN. § 128.105 (2011). GROUNDS FOR TERMINATING PARENTAL RIGHTS: CONSIDERATIONS; REQUIRED FINDINGS.....	179
NEV. REV. STAT. ANN. § 128.106 (2011). SPECIFIC CONSIDERATIONS IN DETERMINING NEGLECT BY OR UNFITNESS OF PARENT	179
NEV. REV. STAT. ANN. § 432B.020 (2011). “ABUSE OR NEGLECT OF A CHILD” DEFINED.....	180
NEV. REV. STAT. ANN. § 432B.390 (2011). PLACEMENT OF CHILD IN PROTECTIVE CUSTODY.	181
NEW HAMPSHIRE	183

N.H. REV. STAT. ANN. § 170-C:5 (2011). GROUNDS FOR TERMINATION OF THE PARENT-CHILD RELATIONSHIP	183
N.H. REV. STAT. ANN. § 169-C:3 (2011). DEFINITIONS.	184
N.H. REV. STAT. ANN. § 169-C:2 (2011). PURPOSE.	189
N.H. REV. STAT. ANN. § 169-C:6 (2011). PROTECTIVE CUSTODY.	189
N.H. REV. STAT. ANN. § 633:7 (2011). TRAFFICKING IN PERSONS.....	191
N.H. REV. STAT. ANN. § 632-A:6 (2011). TESTIMONY AND EVIDENCE	192
NEW JERSEY	193
N.J. STAT. ANN. § 30:4C-15 (2011). GUARDIANSHIP; PETITION.....	193
N.J. STAT. ANN. § 9:6-1 (2011). ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF CHILD; WHAT CONSTITUTES	194
NEW MEXICO.....	195
N.M. STAT. ANN. § 32A-4-28 (2011). TERMINATION OF PARENTAL RIGHTS; ADOPTION DECREE.....	195
N.M. STAT. ANN. § 30-9-16 (2011). TESTIMONY; LIMITATIONS; IN CAMERA HEARING	196
NEW YORK	197
N.Y. SOC. SERV. § 384-B (2011). GUARDIANSHIP AND CUSTODY OF DESTITUTE OR DEPENDENT CHILDREN; COMMITMENT BY COURT ORDER; MODIFICATION OF COMMITMENT AND RESTORATION OF PARENTAL RIGHTS	197
N.Y. FAM. CT. ACT § 1012 (2011). DEFINITIONS.....	210
NORTH CAROLINA	213
N.C. GEN. STAT. § 7B-1111 (2010). GROUNDS FOR TERMINATING PARENTAL RIGHTS.....	213
N.C. GEN. STAT. § 7B-101 (2010). DEFINITIONS.....	215
NORTH DAKOTA.....	218
N.D. CENT. CODE § 27-20-44 (2011). TERMINATION OF PARENTAL RIGHTS.....	218
N.D. CENT. CODE § 27-20-02 (2011). DEFINITIONS.....	219
N.D. CENT. CODE § 12.1-35-02 (2011). ADDITIONAL SERVICES.....	223
N.D. CENT. CODE § 12.1-35-05.2 (2011). CONFIDENTIALITY OF TESTIMONY.....	224
OHIO	224
OHIO ADMIN. CODE § 5101:2-42-95 (2011). OBTAINING PERMANENT CUSTODY: TERMINATION OF PARENTAL RIGHTS	224
OHIO REV. CODE ANN. § 2945.481 (2011). DEPOSITION OF CHILD SEX OFFENSE VICTIM; PRESENCE OF DEFENDANT; ADDITIONAL DEPOSITIONS; VIDEOTAPED DEPOSITION; ADMISSIBILITY OF DEPOSITION; TELEVISED OR RECORDED TESTIMONY	226
OKLAHOMA	231
OKLA. STAT. ANN. TIT. § 1-4-904(2011). TERMINATION OF PARENTAL RIGHTS IN CERTAIN SITUATIONS.....	231
OREGON.....	235
OR. REV. STAT. § 419B.502 (2011). TERMINATION FOR EXTREME CONDUCT; CONSIDERATIONS.....	235
OR. REV. STAT. § 419B.504 (2011). TERMINATION FOR CONDUCT SERIOUSLY DETRIMENTAL TO CHILD; CONSIDERATIONS.....	235
OR. REV. STAT. § 44.547 (2011). NOTICE TO COURT; ACCOMODATIONS.....	236
PENNSYLVANIA	237
23 PA. CONST. STAT. § 2511 (2011). GROUNDS FOR INVOLUNTARY TERMINATION	237
42 PA. CONST. STAT. ANN. § 5988 (2011). VICTIMS OF SEXUAL OR PHYSICAL ABUSE	238
RHODE ISLAND	239
R.I. GEN. LAWS § 40-11-2 (2011). DEFINITIONS.....	239
R.I. GEN. LAWS § 40-11-1 (2011). POLICY.....	241
R.I. GEN. LAWS § 40-11-5 (2011). PROTECTIVE CUSTODY BY PHYSICIAN OR LAW ENFORCEMENT OFFICER.....	241

R.I. GEN. LAWS § 40-11-7 (2011). INVESTIGATION OF REPORTS -- PETITION FOR REMOVAL FROM CUSTODY -- REPORT TO CHILD ADVOCATE -- ATTORNEY GENERAL -- COURT-APPOINTED SPECIAL ADVOCATE.....	242
R.I. GEN. LAWS § 40-11-12.4 (2011). RESTRAINING ORDERS.....	243
SOUTH CAROLINA.....	243
S.C. CODE ANN. § 63-7-2570 (2011). GROUNDS.....	243
S.C. CODE ANN. § 63-7-620 (2011). EMERGENCY PROTECTIVE CUSTODY.....	245
SOUTH DAKOTA.....	246
S.D. CODIFIED LAWS § 26-8A-2 (2011). ABUSED OR NEGLECTED CHILD DEFINED.....	246
S.D. CODIFIED LAWS § 26-7A-1 (2011). DEFINITION OF TERMS.....	247
S.D. CODIFIED LAWS § 26-7A-6 (2011). CONSTRUCTION -- PROTECTION OF CHILD FROM ABUSE.....	249
S.D. CODIFIED LAWS § 26-7A-12 (2011). TEMPORARY CUSTODY WITHOUT COURT ORDER -- LAW ENFORCEMENT OR COURT SERVICES OFFICER.....	249
S.D. CODIFIED LAWS § 26-7A-13 (2011). ORDER OF TEMPORARY CUSTODY -- TEMPORARY CUSTODY DIRECTIVE.....	249
S.D. CODIFIED LAWS § 26-7A-107 (2011). ORDER OF PROTECTION.....	250
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.....	251
S.D. CODIFIED LAWS § 26-8A-26.1 (2011). ADDITIONAL REASONS FOR TERMINATION OF PARENTAL RIGHTS.....	252
TENNESSEE.....	253
TENN. CODE ANN. § 37-1-602 (2011). DEFINITIONS.....	253
TENN. CODE ANN. § 37-1-601 (2011). LEGISLATIVE INTENT; PURPOSE.....	256
TENN. CODE ANN. § 37-1-608 (2011). PROTECTIVE CUSTODY.....	256
TENN. CODE ANN. § 37-1-147 (2011). TERMINATION OF PARENTAL RIGHTS.....	257
TENN. CODE ANN. § 36-1-113 (2011). TERMINATION OF PARENTAL RIGHTS.....	257
TENN. CODE ANN. § 40-38-115 (2011). EMOTIONAL SUPPORT FOR VICTIMS.....	266
TEXAS.....	266
TEX. FAM. CODE ANN. § 161.001 (2011). INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP.....	266
TEX. FAM. CODE ANN. § 261.301 (2011). INVESTIGATION OF REPORT.....	269
TEX. FAM. CODE ANN. § 262.101 (2011). FILING PETITION BEFORE TAKING POSSESSION OF CHILD.....	271
TEX. FAM. CODE ANN. § 262.102 (2011). EMERGENCY ORDER AUTHORIZING POSSESSION OF CHILD.....	271
TEX. FAM. CODE ANN. § 262.104 (2011). TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER.....	272
TEX. CODE CRIM. PROC. ANN. ART. 7A.01 (2011). APPLICATION FOR PROTECTIVE ORDER.....	273
TEX. CODE CRIM. PROC. ANN. ART. 38.07 (2011). TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE.....	273
TEX. CODE CRIM. PROC. ANN. ART. 38.071 (2011). TESTIMONY OF CHILD WHO IS VICTIM OF OFFENSE.....	274
TEX. CODE CRIM. PROC. ANN. ART. 38.072 (2011). HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS.....	280
TEX. CODE CRIM. PROC. ANN. ART. 38.37 (2011). EVIDENCE OF EXTRANEOUS OFFENSES OR ACTS.....	281
TEX. CODE CRIM. PROC. ANN. ART. 42.0191 (2011). FINDING REGARDING VICTIMS OF TRAFFICKING OR OTHER ABUSE.....	282
UTAH.....	283
UTAH CODE ANN. § 78A-6-105 (2011). DEFINITIONS.....	283

UTAH CODE ANN. § 62A-4A-101 (2011). DEFINITIONS	290
UTAH CODE ANN. § 62A-4A-203 (2011). REMOVAL OF A CHILD FROM HOME -- REASONABLE EFFORTS TO MAINTAIN CHILD IN HOME -- EXCEPTION -- REASONABLE EFFORTS FOR REUNIFICATION.	294
UTAH CODE ANN. § 62A-4A-203.5 (2011). MANDATORY PETITION FOR TERMINATION OF PARENTAL RIGHTS.	295
UTAH CODE ANN. § 62A-4A-208 (2011). CHILD PROTECTION OMBUDSMAN -- RESPONSIBILITY – AUTHORITY.	296
UTAH CODE ANN. § 78A-6-507 (2011). GROUNDS FOR TERMINATION OF PARENTAL RIGHTS – FINDINGS REGARDING REASONABLE EFFORTS	299
UTAH CODE ANN. § 78A-6-508 (2011). EVIDENCE OF GROUNDS FOR TERMINATION	300
UTAH CODE ANN. § 62A-4A-202.1 (2011). ENTERING HOME OF A CHILD – TAKING A CHILD INTO PROTECTIVE CUSTODY –CASEWORKER ACCOMPANIED BY PEACE OFFICER – PREVENTIVE SERVICES— SHELTER FACILITY OR EMERGENCY PLACEMENT.....	302
UTAH CODE ANN. § 77-37-4 (2011). ADDITIONAL RIGHTS—CHILDREN	303
VERMONT.....	305
VT. STAT. ANN. TIT. 15A §3-504 (2011). GROUNDS FOR TERMINATING RELATIONSHIP OF PARENT AND CHILD.	305
VT. STAT. ANN. TIT. 13 §2652(E)(2011). HUMAN TRAFFICKING.....	307
VT. STAT. ANN. TIT. 13 §2661 (2011). RESOURCE GUIDE POSTING	307
VT. STAT. ANN. TIT. 13 §3255 (2011). EVIDENCE	308
VIRGINIA	309
VA. CODE ANN. § 16.1-283 (2011). TERMINATION OF RESIDUAL PARENTAL RIGHTS	309
VA. CODE ANN. § 18.2-67.7 (2011). ADMISSION OF EVIDENCE	313
WASHINGTON	314
WASH. REV. CODE ANN. § 13.34.132 (2011). PETITION SEEKING TERMINATION OF PARENT-CHILD RELATIONSHIP—REQUIREMENTS.....	314
WASH. REV. CODE ANN. § 13.34.180 (2011). ORDER TERMINATING PARENT AND CHILD RELATIONSHIP—PETITION—FILING—ALLEGATIONS	315
WEST VIRGINIA	317
W. VA. CODE ANN. § 49-6-5 (2011). DISPOSITION OF NEGLECTED OR ABUSED CHILDREN	317
W. VA. CODE ANN. § 49-6-5A (2011). PERMANENCY HEARING WHEN COURT DETERMINES REASONABLE EFFORTS TO PRESERVE FAMILIES NOT REQUIRED	321
W. VA. CODE ANN. § 49-6-5B (2011). WHEN EFFORTS TO TERMINATE PARENTAL RIGHTS REQUIRED	322
W. VA. CODE ANN. § 61-8B-11A (2011). CONVICTIONS FOR OFFENSES AGAINST CHILDREN.....	322
W. VA. CODE ANN. § 49-6A-2 (2011). PERSONS MANDATED TO REPORT SUSPECTED ABUSE AND NEGLECT	323
W. VA. CODE ANN. § 49-6-3 (2011). PETITION TO COURT WHEN CHILD BELIEVED NEGLECTED OR ABUSED – TEMPORARY CUSTODY	323
W. VA. CODE ANN. § 49-5-8 (2011). TAKING A JUVENILE INTO CUSTODY.....	326
WISCONSIN	328
WIS. STAT. § 48.415 (2011). GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.....	328
WIS. STAT. § 48.205 (2011). CRITERIA FOR HOLDING A CHILD OR EXPECTANT MOTHER IN PHYSICAL CUSTODY.....	333
WIS. STAT. § 48.207 (2011). PLACES WHERE A CHILD OR EXPECTANT MOTHER MAY BE HELD IN NONSECURE CUSTODY	334
WIS. STAT. § 972.11 (2011). EVIDENCE AND PRACTICE; CIVIL RULES APPLICABLE	336
WYOMING	340

WYO. STAT. ANN. § 14-2-309 (2011). GROUNDS FOR TERMINATION OF PARENT-CHILD RELATIONSHIP; CLEAR AND CONVINCING EVIDENCE.....	340
WYO. STAT. ANN. § 14-3-205 (2011). CHILD ABUSE OR NEGLECT; PERSONS REQUIRED TO REPORT..	341
WYO. STAT. ANN. § 14-3-405 (2011). TAKING OF CHILD INTO CUSTODY; WHEN PERMITTED	342
FEDERAL LEGISLATION	343
18 U.S.C.S. § 5106G (2011). DEFINITIONS.....	343
42 U.S.C.A. § 5101 (2011). OFFICE ON CHILD ABUSE AND NEGLECT.....	343
42 U.S.C.A. § 5105 (2012). RESEARCH AND ASSISTANCE ACTIVITIES	344
42 U.S.C.A. § 5106A (2012). GRANTS TO STATES FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS.	351
AMERICAN SAMOA.....	365
AM. SAMOA CODE ANN. §47.0302 (2004). FACTORS IN DETERMINING CUSTODY AND VISITATION....	365
GUAM.....	365
GUAM CODE ANN. TIT. 19 , §13302(2011). PROTECTIVE CUSTODY BY POLICE OFFICER, CHILD PROTECTIVE SERVICES SOCIAL WORKER OR PHYSICIAN WITHOUT COURT ORDER	365
PUERTO RICO	367
P.R. LAWS ANN. TIT. 8, § 447V (2009). PARENTAL RIGHTS; PETITION FOR TERMINATION	367
U.S. VIRGIN ISLANDS.....	368

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 [Abuse includes sexual abuse] , 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. § 47.17.010 (2011). Purpose

In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the department. It is not the intent of the legislature that persons required to report suspected child abuse or neglect under this chapter investigate the suspected child abuse or neglect before they make the required report to the department. Reports must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time, to make sure that investigations regarding child abuse and neglect are conducted by trained investigators, and to avoid subjecting a child to multiple interviews about the abuse or neglect. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to

(1) prevent further harm to the child;

(2) safeguard and enhance the general well-being of children in this state; and

(3) preserve family life unless that effort is likely to result in physical or emotional damage to the child.

ALASKA STAT. § 47.17.030 (2011). ACTION ON REPORTS; TERMINATION OF PARENTAL RIGHTS

(a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm to the child or to ensure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, that may be necessary to prevent further harm to the child or to ensure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights under AS 47.10, it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310.

(f) If an investigation under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the department shall report the matter to the Board of Nursing.

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.

ALASKA STAT. § 47.17.069 (2011). PROTECTIVE INJUNCTIONS

(a) A court may enjoin or limit a person from contact with a child if the attorney general establishes by a preponderance of the evidence that the person

(1) has sexually abused a child;

(2) has physically abused a child; or

(3) has engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child.

(b) This section does not limit the authority of the attorney general or the court to act to protect a child.

ARIZONA

ARIZ. REV. STAT. ANN. § 8-800. (2011). PURPOSE OF CHILD PROTECTIVE SERVICES

The primary purposes of child protective services are to protect children by investigating allegations of abuse and neglect, promoting the well-being of the child in a permanent home and coordinating services to strengthen the family and prevent, intervene in and treat abuse and neglect of children.

ARIZ. REV. STAT. ANN. § 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. ANN. § 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. § 9-27-341 (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 § 7825 (2011). PARENT CONVICTED OF FELONY; CONSIDERATION OF CRIMINAL RECORD PRIOR TO FELONY CONVICTION; RIGHT OF ACTION.

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

(1) The child is one whose parent or parents are convicted of a felony.

(2) The facts of the crime of which the parent or parents were convicted are of such a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child. In making a determination pursuant to this section, the court may consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding his or her child.

(b) The mother of a child may bring a proceeding under this part against the father of the child, where the child was conceived as a result of an act in violation of Section 261 of the Penal Code, and where the father was convicted of that violation. For purposes of this subdivision, there is a conclusive presumption that the father is unfit to have custody or control of the child.

CAL. WELF. & INS. CODE § 300 (2011). 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.

COLORADO

COLO. REV. STAT. § 19-3-604 (2011). 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.

COLO. REV. STAT. § 19-3-405 (2011). TEMPORARY PROTECTIVE CUSTODY

(1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders or emergency protection orders, or both. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2)(a) Temporary protective custody orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing the child's place of residence or in the care and custody of the person responsible for the child's care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) Emergency protection orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional

medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered. An emergency protection order may include but is not limited to:

(I) Restraining a person from threatening, molesting, or injuring the child;

(II) Restraining a person from interfering with the supervision of the child; or

(III) Restraining a person from having contact with the child or the child's residence.

(3) The county department of social services shall be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody or emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

CONNECTICUT

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, 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.

DELEWARE

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

National Center for Prosecution of Child Abuse

National District Attorneys Association

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 § 16-2353 (2011). GROUNDS FOR TERMINATION OF PARENT AND CHILD RELATIONSHIP.

(a) A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.

(b) In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

(1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

(3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;

(3A) the child was left by his or her parent, guardian, or custodian 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 was ready for discharge from the hospital, and the parent,

National Center for Prosecution of Child Abuse

National District Attorneys Association

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;

(4) to the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight

D.C. CODE § 16-2354 (2011). MOTIONS

(a) Except as provided by subsection (b)(3) of this section, a motion for the termination of the parent and child relationship may be filed by the District government or by the child through his or her legal representative.

(b) A motion for the termination of the parent and child relationship:

(1) May be filed when the child who is the subject of the motion has been adjudicated neglected at least 6 months prior to the filing of the motion and the child is in the court-ordered custody of a department, agency, institution, or person other than the parent;

(2) May be filed immediately when, despite reasonable efforts, the parent could not be located for the fact finding hearing and during the period from the child's removal from the home to the fact finding hearing; and

(3) Except as provided in subsections (c) and (g) of this section, shall be filed by the District government if:

(A) The child has been in court-ordered custody under the responsibility of the District for 15 of the most recent 22 months;

(B) The Division has determined the child to be abandoned;

(C) A court of competent jurisdiction has determined that the parent has:

(i) Committed murder of a child sibling or another child;

(ii) Committed voluntary manslaughter of a child sibling or another child;

(iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(iv) Committed a felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child; or

(D) The Division has determined the child to be subject to intentional and severe mental abuse.

(c) The District government shall seek to be joined as a party to a motion filed by the child if any of the factors in subsection (b)(3) of this section apply and the child has filed an adoption petition.

(d) A motion for termination of the parent and child relationship shall include but not be limited to:

(1) The name, sex, date and place of birth, and current placement of the child;

(2) The name and title of the petitioner;

(3) The name and address of the child's parent;

(4) A plain and concise statement of the facts and opinions on which the termination of the parent and child relationship is sought;

(5) A specification as to the health of the child;

(6) A statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

(7) A statement as to the various efforts taken by the moving party to locate the parent of the child.

(e) When any facts required pursuant to subsection (d) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship.

(f) The Agency shall take steps to identify, recruit, process, and approve a qualified family for an adoption concurrently with the District government's filing of the motion or its joinder to the petition.

(g) The District government need not file a motion if the Agency determines and has documented in the case plan that:

(1) The child is being cared for by an approved kinship caregiver and adoption is not the child's permanency plan;

(2) A compelling reason for determining that filing such a motion would not be in the best interest of the child; or

(3) The District has not offered or provided to the family of the child, consistent with the time period in the case plan, such services as the District deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child pursuant to § 4-1301.09a.

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.

(I) 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.

**FLA. STAT. ANN. § 39.303 (2011). CHILD PROTECTION TEAMS; SERVICES;
ELIGIBLE CASES**

The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Family Services. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration between the Department of Health and the Department of Children and Family Services. The two departments shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services,

National Center for Prosecution of Child Abuse
National District Attorneys Association

in consultation with the Secretary of Children and Family Services, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall utilize and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Family Services. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children

and Family Services, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter 459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or

(c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Family Services, shall avoid duplicating the provision of those services.

(6) The Department of Health child protection team quality assurance program and the Department of Children and Family Services' Family Safety Program Office quality assurance program shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

FLA. STAT. ANN. § 39.402 (2011). PLACEMENT IN A SHELTER

(1) Unless ordered by the court under this chapter, a child taken into custody shall not be placed in a shelter prior to a court hearing unless there is probable cause to believe that:

(a) The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;

(b) The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or

(c) The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

(2) A child taken into custody may be placed or continued in a shelter only if one or more of the criteria in subsection (1) applies and the court has made a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement.

(3) Whenever a child is taken into custody, the department shall immediately notify the parents or legal custodians, shall provide the parents or legal custodians with a statement setting forth a summary of procedures involved in dependency cases, and shall notify them of their right to obtain their own attorney.

(4) If the department determines that placement in a shelter is necessary under subsections (1) and (2), the authorized agent of the department shall authorize placement of the child in a shelter.

(5)(a) The parents or legal custodians of the child shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. If the parents or legal custodians are outside the jurisdiction of the court, are not known, or cannot be located or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. The person providing or attempting to provide notice to the parents or legal custodians shall, if the parents or legal custodians are not present at the hearing, advise the court either in person or by sworn affidavit, of the attempts made to provide notice and the results of those attempts.

(b) The parents or legal custodians shall be given written notice that:

1. They will be given an opportunity to be heard and to present evidence at the shelter hearing; and

2. They have the right to be represented by counsel, and, if indigent, the parents have the right to be represented by appointed counsel, at the shelter hearing and at each subsequent hearing or proceeding, pursuant to the procedures set forth in s. 39.013. If the parents or legal custodians appear for the shelter hearing without legal counsel, then, at their request, the shelter hearing may be continued up to 72 hours to enable the parents or legal custodians to consult legal counsel. If a continuance is requested by the parents or legal custodians, the child shall be continued in shelter care for the length of the continuance, if granted by the court.

(6)(a) The circuit court, or the county court if previously designated by the chief judge of the circuit court for such purpose, shall hold the shelter hearing.

(b) The shelter petition filed with the court must address each condition required to be determined by the court in paragraphs (8)(a), (b), (d), and (h).

(7) A child may not be removed from the home or continued out of the home pending disposition if, with the provision of appropriate and available early intervention or preventive services, including services provided in the home, the child could safely remain at home. If the child's safety and well-being are in danger, the child shall be removed from danger and continue to be removed until the danger has passed. If the child has been removed from the home and the reasons for his or her removal have been remedied, the child may be returned to the home. If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home, the court shall allow the child to remain in the home.

(8)(a) A child may not be held in a shelter longer than 24 hours unless an order so directing is entered by the court after a shelter hearing. In the interval until the shelter hearing is held, the decision to place the child in a shelter or release the child from a shelter lies with the protective investigator.

(b) The parents or legal custodians of the child shall be given such notice as best ensures their actual knowledge of the time and place of the shelter hearing. The failure to provide notice to a party or participant does not invalidate an order placing a child in a shelter if the court finds that the petitioner has made a good faith effort to provide such notice. The court shall require the parents or legal custodians present at the hearing to provide to the court on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child, so far as are known.

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; and

3. Give the parents or legal custodians an opportunity to be heard and to present evidence.

(d) At the shelter hearing, in order to continue the child in shelter care:

1. The department must establish probable cause that reasonable grounds for removal exist and that the provision of appropriate and available services will not eliminate the need for placement; or

2. The court must determine that additional time is necessary, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child during which time the child shall remain in the department's custody, if so ordered by the court.

(e) At the shelter hearing, the department shall provide the court copies of any available law enforcement, medical, or other professional reports, and shall also provide copies of abuse hotline reports pursuant to state and federal confidentiality requirements.

(f) At the shelter hearing, the department shall inform the court of:

1. Any identified current or previous case plans negotiated in any district with the parents or caregivers under this chapter and problems associated with compliance;

2. Any adjudication of the parents or caregivers of delinquency;

3. Any past or current injunction for protection from domestic violence; and

4. All of the child's places of residence during the prior 12 months.

(g) At the shelter hearing, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.

4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.

5. That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39. 806(1)(f)-(i).

6. That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

7. That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

8. That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

(9) At any shelter hearing, the department shall provide to the court a recommendation for scheduled contact between the child and parents, if appropriate. The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to the provisions of s. 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the

department shall provide justification to the court.

(10)(a) The shelter hearing order shall contain a written determination as to whether the department has made a reasonable effort to prevent or eliminate the need for removal or continued removal of the child from the home. This determination must include a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home and the date by which the services are expected to become available.

(b) If services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, the written determination must also contain an explanation describing why the services are not available for the child.

(c) If the department has not made an effort to prevent or eliminate the need for removal, the court shall order the department to provide appropriate and available services to ensure the protection of the child in the home when the services are necessary for the child's health and safety.

(11)(a) If a child is placed in a shelter pursuant to a court order following a shelter hearing, the court shall require in the shelter hearing order that the parents of the child, or the guardian of the child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child, to pay, to the department or institution having custody of the child, fees as established by the department. When the order affects the guardianship estate, a certified copy of the order shall be delivered to the judge having jurisdiction of the guardianship estate. The shelter order shall also require the parents to provide to the department and any other state agency or party designated by the court, within 28 days after entry of the shelter order, the financial information necessary to accurately calculate child support pursuant to s. 61.30.

(b) The court shall request that the parents consent to provide access to the child's medical records and provide information to the court, the department or its contract agencies, and any guardian ad litem or attorney for the child. If a parent is unavailable or unable to consent or withholds consent and the court determines access to the records and information is necessary to provide services to the child, the court shall issue an order granting access. The court may also order the parents to provide all known medical information to the department and to any others granted access under this subsection.

(c) The court shall request that the parents consent to provide access to the child's educational records and provide information to the court, the department or its contract agencies, and any guardian ad litem or attorney for the child. If a parent is unavailable or unable to consent or withholds consent and the court determines access to the records and information is necessary to provide services to the child, the court shall issue an order granting access.

(d) The court may appoint a surrogate parent or may refer the child to the district school superintendent for appointment of a surrogate parent if the child has or is suspected of having a

disability and the parent is unavailable pursuant to s. 39.0016(3)(b).

(12) In the event the shelter hearing is conducted by a judge other than the juvenile court judge, the juvenile court judge shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.

(13) A child may not be held in a shelter under an order so directing for more than 60 days without an adjudication of dependency. A child may not be held in a shelter for more than 30 days after the entry of an order of adjudication unless an order of disposition has been entered by the court.

(14) The time limitations in this section do not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the child's counsel or the child's guardian ad litem, if one has been appointed by the court, or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child's attorney or the child's guardian ad litem, if one has been appointed by the court, and the child.

(b) Periods of delay resulting from a continuance granted at the request of any party, if the continuance is granted:

1. Because of an unavailability of evidence material to the case when the requesting party has exercised due diligence to obtain such evidence and there are substantial grounds to believe that such evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party, inclusive of the parent or legal custodian, may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parents or legal custodians; however, the petitioner shall continue regular efforts to provide notice to the parents or legal custodians during such periods of delay.

(d) Reasonable periods of delay resulting from a continuance granted at the request of the parent or legal custodian of a subject child.

(e) Notwithstanding the foregoing, continuances and extensions of time are limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child. Time is of the essence for the best interests of dependent children in conducting dependency proceedings in accordance with the time limitations set forth in this chapter. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party in advance of the particular circumstances or need arising

upon which delay of the proceedings may be warranted.

(f) Continuances or extensions of time may not total more than 60 days for all parties within any 12-month period during proceedings under this chapter. A continuance or extension beyond the 60 days may be granted only for extraordinary circumstances necessary to preserve the constitutional rights of a party or when substantial evidence demonstrates that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.

(15) The department, at the conclusion of the shelter hearing, shall make available to parents or legal custodians seeking voluntary services, any referral information necessary for participation in such identified services. The parents' or legal custodians' participation in the services shall not be considered an admission or other acknowledgment of the allegations in the shelter petition.

(16) At the conclusion of a shelter hearing, the court shall notify all parties in writing of the next scheduled hearing to review the shelter placement. The hearing shall be held no later than 30 days after placement of the child in shelter status, in conjunction with the arraignment hearing, and at such times as are otherwise provided by law or determined by the court to be necessary.

(17) At the shelter hearing, the court shall inquire of the parent whether the parent has relatives who might be considered as a placement for the child. The parent shall provide to the court and all parties identification and location information regarding the relatives. The court shall advise the parent that the parent has a continuing duty to inform the department of any relative who should be considered for placement of the child.

(18) The court shall advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent.

GEORGIA

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.

HAWAII

HAW. REV. STAT. ANN. § 571-61 (2011). TERMINATION OF PARENTAL RIGHTS; PETITION

(a) Relinquishment. The parents or either parent or the surviving parent who desire to relinquish parental rights to any natural or adopted child and thus make the child available for adoption or readoption, may petition the family court of the circuit in which they or he or she resides, or of the circuit in which the child resides, or was born, for the entry of a judgment of termination of parental rights. The petition shall be verified and shall be substantially in such form as may be prescribed by the judge or senior judge of the family court. The petition may be filed at any time following the mother's sixth month of pregnancy; provided that no judgment may be entered upon a petition concerning an unborn child until after the birth of the child and in respect to a legal parent or parents until the petitioner or petitioners have filed in the termination proceeding a written reaffirmation of their desires as expressed in the petition or in respect to a legal parent or parents until the petitioner or petitioners have been given not less than ten days' notice of a proposal for the entry of judgment and an opportunity to be heard in connection with such

proposal.

(b) Involuntary termination.

(1) The family courts may terminate the parental rights in respect to any child as to any legal parent:

(A) Who has deserted the child without affording means of identification for a period of at least ninety days;

(B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;

(C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;

(D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;

(E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under section 571-11(9), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;

(F) Who is found by the court to be mentally ill or intellectually disabled and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child;

(G) Who is found not to be the child's natural or adoptive father.

(2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under chapter 578, or who is named as the father on the child's birth certificate:

(A) Who falls within subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1);

(B) Whose child is sought to be adopted by the child's stepfather and the stepfather has lived with the child and the child's legal mother for a period of at least one year;

(C) Who is only a concerned father who has failed to file a petition for the adoption of the child or whose petition for the adoption of the child has been denied; or

(D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.

(3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. If personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.

(4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under chapter 578.

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to the father, the court shall conduct a hearing to determine whether notice is required.

If the court finds that good cause exists why notice cannot or should not be given to the child's father, and that the father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern, or responsibility as to the existence or welfare of the child, the court may enter an order authorizing the termination of the father's parental rights and the subsequent adoption of the child without notice to the father.

IDAHO

IDAHO CODE ANN. § 16-1602 (2009). 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. § 16-1608 (2011). EMERGENCY REMOVAL

1) (a) A child may be taken into shelter care by a peace officer without an order issued pursuant to subsection (4) of section 16-1611 or section 16-1619, Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is an abandoned child pursuant to the provisions of chapter 82, title 39, Idaho Code.

(b) An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer without an order, issued pursuant to subsection (5) of section 16-1611, Idaho Code, only where the child is endangered and prompt removal of an alleged offender is necessary to prevent serious physical or mental injury to the child.

(2) When a child is taken into shelter care under subsection (1) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section 16-1615, Idaho Code, and the court orders an adjudicatory hearing.

(3) When an alleged offender is removed from the home under subsection (1)(b) of this section, a motion based on a sworn affidavit by the department must be filed simultaneously with the petition and the court shall determine at a shelter care hearing, held within a maximum of twenty-four (24) hours, excluding Saturdays, Sundays and holidays, whether the relief sought shall be granted, pending an adjudicatory hearing. Notice of such hearing shall be served upon the alleged offender at the time of removal or other protective relief.

ILLINOIS

705 ILL. COMP. STAT. ANN. 405/2-21 (2011). 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.

(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; 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 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. 405/2-3 (2011). 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, 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.

(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, 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.

720 ILL. COMP. STAT. ANN. 5/11-14(D) (2011). PROSTITUTION

.....
(d) Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987, a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 of this Code to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.

325 ILL. COMP. STAT. ANN. 15/2 (2011). DEPARTMENT OF CHILDREN AND FAMILY SERVICES; TREATMENT AND COUNSELING

§ 2. The Department of Children and Family Services shall develop programs and services for the prevention of child sexual abuse and exploitation and shall provide for the treatment and counseling of sexually abused children and their families, where such sexual abuse or exploitation was inflicted by the child's immediate care giver, or any person responsible for the child's welfare, whenever possible, through community based child abuse grants or other appropriate means.

INDIANA

IND. CODE ANN. § 31-35-3-1 (2011) APPLICATION OF CHAPTER

Sec. 1. This chapter applies to the termination of the parent-child relationship between an individual convicted of an offense listed in section 4(1) of this chapter and a child described in section 4(2) of this chapter.

IND. CODE ANN. § 31-35-3-4 (2011) PETITION; CONVICTION OF CERTAIN OFFENSES.

Sec. 4. If:

(1) an individual is convicted of the offense of:

(A) murder (
IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

- (C) voluntary manslaughter (IC 35-42-1-3);
- (D) involuntary manslaughter (IC 35-42-1-4);
- (E) rape (IC 35-42-4-1);
- (F) criminal deviate conduct (IC 35-42-4-2);
- (G) child molesting (IC 35-42-4-3);
- (H) child exploitation (IC 35-42-4-4);
- (I) sexual misconduct with a minor (IC 35-42-4-9); or
- (J) incest (IC 35-46-1-3); and

(2) the victim of the offense:

(A) was less than sixteen (16) years of age at the time of the offense; and

(B) is:

(i) the individual's biological or adoptive child; or

(ii) the child of a spouse of the individual who has committed the offense; the attorney for the department, the child's guardian ad litem, or the court appointed special advocate may file a petition with the juvenile or probate court to terminate the parent-child relationship of the individual who has committed the offense with the victim of the offense, the victim's siblings, or any biological or adoptive child of that individual.

IOWA

IOWA CODE § 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. § 38-2217 (2011). HEALTH SERVICES.

(a) *Physical or mental care and treatment.* (1) When a child less than 18 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, no

consent shall be required to medically examine the child to determine whether the child has been abused or neglected. Unless the child is alleged or suspected to have been abused by the parent or guardian, the investigating officer shall notify or attempt to notify the parent or guardian of the medical examination of the child.

(2) When the health or condition of a child who is subject to jurisdiction of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper.

(3) The custodian or agent of the custodian is the personal representative for the purpose of consenting to disclosure of otherwise protected health information and may give consent to the following:

(A) Dental treatment for the child by a licensed dentist;

(B) diagnostic examinations of the child, including but not limited to the withdrawal of blood or other body fluids, x-rays and other laboratory examinations;

(C) releases and inspections of the child's medical history records;

(D) immunizations for the child;

(E) administration of lawfully prescribed drugs to the child;

(F) examinations of the child including, but not limited to, the withdrawal of blood or other body fluids or tissues for the purpose of determining the child's parentage; and

(G) subject to limitations in K.S.A. 59-3075(e)(4), (5) and (6), and amendments thereto, medical or surgical care determined by a physician to be necessary for the welfare of such child, if the parents are not available or refuse to consent.

(4) When the court has adjudicated a child to be in need of care, the custodian or an agent designated by the custodian is the personal representative for the purpose of consenting to disclosure of otherwise protected health information and shall have authority to consent to the performance and furnishing of hospital, medical, surgical or dental treatment or procedures or mental care or treatment other than inpatient treatment at a state psychiatric hospital, including the release and inspection of medical or hospital records, subject to terms and conditions the court considers proper and subject to the limitations of K.S.A. 59-3075 (e)(4), (5) and (6), and amendments thereto.

(5) Any health care provider who in good faith renders hospital, medical, surgical, mental or dental care or treatment to any child or discloses protected health information as authorized by this section shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

(6) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to provide care and support for a child.

(b) *Care and treatment requiring court action.* If it is brought to the court's attention, while the court is exercising jurisdiction over the person of a child under this code, that the child may be a mentally ill person as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem as defined in K.S.A. 59-29b46, and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 59-2957, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons or the petition provided for in K.S.A. 59-29b57, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for persons with an alcohol or substance abuse problem; or

(2) authorize that the child seek voluntary admission to a treatment facility as provided in K.S.A. 59-2949, and amendments thereto, or K.S.A. 59-29b49, and amendments thereto.

The application to determine whether the child is a mentally ill person or a person with an alcohol or substance abuse problem may be filed in the same proceedings as the petition alleging the child to be a child in need of care, or may be brought in separate proceedings. In either event, the court may enter an order staying any further proceedings under this code until all proceedings have been concluded under the care and treatment act for mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse problem.

**KAN. STAT. ANN. § 38-2259 (2011). EMERGENCY CHANGE OF PLACEMENT;
REMOVAL FROM HOME OF PARENT, FINDINGS OF COURT.**

(a) When an emergency exists requiring immediate action to assure the safety and protection of the child or the secretary is notified that the foster parents or shelter facility refuse to allow the child to remain, the secretary may transfer the child to another foster home or shelter facility without prior court approval. The secretary shall notify the court of the action at the earliest practical time. When the child is removed from the home of a parent after having been placed in the home for a period of six months or longer, the secretary shall present to the court in writing the specific nature of the emergency and reasons why it is contrary to the welfare of the child to remain in the placement and request a finding by the court whether remaining in the home is contrary to the welfare of the child. If the court enters an order the court shall make a finding as to whether an emergency exists. The court shall provide the secretary with a copy of the order. In making the finding, the court may rely on documentation submitted by the secretary or may set

the date for a hearing on the matter. If the secretary requests such a finding, the court shall provide the secretary with a written copy of the finding by the court not more than 45 days from the date of the request.

(b) The court shall not enter an order approving the removal of a child from the home of a parent pursuant to this section unless the court first finds probable cause that:

(1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

KENTUCKY

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.

LOUSINANA

LA. CHILD. CODE. ANN. ART. 603 (2011). DEFINITIONS

As used in this Title:

- (1) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:
 - (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or

National Center for Prosecution of Child Abuse
National District Attorneys Association

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

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

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

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

(6) "Child care agency" means any public or private agency exercising custody of a child.

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

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

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

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

- (a) Homicide.
- (b) Battery.
- (c) Assault.
- (d) Rape.
- (e) Sexual battery.
- (f) Kidnapping.
- (g) Criminal neglect.
- (h) Criminal abandonment.
- (i) Incest.
- (j) Carnal knowledge of a juvenile.
- (k) Indecent behavior with juveniles.
- (l) Pornography involving juveniles.
- (m) Molestation of a juvenile.
- (n) Crime against nature.
- (o) Cruelty to juveniles.
- (p) Contributing to the delinquency or dependency of children.
- (q) Sale of minor children.

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

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

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

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

(15) “Mandatory reporter” is any of the following individuals performing their occupational duties:

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

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

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

(d) “Teaching or child care provider” is any person who provides training and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child.

(e) Police officers or law enforcement officials.

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

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

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

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

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

<Text of par. (17) effective upon appropriation of sufficient funds>

(17) “Newborn” means a child who is not more than thirty days old, as determined within a reasonable degree of medical certainty by an examining physician.

(18) “Other suitable individual” means a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent. Relative for the purpose of this title means an individual with whom the child has established a significant relationship by blood, adoption, or affinity.

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

(20) “Permanent placement” means:

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

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

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

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

<Text of par. (22) effective until appropriation of sufficient funds>

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

<Text of par. (22) effective upon appropriation of sufficient funds>

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

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

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

(25) “Safety plan” means a short-term plan for the purpose of assuring a child's immediate health and safety by imposing conditions for the continued placement of the child with a custodian and terms for contact between the child and his parents or other persons.

LA. CHILD. CODE. ANN. ART. 601 (2011). PURPOSE

The purpose of this Title is to protect children whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children; by providing for the investigation of such complaints; and by providing, if necessary, for the resolution of child in need of care proceedings in the courts. The proceedings shall be conducted expeditiously to avoid delays in achieving permanency for children. This Title is intended to provide the greatest possible protection as promptly as possible for such children. The health, safety, and best interest of the child shall be the paramount concern in all proceedings under this Title. This Title shall be construed in accordance with Article 102. This Title shall be administered and interpreted to avoid unnecessary interference with family privacy and trauma to the child, and yet, at the same time, authorize the protective and preventive intervention needed for the health, safety, and well-being of children.

LA. CHILD. CODE. ANN. ART. 617 (2011). TEMPORARY RESTRAINING ORDER

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse or neglect the petitioner, any children, or any person alleged to be an incompetent. Immediate and present danger of abuse shall constitute good cause for purposes of this Article. The order may include but is not limited to the following:

(1) Directing the defendant to refrain from abusing, neglecting, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the children, or any person alleged to be incompetent, on whose behalf a petition was filed.

(2) Awarding to a party use and possession of specified community property, such as an automobile.

(3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where:

(a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought.

(b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought.

(c) The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.

(4) Prohibiting either party from transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor children.

B. If a temporary restraining order is granted without notice, the matter shall be set within ten days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse or neglect by a preponderance of the evidence. The defendant shall be given notice of the temporary restraining order and the hearing on the rule to show cause by service of process as required by law.

C. During the existence of the temporary restraining order, a party shall have the right to return to the family residence once to recover his or her personal clothing and necessities, provided that the party is accompanied by a law enforcement officer to insure the protection and safety of the parties.

D. If no temporary restraining order has been granted, the court shall issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within ten days from the date of service of the petition, at which time the petitioner must prove the allegations of abuse or neglect by a preponderance of the evidence. The defendant shall be given notice by service of process as required by law.

E. If the hearing pursuant to Paragraph B or D of this Article is continued, the court shall make or extend such temporary restraining orders as it deems necessary. Such continuance shall not exceed ten days.

F. The court may, in its discretion, grant an emergency temporary restraining order outside regular court hours.

LA. CHILD. CODE. ANN. ART. 618 (2011). PROTECTIVE ORDERS; CONTENT; MODIFICATION; SERVICE

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse or neglect of a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to:

(1) Granting the relief enumerated in Article 617.

(2) When there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them.

(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.

(4) Ordering counseling or professional medical treatment for either the defendant or the abused or neglected person, or both.

B. A protective order may be rendered pursuant to this Chapter if the court has jurisdiction over the parties and subject matter and either of the following occurs:

(1) The parties enter into a consent agreement.

(2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.

C. Any protective order issued within this state or outside this state that is consistent with Paragraph B of this Article shall be accorded full faith and credit by the courts of this state and

enforced as if it were the order of the enforcing court.

D. On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order or to include any item that could have been included in the prior order.

E. A protective order made under this Article shall be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction. The clerk of the issuing court shall send a copy of the order or any modification thereof to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the protective order shall be retained on file in the office of the chief law enforcement officer as provided herein until otherwise directed by the court.

F. Any final protective order or approved consent agreement shall be for a fixed period of time, not to exceed six months, and may be extended by the court, after a contradictory hearing, in its discretion. Such protective order or extension thereof shall be subject to a devolutive appeal only.

LA. CHILD. CODE. ANN. ART. 619 (2011). INSTANTER ORDERS OF CUSTODY

A. (1) A peace officer, district attorney, or employee of the local child protection unit of the department may file a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal is necessary to secure the child's protection.

(2) After the complaint has been filed, the parent is without authority to place the child with any individual or institution except the department until legal custody is returned to the parent.

B. The court shall immediately determine whether reasonable efforts have been made by the department to prevent or eliminate the need for the child's removal, including whether the department has requested a temporary restraining order pursuant to Article 617 or a protective order pursuant to Article 618. In making and determining reasonable efforts, the child's health and safety shall be the paramount concern. However, the court may authorize the removal of the child even if the department's efforts have not been reasonable.

C. (1) Upon presentation of the verified complaint, the court shall immediately determine whether emergency removal is necessary to secure the child's protection.

(2) If the court determines that the child's welfare cannot be safeguarded without removal, the court shall immediately issue a written instanter order directing that the child be placed in the provisional custody of a suitable relative or other suitable individual capable of protecting the health and safety of the child or taken into the custody of the state. The order shall contain written findings of fact supporting the necessity for the child's removal in order to safeguard his welfare. If the court determines that emergency removal is not necessary to secure the child's protection, the court shall issue a written order denying the request for custody. If custody is

given to a suitable relative or other suitable individual, the safety plan shall be made an order of the court and shall direct the provisional custodian to adhere to the conditions of the safety plan. The safety plan shall set forth conditions of contact with parents or other third parties.

(3) If the court determines that emergency removal is not necessary to secure the child's protection, the court shall issue a written order denying the request for custody.

D. An instant order shall be executed by either an employee of the local child protection unit or any peace officer having territorial jurisdiction over the child.

E. Any peace officer having territorial jurisdiction over the child is authorized to serve a summons upon a parent or caretaker, commanding him to appear at court for a continued custody hearing. The summons shall expressly notify the parent or caretaker that the court may issue a binding order in his absence if he fails to appear. A copy of the summons shall be filed in the record as proof of service. An employee of the local child protection unit shall provide written notice to the parents or caretaker of the date, time, and location of the continued custody hearing.

LA. CHILD. CODE. ANN. ART. 622 (2011). PLACEMENT PENDING A CONTINUED CUSTODY HEARING

A. Prior to the continued custody hearing required in Article 624, a suitable relative or other suitable individual may seek and obtain an ex parte court order to take provisional custody of the child pending the continued custody hearing. The provisions of Code of Civil Procedure Article 3945 are inapplicable to an ex parte order rendered pursuant to this Paragraph.

B. Unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and his immediate removal is necessary for his protection from further abuse or neglect shall be placed, pending a continued custody hearing, in accordance with this priority:

(1) In the home of a suitable relative who is of the age of majority and with whom the child has been living in a wholesome and stable environment if the relative is willing and able to continue to offer such environment for the child pending an adjudication hearing and if he agrees to the safety plan.

(2) In the home of a suitable relative who is of the age of majority if the relative is willing and able to offer a wholesome and stable environment for the child pending an adjudication hearing and if he agrees to the safety plan.

(3) In the home of a suitable individual who is of the age of majority if he is willing and able to offer a wholesome and stable environment for the child pending an adjudication hearing and if he agrees to the safety plan.

(4) In foster care under the supervision of the department until further orders of the court.

MAINE

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, 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, or a proceeding on a medical treatment petition under subchapter VIII.

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, § 4003 (2011). PURPOSES

Recognizing that the health and safety of children must be of paramount concern and that the right to family integrity is limited by the right of children to be protected from abuse and neglect and recognizing also that uncertainty and instability are possible in extended foster home or institutional living, it is the intent of the Legislature that this chapter:

1. Authorization. Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

2. Removal from parental custody. Provide that children will be taken from the custody of their parents only where failure to do so would jeopardize their health or welfare;

3. Reunification as a priority. Give family rehabilitation and reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible;

3-A. Kinship placement. Place children who are taken from the custody of their parents with an adult relative when possible;

4. Permanent plans for care and custody. Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family. It is the intent of the Legislature that the department reduce the number of children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983; and

5. Report. Require the department to report monthly to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters, beginning in July 2000, on the status of children served by the Bureau of Child and Family Services. The report must include, at a minimum, information on the department's caseload, the location of the children in the department's custody and the number of cases of abuse and neglect that were not opened for assessment. This information must be identified by

program and funding source.

**ME. REV. STAT. ANN. TIT. 22, § 4032 (2011). CHILD PROTECTION PETITION;
PETITIONERS; CONTENT; FILING**

1. Who may petition. Petitions may be brought by:

- A. The department through an authorized agent;
- B. A police officer or sheriff; or
- C. Three or more persons.

2. Contents of petition. A petition must be sworn and include at least the following:

- A. Name, date, place of birth and municipal residence, if known, of each child;
- B. The name and address of the petitioner and the nature of the petitioner's relationship to the child;
- C. Name and municipal residence, if known, of each parent and custodian;
- D. A summary statement of the facts that the petitioner believes constitute the basis for the petition;
- E. An allegation that is sufficient for court action;
- F. A request for specific court action;
- G. A statement that the parents and custodians are entitled to legal counsel in the proceedings and that, if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel;
- H. A statement that petition proceedings could lead to the termination of parental rights under section 4051 et seq.;
- I. A statement explaining the specific reasonable efforts made to prevent the need to remove the child from the home or to resolve jeopardy;
- J. The names of relatives who may be able to provide care for the child; and
- K. The names of relatives who are members of an Indian tribe.

3. Hearing date. On the filing of a petition, the court shall set the earliest practicable time and date for a hearing.

ME. REV. STAT. ANN. TIT. 22, § 4036-B (2011). REMOVAL OF CHILD FROM HOME

1. Application. The provisions of this section apply in any case in which the court orders, or has ordered, the removal of a child from home.

2. Welfare of child. Before a court may order removal of a child from home, the court must specifically find that remaining in the home is contrary to the welfare of the child.

3. Reasonable efforts to prevent removal. The department shall make reasonable efforts to prevent removal of the child from home, unless the court finds the presence of an aggravating factor. In an order providing for removal of the child from home, or within 60 days of the date of removal of the child from home, the court shall make a finding:

A. Whether or not the department has made reasonable efforts to prevent the removal of the child from home; and

B. If the court finds that the department did not make reasonable efforts to prevent the removal of the child from home, whether or not there is an aggravating factor.

3-A. Notification to relatives. Except as required by family or domestic violence safety precautions, the department shall exercise due diligence to identify and provide notice to all known grandparents and other adult relatives within 30 days after the removal of a child from the custody of a parent or custodian. Failure to comply with this provision does not affect service on a parent or custodian.

4. Reasonable efforts to reunify. The department shall make reasonable efforts to rehabilitate and reunify the family as provided in section 4041, subsection 1-A unless the court has ordered that the department need not commence or may cease reunification pursuant to section 4041, subsection 2. In the jeopardy order pursuant to section 4035 and in each judicial review order pursuant to section 4038, the court shall make a finding whether or not the department has made reasonable efforts to rehabilitate and reunify the family.

5. Reasonable efforts to finalize permanency plan. The department shall make reasonable efforts to finalize the permanency plan. In each order determining a permanency plan pursuant to section 4038-B, the court shall make a finding whether or not the department has made reasonable efforts to finalize the permanency plan.

6. Requirements for findings. A court order making any finding required by this section must:

A. Be in writing;

B. State that the finding was based on the specific facts and circumstances relating to the child; and

C. Explicitly document the basis for the finding.

MARYLAND

MD. CODE ANN., HEALTH-GEN. § 15-127 (2011). RAPE AND ABUSE VICTIMS SERVICES

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) “Child” means any individual under the age of 18 years.

(3) “Initial assessment” includes:

(i) A psychological evaluation;

(ii) Parental interview; and

(iii) Medical evaluation.

(4)(i) For purposes of this section, “sexual abuse” means any act that involves sexual molestation or exploitation of a child whether or not the sexual molestation or exploitation of the child is 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.

(ii) “Sexual abuse” includes:

1. Incest, rape, or sexual offense in any degree;

2. Sodomy; and

3. Unnatural or perverted sexual practices.

Costs for providing services

(b) If a physician or a hospital provides any of the services described in subsection (c) of this section to a victim of an alleged rape or sexual offense or a victim of alleged child sexual abuse, the services shall be provided without charge to the individual and the physician or hospital is entitled to be paid by the Department for the costs of providing the services.

Applicable services

(c) The services to which this section applies are:

- (1) A physical examination to gather information and evidence as to the alleged crime;
- (2) Emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination in paragraph (1) of this subsection; and
- (3) For up to 5 hours of professional time to gather information and evidence as to the alleged sexual abuse, an initial assessment of a victim of alleged child sexual abuse by:
 - (i) A physician;
 - (ii) Qualified hospital health care personnel;
 - (iii) A mental health professional; or
 - (iv) An interdisciplinary team expert in the field of child abuse.

Immunity from liability

(d)(1) A physician who examines a victim of alleged child sexual abuse under the provisions of this section is immune from any civil liability that may result from the failure of the physician to obtain consent from the child's parent, guardian, or custodian for the examination or treatment of the child.

(2) The immunity extends to:

- (i) Any hospital with which the physician is affiliated or to which the child is brought; and
- (ii) Any individual working under the control or supervision of the hospital.

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.

MASSCHUSETTS

H.B.3808, 187th Gen. Ass. (mass. 2011). An act relative to the commercial sexual exploitation of people– Signed by Governor November 21, 2011

An Act relative to the commercial exploitation of people.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The definition of “sex offense” in section 178C of chapter 6 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the words “chapter 265”, in line 72, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude under section 50 of said chapter 265; a second or subsequent violation of human trafficking for sexual servitude under section 52 of chapter 265.

SECTION 2. The definition of "sex offense involving a child" in said section 178C of said chapter 6, as so appearing, is hereby amended by inserting after the words “chapter 265”, in line 105, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of section 50 of said chapter 265.

SECTION 3. The definition of "sexually violent offense" in said section 178C of said chapter 6, as so appearing, is hereby amended by inserting after the words “chapter 265”, in line 129, the following words:- ; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude under section 50 of chapter 265; a second or subsequent violation of human trafficking for sexual servitude under section 52 of chapter 265.

SECTION 4. The definition of "sexual assault" in section 1 of chapter 9A of the General Laws, as so appearing, is hereby amended by striking out, in line 19, the words “and 24B of chapter 265” and inserting in place thereof the following words:- , 24B, 26D and 50 of chapter 265.

SECTION 5. Chapter 10 of the General Laws is hereby amended by inserting after section 66 the following section:-

Section 66A. There shall be established and set up on the books of the commonwealth a separate

National Center for Prosecution of Child Abuse

National District Attorneys Association

fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall consist of proceeds of assets seized and forfeited pursuant to sections 55 and 56 of chapter 265 and fines and assessments collected pursuant to sections 50, 51 and 54 of said chapter 265, together with any interest or earnings accrued on such monies through investment or deposit. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34 and 38 of chapter 29 in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer shall transfer funds from the income and receipts of the fund to the victim and witness assistance board, as established in section 4 of chapter 258B, from time to time, at the request of the board. The board shall award and administer grants from the fund, without further appropriation, to public, private non-profit or community-based programs in the commonwealth to provide services to victims of offenses under said sections 50 and 51 of said chapter 265.

The board shall file a report detailing the amount of funds collected and expended from the fund, along with a copy of the written criteria used to expend the funds, to the house and senate committees on ways and means not later than August 15 of each calendar year. Administrative and operational expenses directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel, shall not exceed 5 per cent of the total assets of the fund in any 1 fiscal year. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION 6. Section 21 of chapter 119 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the definition of "51A report", the following 2 definitions:-

"Advocate", an employee of a governmental or non-governmental organization or entity providing appropriate services, or a similar employee of the department of children and families who has been trained to work and advocate for the needs of sexually exploited children.

"Appropriate services", the assessment, planning and care provided by a state agency or non-governmental organization or entity, through congregate care facilities, whether publicly or privately funded, emergency residential assessment services, family-based foster care or the community, including food, clothing, medical care, counseling and appropriate crisis intervention services, provided: (i) that such agency, organization or entity has expertise in providing services to sexually exploited children or children who are otherwise human trafficking victims; and (ii) that such services are provided in accordance with such regulations that the department of children and families may adopt or the policies of such department.

SECTION 7. The definition of "child in need of services" in said section 21 of said chapter 119, as so appearing, is hereby amended by striking out the words "or (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter" and inserting in place thereof the

following words :- (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter; or (e) is a sexually exploited child.

SECTION 8. Said section 21 of said chapter 119, as so appearing, is hereby further amended by inserting after the definition of "Serious bodily injury", the following definition:-

"Sexually exploited child", any person under the age of 18 who has been subjected to sexual exploitation because such person:

(1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;

(2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;

(3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or

(4) engages in common night walking or common streetwalking under section 53 of chapter 272.

SECTION 9. Said chapter 119 is hereby further amended by inserting after section 39J the following 2 sections:-

Section 39K. (a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child's welfare. If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24. Sexually exploited children shall have access to an advocate. The advocate or a member of the multi-disciplinary service team established under section 51D shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

(b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person.

(c) In determining the need for and capacity of the services that may be provided under this

section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists.

(d) The commissioner of the department may, subject to appropriation, contract with non-governmental organizations or entities with experience working with sexually exploited children to train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties. The training shall include, but not be limited to, awareness and compliance with the provisions of this section, identification of, access to, and the provision of services for sexually-exploited children and any other services the department deems necessary.

(e) The department may apply to the victim and witness assistance board for grants from the Victims of Human Trafficking Trust Fund, established in section 66A of chapter 10,, grants from the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention or any other federal agency, or grants from any other private source to fund the law enforcement training and services for sexually-exploited children.

(f) The department shall adopt regulations to carry out this section.

Section 39L. (a) Before or after arraignment in any juvenile delinquency or criminal proceeding against a sexually exploited child alleging that such juvenile or such defendant violated the prohibition against common night walking or common streetwalking under section 53 of chapter 272 or the provisions of subsection (a) of section 53A of said chapter 272, there shall be a presumption that a care and protection petition on behalf of such child, or a child in need of services petition under section 39E, shall be filed. Any person, including the juvenile, may file a care and protection petition on behalf of such child, including a petition for emergency commitment under section 24, or a parent or a police officer may file a child in need of services petition under section 39E.

(b) The court may appoint a guardian ad litem and shall hold a hearing on such petition. The court may allow a reasonable delay in the proceedings, including any arraignment, to consider the petition. The necessary findings of fact to support the court's decision shall be reduced to writing and made part of the court record.

(c) Upon a motion by a party to the juvenile delinquency or criminal proceeding or by a guardian ad litem, unless the district attorney or the attorney general objects, and upon a finding that a child alleged to be a juvenile delinquent by reason of violating section 53 of chapter 272 or subsection (a) of section 53A of said chapter 272 is a child in need of care and protection or a child in need of services, the court shall, if arraignment has not yet occurred, indefinitely stay arraignment and place the proceeding on file. If the court finds that the child has failed to substantially comply with the requirements of services or that the child's welfare or safety so requires, the court may remove the proceeding from file, arraign the child and restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings. If arraignment has already occurred, unless the district attorney or the attorney general objects, the court shall place the child on pretrial

probation under section 87 of chapter 276. If appropriate, the conditions of such probation shall include, but not be limited to, requiring the child to substantially comply with all lawful orders of the court, including orders relating to any care and protection or child in need of services proceeding, and the child shall also comply with the guidance and services of the department or any designated non-governmental service provider. If the child fails to substantially comply with the conditions of probation or if the child's welfare or safety so requires, the court may in its discretion restore the delinquency or criminal complaint to the docket for trial or further proceedings in accordance with the regular course of such proceedings.

SECTION 10. Section 51A of said chapter 119, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 5 to 9, inclusive, the words "or (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect" and inserting in place thereof the following words:-; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

SECTION 11. Subsection (a) of section 51B of said chapter 119, as so appearing, is hereby amended by adding the following sentence:- The department shall immediately report to the district attorney and local law enforcement authorities, a sexually exploited child or a child who is otherwise a human trafficking victim, regardless of whether the child is living with a parent, guardian or other caretaker.

SECTION 12. Clause (3) of the second paragraph of subsection (k) of said section 51B of said chapter 119, as so appearing, is hereby amended by inserting after the words "chapter 272" the following words:- or is a sexually exploited child or a child who is otherwise a human trafficking victim.

SECTION 13. Section 51D of said chapter 119, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

For 51A reports specifically involving a sexually exploited child or a child who is otherwise a human trafficking victim, the multi-disciplinary service team may consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children or children who are otherwise human trafficking victims including, but not limited to, a police officer, as defined by section 1 of chapter 90C, or other person designated by a police chief, as defined in said section 1 of said chapter 90C, an employee of the department of children and families, a representative of the appropriate district attorney, a social service provider, a medical professional or a mental health professional.

SECTION 14. Said section 51D of said chapter 119, as so appearing, is hereby further amended by inserting after the fifth paragraph the following paragraph:-

For 51B reports specifically involving a sexually exploited child, the purpose of the multi-disciplinary service team shall be to determine whether the child has been sexually exploited or is otherwise a human trafficking victim and to recommend a plan for services to the department that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services.

SECTION 15. Section 55B of said chapter 119, as so appearing, is hereby amended by inserting after the figure “23B”, in line 17, the following words:- or section 50.

SECTION 16. Section 58 of said chapter 119, as so appearing, is hereby amended by striking out, in line 13, the words “or section 23B” and inserting in place thereof the following words:- , section 23B or section 50.

SECTION 17. Chapter 233 of the General Laws is hereby amended by inserting after section 20L the following section:-

Section 20M. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Confidential communication", information transmitted in confidence by and between a victim and a victim's caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term confidential communication shall include all information received by a victim's caseworker which arises out of and in the course of such counseling and assisting including, but not limited to, reports, records, working papers or memoranda.

"Human trafficking victim" or “victim”, a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265.

"Human trafficking victims' caseworker,” a person who is employed by or volunteers with a program serving human trafficking victims, who has undergone a minimum of 25 hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a human trafficking victim program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.

"Human trafficking victims' program", any refuge, shelter, office, safe house, institution or center established for the purpose of offering assistance to human trafficking victims through crisis intervention, medical, legal or support counseling.

(b) A human trafficking victims' caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child, to whom such confidential

communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is contained in the communication before allowing such discovery or the introduction of such evidence.

(c) During the initial meeting between a caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of the confidentiality of communications between a caseworker and victim and the limitations thereto.

SECTION 18. Section 21B of said chapter 233, as appearing in the 2010 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Evidence of the reputation of a victim's sexual conduct shall not be admissible in an investigation or proceeding before a grand jury or a court of the commonwealth for a violation of sections 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 50 or 51 of chapter 265.

SECTION 19. Section 4C of chapter 260 of the General Laws, as so appearing, is hereby amended by striking out, in line 12, the words "or twenty-four B" and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 20. Said chapter 260 of the General Laws is hereby further amended by inserting after section 4C the following section:-

Section 4D. (a) A victim of trafficking of persons for sexual servitude under section 50 of chapter 265 or of trafficking of persons for forced services under section 51 of said chapter 265 may bring a civil action for trafficking of persons for forced labor or services or sexual servitude. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages may be awarded on proof of actual damages if the defendant's acts were willful and malicious.

(b) A civil action for trafficking of persons for forced labor or services or sexual servitude shall be commenced within 3 years of the date on which the human trafficking victim was freed from human trafficking or, if the victim was a child during the commission of the offense, within 3 years after the date the plaintiff attains the age of 18.

(c) If a person entitled to sue is under a disability at the time the cause of action accrues, such that it is impossible or impracticable for such person to bring an action, the time during which the plaintiff is under a disability shall toll the statute until the disability ceases.

(d) In the event that a child plaintiff is under a disability, the failure of the child's guardian ad litem to bring a plaintiff's action within the applicable limitation period shall not prejudice the plaintiff's right to do so after his disability ceases.

(e) A defendant shall be estopped from asserting a defense of the statute of limitations if the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the action, preventing the plaintiff from filing the action or threats made by the defendant that caused duress upon the plaintiff.

(f) Any legal guardian, family member, representative of the human trafficking victim or court appointee may represent the human trafficking victim's rights, in the event the human trafficking victim is deceased or otherwise unable to represent his own interests in court.

SECTION 21. Section 24C of chapter 265 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "sixty-five", in line 7, the following words:- , or an arrest, investigation or complaint for trafficking of persons under section 50 of said chapter 265.

SECTION 22. Said chapter 265 is hereby further amended by inserting after section 26C the following section:-

Section 26D. (a) As used in this section, the term "entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) As used in this section, the term "electronic communication" shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.

(c) Whoever, by electronic communication, knowingly entices a child under the age of 18 years, to engage in prostitution in violation of section 50 or section 53A of chapter 272, human trafficking in violation of section 50, 51, 52 or 53 or commercial sexual activity as defined in section 49, or attempts to do so, shall be punished by imprisonment in a house of correction for not more than 2 ½ years or in the state prison for not more than 5 years or by a fine of not less than \$2,500, or by both such fine and imprisonment.

(d) Whoever, after having been convicted of, or adjudicated delinquent by reason of a violation of this section, commits a second or subsequent such violation, shall be punished by imprisonment in the state prison for not less than 5 years and by a fine of not less than \$10,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release or furlough or receive any deduction from the sentence for good conduct until that person has served 5 years of such sentence.

SECTION 23. Said chapter 265 of the General Laws is hereby amended by adding after section 48 the following 9 sections:-

Section 49. As used in sections 50 to 51, inclusive, the following words shall, unless the context

clearly requires otherwise, have the following meanings:

“Commercial sexual activity”, any sexual act on account of which anything of value is given, promised to or received by any person.

“Financial harm”, a detrimental position in relation to wealth, property or other monetary benefits that occurs as a result of another person’s illegal act including, but not limited to, extortion under by section 25, a violation of section 49 of chapter 271 or illegal employment contracts.

"Forced services", services performed or provided by a person that are obtained or maintained by another person who: (i) causes or threatens to cause serious harm to any person; (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) engages in extortion under section 25; or (vi) causes or threatens to cause financial harm to any person.

"Services", acts performed by a person under the supervision of or for the benefit of another including, but not limited to, commercial sexual activity and sexually-explicit performances.

“Sexually-explicit performance”, an unlawful live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

Section 50. (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.

(d) A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

Section 51. (a) Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of trafficking of persons for forced services and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.

(b) Whoever commits the crime of trafficking of persons for forced services upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.

(c) A business entity that commits trafficking of persons for forced labor services shall be punished by a fine of not more than \$1,000,000.

(d) A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of person for forced labor or services shall be civilly liable for an offense under this section.

Section 52. (a) Whoever, after having been convicted of or adjudicated delinquent by reason of a violation of section 50 or 51, commits a second or subsequent violation of either section 50 or 51, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. Such sentence shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. No prosecutions commenced under this section shall be continued without a finding or placed on file.

(b) In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

Section 53. (a) Whoever: (i) recruits, entices, harbors, transports, delivers or obtains by any means, another person, intending or knowing that an organ, tissue or other body part of such person will be removed for sale, against such person's will; or (ii) knowingly receives anything of value, directly or indirectly as a result of a violation of clause (i) shall be guilty of organ trafficking and punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, or both.

(b) Whoever commits the crime of organ trafficking upon a person under 18 years of age shall be punished by imprisonment in the state prison for 5 years. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from such sentence for good conduct until having served 5 years of such sentence.

Section 54. The court shall transmit fines collected pursuant to sections 50 and 51 to the state treasurer. The treasurer shall deposit such fines into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

Section 55. All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B.

Section 56. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 or 51;

(ii) all books, records and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51;

(iii) all negotiable instruments, securities or other things of value furnished or intended to be

furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments and securities used or intended to be used to facilitate any violation of section 50 or 51; and

(iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part to commit or to facilitate any violation of section 50 or 51.

No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive, of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under this section.

(c) The court shall order forfeiture of all conveyances and real property subject to forfeiture under this section, except as follows:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of section 50 or 51;

(ii) no conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, of the commonwealth or of any state; and

(iii) no conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in violation of section 50 or 51.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real property or other things of value or having final jurisdiction over any related criminal proceeding brought under section 50 or 51. In all such suits in which the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The owner of the conveyance or real property, or other person claiming thereunder, shall have the burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property or other things of value

and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 50 or 51. At such hearing, the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.

(e) The final order of the court shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

(f) Any officer, department, or agency having custody of any property subject to forfeiture under this section or having disposed of the property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of said property, to whom it delivered the property, the date and manner of disposition of the property, and the exact kinds, quantities and forms of the property. The records shall be open to inspection by all federal and state officers charged with enforcement of federal and state human trafficking laws. Persons making final disposition of the property under court order shall report, under oath, to the court the exact circumstances of such disposition.

(g) During the pendency of the proceedings, the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody including, but not limited to: an order that the commonwealth remove the property if possible and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and that a substitute custodian be appointed to manage such property. Property taken or detained under this section shall not be replevable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of the property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution and return thereof shall be subject to chapter 276, so far as applicable.

(h) A district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought, to the division of capital asset management and maintenance office of seized property management, established under section 47 of chapter 94C. The office of seized property management shall preserve and manage the property in a reasonable fashion and dispose of the property upon a judgment ordering forfeiture, and to enter into contracts to preserve, manage and dispose of the property. The office of seized property management may receive initial funding from the special

law enforcement trust funds of the attorney general and each district attorney under paragraph (f) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in paragraph (d).

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town wherein the affected real property lies, and a description of the real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

Section 57. In any prosecution or juvenile delinquency proceeding of a person who is a human trafficking victim, as defined by section 20M of chapter 233, it shall be an affirmative defense to charges of engaging in common night walking or common streetwalking in violation of section 53 of chapter 272 and to a violation of section 53A of said chapter 272 that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced.

SECTION 24. Chapter 272 of the General Laws is hereby amended by striking out section 8, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 8. Whoever solicits or receives compensation for soliciting for a prostitute shall be punished by imprisonment in a house of correction for not more than 2 and one-half years, or by a fine of not less than \$1,000 and not more than \$5,000 or by both such imprisonment and fine.

SECTION 25. Said chapter 272 is hereby further amended by striking out section 53A, as so appearing, and inserting in place thereof the following section:-

Section 53A. (a)Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment in the house of correction for not more than 1 year or by a fine of not more than \$500, or by both such imprisonment and

fine, whether such sexual conduct occurs or not.

(b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another person, shall be punished by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not less than \$1,000 and not more than \$5,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction for not more than 2 and one-half years and by a fine of not less than \$3,000 and not more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not; provided, however, that a prosecution commenced under this section shall not be continued without a finding or placed on file.

SECTION 26. Section 87 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the words “or twenty-four B” and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 27. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words “or 24B,” and inserting in place thereof the following words:- , 24B or subsection (b) of section 50.

SECTION 28. Said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out, in line 12, the words “and 24” and inserting in place thereof the following words:- , 24 or subsection (a) of section 50.

SECTION 29. Said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out, in line 25, the words “or 26A” and inserting in place thereof the following words:- 26A or 50.

SECTION 30. Section 16D of chapter 278 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words “or twenty-four B” and inserting in place thereof the following words:- , 24B or 50.

SECTION 31. (a) There shall be an interagency task force to address all aspects of human trafficking, including sex trafficking and labor trafficking. The task force shall consist of the attorney general or the attorney general’s designee, who shall serve as the chair, the colonel of state police or the colonel’s designee, a representative of the Massachusetts police chiefs association, a representative of the Massachusetts district attorneys’ association, the commissioner of the Boston police department or the commissioner’s designee, the director of the division of professional licensure or the director’s designee, a representative of the Massachusetts office for victim assistance, the director of the department of labor standards or

the director's designee, the commissioner of the department of children and families or the commissioner's designee, the secretary of the executive office of public safety or the secretary's designee, the commissioner of the office of probation or the commissioner's designee; a representative of a group dedicated to immigrant and refugee issues appointed by the governor; a representative of a group dedicated to the prevention of violence against women appointed by the governor; a representative of an entity dedicated to prevention of and intervention in the trafficking of children appointed by the governor; a survivor of human trafficking appointed by the governor; a human trafficking attorney appointed by the governor; a human trafficking caseworker appointed by the governor; a mental health professional appointed by the governor and a university researcher with a background in human trafficking appointed by the governor.

(b) Subject to appropriation, the task force shall:

(i) coordinate the collection and sharing of human trafficking data among government agencies; provided, however, that such data collection shall respect the privacy of victims of human trafficking; coordinate strategies and make recommendations for law enforcement to share information for the purposes of detecting individuals and groups engaged in human trafficking;

(ii) review and recommend policies and procedures to enable state government to work with non-governmental organizations and other elements of civil society to prevent human trafficking and to protect and provide assistance to victims of trafficking;

(iii) identify and review the existing services and facilities that meet the needs of victims of human trafficking including, but not limited to, health and mental health services, housing, education and job training, legal services and victim compensation;

(iv) evaluate approaches to increase public awareness of human trafficking and offer recommendations for programs and educational and training opportunities for law enforcement and social service providers including, but not limited to, methods used to identify human trafficking victims including preliminary interviewing and questioning techniques, methods of protecting the special needs of women and child human trafficking victims, developments in state and federal laws regarding human trafficking and methods to increase effective collaboration between state and local agencies, law enforcement, social service providers and non-governmental organizations;

(v) examine ways to curtail the demand side of trafficking such as self sustaining first offender diversion programs;

(vi) examine the costs associated with establishing a safe house pilot program for adult and child victims of human trafficking and identify public and private funding sources that may be used to develop and implement a safe house pilot program;

(vii) examine cost-effective notices, announcements or advertisements that may be displayed in public places, such as airports, train stations, bus stations, hotels, massage parlors, spas, strip clubs and other sexually-oriented businesses providing information relating to services for

human trafficking victims;

(viii) recommend strategy and relevant methodologies for training providers in health and human services in the recognition of signs and circumstances indicating that an individual is the victim of human trafficking and the appropriate steps to report the individual to the appropriate law enforcement personnel or agencies;

(ix) recommend ways to develop and promulgate educational materials and health curricula that may be used by school administrators and educators to identify human trafficking victims and the appropriate actions to be undertaken when such victims are identified and to educate school officials as to the scope and magnitude of human trafficking in the nation and the commonwealth including, but not limited to, how to prevent it and developing a parent guide and teacher training material on internet safety and methods of preventing the exploitation of minors over the internet; and

(x) submit a report of its findings and recommendations to the clerks of the senate and the house of representatives who shall forward the report to the chairs of the joint committee on the judiciary not later than 18 months after the effective date of this act. The task force shall determine if subsequent reports are necessary in order to properly address human trafficking

MICHIGAN

MICH. COMP. LAWS SERV. § 722.622 (2011). DEFINITIONS.

Sec. 2. As used in this act:

(a) “Adult foster care location authorized to care for a child” means an adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, in which a child is placed in accordance with section 5 of 1973 PA 116, MCL 722.115.

(b) “Attorney” means, if appointed to represent a child under the provisions referenced in section 10, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(c) “Central registry” means the system maintained at the department that is used to keep a record of all reports filed with the department under this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

(d) “Central registry case” means a child protective services case that the department classifies under sections 8 and 8d as category I or category II. For a child protective services case that was investigated before July 1, 1999, central registry case means an allegation of child abuse or neglect that the department substantiated.

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

(f) “Child abuse” means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

(g) “Child care organization” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) “Child care provider” means an owner, operator, employee, or volunteer of a child care organization or of an adult foster care location authorized to care for a child.

(i) “Child care regulatory agency” means the department of consumer and industry services or a successor state department that is responsible for the licensing or registration of child care organizations or the licensing of adult foster care locations authorized to care for a child.

(j) “Child neglect” means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(k) “Citizen review panel” means a panel established as required by section 106 of title I of the child abuse prevention and treatment act, Public Law 93-247, 42 U.S.C. 5106a.

(l) “Member of the clergy” means a priest, minister, rabbi, Christian science practitioner, or other religious practitioner, or similar functionary of a church, temple, or recognized religious body, denomination, or organization.

(m) “Controlled substance” means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(n) “CPSI system” means the child protective service information system, which is an internal data system maintained within and by the department, and which is separate from the central registry and not subject to section 7.

(o) “Department” means the family independence agency.

(p) “Director” means the director of the department.

- (q) “Expunge” means to physically remove or eliminate and destroy a record or report.
- (r) “Lawyer-guardian ad litem” means an attorney appointed under section 10 who has the powers and duties referenced by section 10.
- (s) “Local office file” means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.
- (t) “Nonparent adult” means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:
- (i) Has substantial and regular contact with the child.
 - (ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.
 - (iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.
- (u) “Person responsible for the child's health or welfare” means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:
- (i) A licensed or registered child care organization.
 - (ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.
- (v) “Relevant evidence” means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence.
- (w) “Sexual abuse” means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.
- (x) “Sexual exploitation” includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.
- (y) “Specified information” means information in a children's protective services case record related specifically to the department's actions in responding to a complaint of child abuse or neglect. Specified information does not include any of the following:

(i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

(iv) Any information not related to the department's actions in responding to a report of child abuse or neglect.

(z) "Structured decision-making tool" means the department document labeled "DSS-4752 (P3) (3-95)" or a revision of that document that better measures the risk of future harm to a child.

(aa) "Substantiated" means a child protective services case classified as a central registry case.

(bb) "Unsubstantiated" means a child protective services case the department classifies under sections 8 and 8d as category III, category IV, or category V.

MICH. COMP. LAWS § 712A.19B (2011). 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 or a permanency planning hearing under section 19a of this chapter 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 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 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.

MICH. COMP. LAWS SERV. § 722.626 (2011). DETENTION OF CHILD IN TEMPORARY PROTECTIVE CUSTODY; PRELIMINARY HEARING; EXAMINATIONS; REPORT; MEDICAL EVALUATION.

Sec. 6. (1) If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12A of the probate code of 1939, 1939 PA 288, MCL 712A.14, or order the child released to the child's parent, guardian, or custodian.

(2) When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies. The physician's written report to the department shall contain summaries of the evaluation, including medical test results.

(3) If a report is made by a person other than a physician, or if the physician's report is not complete, the department may request a court order for a medical evaluation of the child. The department shall have a medical evaluation made without a court order if either of the following occurs:

(a) The child's health is seriously endangered and a court order cannot be obtained.

(b) The child is displaying symptoms suspected to be the result of exposure to or contact with methamphetamine production.

MINNESOTA

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. § 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.

MISSISSIPPI

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.

MISS. CODE ANN. § 13-1-405 (2011). USE OF CLOSED CIRCUIT TELEVISION

(1) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in § 13-1-411, that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court.

(2) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion.

(3) Upon stipulation of the parties, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting concerning the offense to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(4) Closed circuit television testimony may be taken by any method not inconsistent with the Mississippi Rules of Civil Procedure and the Mississippi Uniform Criminal Rules of Circuit Court Practice. After a determination that the defendant's presence would cause a substantial likelihood of traumatic emotional or mental distress to the child, the judge may exclude the defendant from the room where the testimony is taken. In any case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(5) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this section.

(6) All parties must be represented by counsel at any taking of any testimony under this section.

MISS. CODE ANN. § 99-1-27 (2011). SEX OFFENSE VICTIMS; INVESTIGATIONS; POLYGRAPH TESTS

(1) No law enforcement officer, prosecutor or other government official shall ask or require an adult, youth or child victim of a sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense.

(2) The refusal of a victim to submit to an examination described above shall not prevent the investigation of the offense.

(3) For purposes of this section, a “sex offense” shall have the meaning ascribed in Section 45-33-23(g).

MISSOURI

MO. REV. STAT. §566.212 (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.

MO. REV. STAT. §566.223 (2011). VICTIM RIGHTS AND PROTECTION—DEFENSE-IDENTIFICATION OF VICTIMS OF TRAFFICKING, PROCEDURES, SERVICES—VICTIM OF TRAFFICKING, CIVIL ACTION—ATTORNEY GENERAL, CIVIL ACTION

1. Any individual who is alleging that a violation of sections 566.200 to 566.221 has occurred against his or her person shall be afforded the rights and protections provided in the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.
2. It is an affirmative defense for the offense of prostitution under section 567.020 that the defendant engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or threatened use of, unlawful physical force upon himself or herself or a third person, which force or threatened force a person of reasonable firmness in his or her

situation would have been unable to resist.

3. The department of public safety is authorized to establish procedures for identifying victims of trafficking under sections 566.200 to 566.223. The department may establish training programs as well as standard protocols for appropriate agencies to educate officials and employees on state statutes and federal laws regulating human trafficking and with the identification and assistance of victims of human trafficking. Such agencies may include but not be limited to state employees and contractors, including the children's division of the department of social services, juvenile courts, state law enforcement agencies, health care professionals, and runaway and homeless youth shelter administrators.

4. As soon as possible after a first encounter with a person who reasonably appears to a law enforcement agency to be a victim of trafficking as defined in section 566.200, that agency or office shall notify the department of social services and, where applicable, juvenile justice authorities that the person may be a victim of trafficking, in order that such agencies may determine whether the person may be eligible for state or federal services, programs, or assistance.

5. The department of social services may coordinate with relevant state, federal, and local agencies to evaluate appropriate services for victims of trafficking. State agencies may implement programs and enter into contracts with nonprofit agencies, domestic and sexual violence shelters, and other nongovernment organizations to provide services to confirmed victims of trafficking, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, alcohol and drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training, and placement assistance.

6. A victim of trafficking may bring a civil action against a person or persons who plead guilty to or are found guilty of a violation of section 566.203, 566.206, 566.209, 566.212, or 566.213, to recover the actual damages sustained by the victim, court costs, including reasonable attorney's fees, and punitive damages, when determined to be appropriate by the court. Any action commenced under this section shall be filed within ten years after the later of:

- (1) The final order in the related criminal case;
- (2) The victim's emancipation from the defendant; or
- (3) The victim's eighteenth birthday.

7. The attorney general may bring a civil action, in the circuit court in which the victim of trafficking was found, to recover from any person or entity that benefits, financially or by receiving anything of value, from violations of section 566.203, 566.206, 566.209, 566.212, or 566.213, a civil penalty of not more than fifty thousand dollars for each violation of section 566.203, 566.206, 566.209, 566.212, or 566.213, and injunctive and other equitable relief as the court may, in its discretion, order. The first priority of any money or property collected under

such an action shall be to pay restitution to the victims of trafficking on whose behalf the civil action was brought.

MO. REV. STAT. § 491.015 (2011). PROSECUTING WITNESS IN CERTAIN CASES NOT TO BE INTERROGATED AS TO PRIOR SEXUAL CONDUCT

1. In prosecutions under chapter 566, RSMo, or prosecutions related to sexual conduct under chapter 568, RSMo, opinion and reputation evidence of the complaining witness' prior sexual conduct is inadmissible; evidence of specific instances of the complaining witness' prior sexual conduct or the absence of such instances or conduct is inadmissible, except where such specific instances are:

- (1) Evidence of the sexual conduct of the complaining witness with the defendant to prove consent where consent is a defense to the alleged crime and the evidence is reasonably contemporaneous with the date of the alleged crime; or
- (2) Evidence of specific instances of sexual activity showing alternative source or origin of semen, pregnancy or disease;
- (3) Evidence of immediate surrounding circumstances of the alleged crime; or
- (4) Evidence relating to the previous chastity of the complaining witness in cases, where, by statute, previously chaste character is required to be proved by the prosecution.

2. Evidence of the sexual conduct of the complaining witness offered under this section is admissible to the extent that the court finds the evidence relevant to a material fact or issue.

3. If the defendant proposes to offer evidence of the sexual conduct of the complaining witness under this section, he shall file with the court a written motion accompanied by an offer of proof or make an offer of proof on the record outside the hearing of the jury. The court shall hold an in camera hearing to determine the sufficiency of the offer of proof and may at that hearing hear evidence if the court deems it necessary to determine the sufficiency of the offer of proof. If the court finds any of the evidence offered admissible under this section the court shall make an order stating the scope of the evidence which may be introduced. Objections to any decision of the court under this section may be made by either the prosecution or the defendant in the manner provided by law. The in camera hearing shall be recorded and the court shall set forth its reasons for its ruling. The record of the in camera hearing shall be sealed for delivery to the parties and to the appellate court in the event of an appeal or other post trial proceeding.

MONTANA

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.

MONT. CODE ANN. § 41-3-423 (2011). REASONABLE EFFORTS REQUIRED TO PREVENT REMOVAL OF CHILD OR TO RETURN—EXEMPTION—FINDINGS—PERMANENCY PLAN

(1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must 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.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302.

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. § 45-5-511 (2011). PROVISIONS GENERALLY APPLICABLE TO SEXUAL CRIMES

(1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that the offender reasonably believed the child to be above that age. The belief may not be considered reasonable if the child is less than 14 years old.

(2) Evidence concerning the sexual conduct of the victim is inadmissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

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.

NEB. REV. STAT. ANN. § 27-412 (2011). SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM’S PAST SEXUAL BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

NEVADA

NEV. REV. STAT. ANN. § 128.105 (2011). 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 (2011). 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.

NEV. REV. STAT. ANN. § 432B.020 (2011). "ABUSE OR NEGLECT OF A CHILD" DEFINED.

1. "Abuse or neglect of a child" means, except as otherwise provided in subsection 2:

(a) Physical or mental injury of a nonaccidental nature;

(b) Sexual abuse or sexual exploitation; or

(c) Negligent treatment or maltreatment as set forth in NRS 432B.140,

of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

2. A child is not abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:

(a) The parent of the child delivers the child to a provider of emergency services pursuant to NRS 432B.630, if the parent complies with the requirements of paragraph (a) of subsection 3 of that section; or

(b) The parent or guardian of the child, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.

3. As used in this section, “allow” means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.

NEV. REV. STAT. ANN. § 432B.390 (2011). PLACEMENT OF CHILD IN PROTECTIVE CUSTODY.

1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:

(a) May place a child in protective custody without the consent of the person responsible for the child's welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

2. When an agency which provides child welfare services receives a report pursuant to subsection 2 of NRS 432B.630, a designee of the agency which provides child welfare services shall immediately place the child in protective custody.

3. If there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, a protective custody hearing must be held pursuant to NRS 432B.470, whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides child welfare services becomes aware that there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, that agency shall immediately notify the agency which provides child welfare services and a protective custody hearing must be scheduled.

4. An agency which provides child welfare services shall request the assistance of a law enforcement agency in the removal of a child if the agency has reasonable cause to believe that

the child or the person placing the child in protective custody may be threatened with harm.

5. Before taking a child for placement in protective custody, the person taking the child shall show his or her identification to any person who is responsible for the child and is present at the time the child is taken. If a person who is responsible for the child is not present at the time the child is taken, the person taking the child shall show his or her identification to any other person upon request. The identification required by this subsection must be a single card that contains a photograph of the person taking the child and identifies the person as a person authorized pursuant to this section to place a child in protective custody.

6. A child placed in protective custody pending an investigation and a hearing held pursuant to NRS 432B.470 must be placed, except as otherwise provided in NRS 432B.3905, in the following order of priority:

(a) In a hospital, if the child needs hospitalization.

(b) With a person who is related within the fifth degree of consanguinity or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

(c) In a foster home that is licensed pursuant to chapter 424 of NRS.

(d) In any other licensed shelter that provides care to such children.

7. Whenever possible, a child placed pursuant to subsection 6 must be placed together with any siblings of the child. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

8. A person placing a child in protective custody pursuant to subsection 1 shall:

(a) Immediately take steps to protect all other children remaining in the home or facility, if necessary;

(b) Immediately make a reasonable effort to inform the person responsible for the child's welfare that the child has been placed in protective custody; and

As soon as practicable, inform the agency which provides child welfare services and the appropriate law enforcement agency, except that if the placement violates the provisions of NRS 432B.3905, the person shall immediately provide such notification.

9. If a child is placed with any person who resides outside this State, the placement must be in accordance with NRS 127.330.

10. As used in this section, “fictive kin” means a person who is not related by blood to a child but who has a significant emotional and positive relationship with the child.

NEW HAMPSHIRE

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.

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. § 169-C:2 (2011). PURPOSE.

I. It is the purpose of this chapter, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered and to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in his own home, the care, emotional security, guidance and control that will promote the child's best interest; and, if the child should be removed from the control of his parents, guardian or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- (a) Protect the safety of the child.
- (b) Preserve the unity of the family whenever possible.
- (c) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.
- (d) Take such action as may be necessary to prevent abuse or neglect of children.
- (e) Provide protection, treatment and rehabilitation, as needed, to children placed in alternative care.

II. This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

- (a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing him with the protection, care, treatment, counselling, supervision, and rehabilitative resources which he needs and has a right to receive.
- (b) To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his home community and in a family environment by preserving the unity of the family and separating the child from his parents only when the safety of the child is in danger or when it is clearly necessary for his welfare or the interests of the public safety and when it can be clearly shown that a change in custody and control will plainly better the child; and
- (c) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

N.H. REV. STAT. ANN. § 169-C:6 (2011). PROTECTIVE CUSTODY.

I. A police or juvenile probation and parole officer may take a child into protective custody without the consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for

a court order.

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform both parents or other persons legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to both parents and all parties designated by the petitioner or the court.

V. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact a judge or clerk immediately for an order to remove the child. Prior to any order authorizing foster placement, the child protective service worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.

VI. The court having jurisdiction over a child who appears to be abused or neglected, and in imminent danger may issue ex parte orders pursuant to RSA 169-C:6-a, permitting the child or the alleged perpetrator to be removed from the home at the request of the department or a law enforcement officer.

VII. No child taken into protective custody pursuant to this section shall be securely detained.

VIII. Unless otherwise ordered by the court, the refusal of a parent or other person having control of a child to administer or consent to the administration of any psychotropic drug to such child shall not, in and of itself, constitute grounds for the police or a juvenile probation and parole officer to take the child into custody, or for the court to order that such child be taken into

custody. However, if the administration of a decreasing dose of the drug is required during withdrawal from the medication, the refusal may constitute grounds for taking the child into protective custody.

N.H. REV. STAT. ANN. § 633:7 (2011). TRAFFICKING IN PERSONS.

I. (a) It is a class A felony to knowingly subject a person to involuntary servitude, where the compulsion is accomplished by any of the following means:

- (1) Causing or threatening to cause serious harm to any person.
 - (2) Confining the person unlawfully as defined in RSA 633:2, II, or threatening to so confine the person.
 - (3) Abusing legal process or threatening to bring legal action against the person relating to the person's legal status or potential criminal liability.
 - (4) Destroying, concealing, removing, confiscating, or otherwise making unavailable to that person any actual or purported passport or other immigration document, or any other actual or purported government identification document.
 - (5) Threatening to commit a crime against the person.
 - (6) False promise relating to the terms and conditions of employment, education, marriage, or financial support.
 - (7) Threatening to reveal any information sought to be kept concealed by the person which relates to the person's legal status or which would expose the person to criminal liability.
 - (8) Facilitating or controlling the person's access to an addictive controlled substance.
 - (9) Engaging in any scheme, plan, or pattern, whether overt or subtle, intended to cause the person to believe that, if he or she did not perform such labor, services, commercial sex acts, or sexually explicit performances, that such person or any person would suffer serious harm or physical restraint.
 - (10) Withholding or threatening to withhold food or medication that the actor has an obligation or has promised to provide to the person.
 - (11) Coercing a person to engage in any of the foregoing acts by requiring such in satisfaction of a debt owed to the actor.
- (b) The means listed in subparagraphs (a)(4), (a)(10), and (a)(11) are not intended to criminalize the actions of a parent or guardian who requires his or her child to perform common household chores under threat of typical parental discipline.

(c) Notwithstanding RSA 651:2, a person convicted of an offense under subparagraph I(a) involving a commercial sex act or sexually explicit performance by a victim under the age of 18 shall be subject to a minimum term of not more than 10 years and a maximum term of not more than 30 years.

II. It is a class A felony to recruit, harbor, transport, provide, obtain, or otherwise make available a person, knowing or believing it likely that the person will be subjected to trafficking as defined in paragraph I. Notwithstanding RSA 651:2, a person convicted of an offense under this paragraph involving a victim under the age of 18 shall be subject to a minimum term of not more than 10 years and a maximum to be fixed by the court, if the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance.

III. Evidence of a trafficking victim's personal sexual history or history of commercial sexual activity shall not be admissible at trial.

N.H. REV. STAT. ANN. § 632-A:6 (2011). TESTIMONY AND EVIDENCE

I. The testimony of the victim shall not be required to be corroborated in prosecutions under this chapter.

II. Prior consensual sexual activity between the victim and any person other than the actor shall not be admitted into evidence in any prosecution under this chapter.

III. Consent is no defense if, at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act. A jury is not required to infer consent from a victim's failure to physically resist a sexual assault.

III-a. The victim's manner of dress at the time of the sexual assault shall not be admitted as evidence in any prosecution under this chapter to infer consent.

IV. At the request of a party the court shall, in cases under RSA 632-A, order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This does not authorize exclusion of a party who is a natural person or a victim of the crime, or a person whose presence is shown by a party to be essential to the presentation of the party's cause.

V. In any sexual assault case under RSA 632-A where the victim is 16 years of age or younger, and the defense has listed as a witness or subpoenaed a parent or parents to testify in the case and requested that the parent or parents be sequestered, the court shall appoint a guardian ad litem to determine the best interests of the minor victim. The guardian ad litem shall make a recommendation to the court, based on the preferences and best interests of the victim, as to whether the parent or parents should be permitted to sit with the victim in the court room during the duration of the trial.

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. § 9:6-1 (2011). ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF CHILD; WHAT CONSTITUTES

Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119

(C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

NEW MEXICO

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 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.

N.M. STAT. ANN. § 30-9-16 (2011). TESTIMONY; LIMITATIONS; IN CAMERA HEARING

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.

NEW YORK

N.Y. SOC. SERV. § 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, ten-A or ten-C 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, ten-A or ten-C 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, one thousand eighty-nine or one thousand ninety-five 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, ten-A or ten-C 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.

§ 23. Subdivision 1 of section 398 of the social services law, as amended by a chapter of the laws of 2011 amending the family court act and the social services law relating to procedures for destitute children in the family court, as proposed in legislative bills numbers A.7836–A and S.5694–A, is amended to read as follows:

(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 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 judgement 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.

N.Y. FAM. CT. ACT § 1012 (2011). DEFINITIONS

When used in this article and unless the specific context indicates otherwise:

(a) “Respondent” includes any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child;

(b) “Child” means any person or persons alleged to have been abused or neglected, whichever the case may be;

(c) “A case involving abuse” means any proceeding under this article in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children;

(d) “Drug” means any substance defined as a controlled substance in section thirty-three hundred six of the public health law;

(e) “Abused child” means a child less than eighteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law; commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; or allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

(f) “Neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

(g) “Person legally responsible” includes the child's custodian, guardian, any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

(h) “Impairment of emotional health” and “impairment of mental or emotional condition” includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

(i) “Child protective agency” means the child protective service of the appropriate local department of social services or such other agencies with whom the local department has arranged for the provision of child protective services under the local plan for child protective services or an Indian tribe that has entered into an agreement with the state department of social services pursuant to section thirty-nine of the social services law to provide child protective services.

(j) “Aggravated circumstances” means where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of the social services law; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of this section, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of this section, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the

child be safe from physical injury and cared for in an appropriate manner.

(k) “Permanency hearing” means a hearing held in accordance with section one thousand eighty-nine of this act for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district or agency.

NORTH CAROLINA

N.C. GEN. STAT. § 7B-1111 (2010). 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.

N.C. GEN. STAT. § 7B-101 (2010). 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.

NORTH DAKOTA

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.

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 § 12.1-35-02 (2011). ADDITIONAL SERVICES

In addition to all rights afforded to victims and witnesses by law, state's attorneys are encouraged to provide the following additional services to children who are involved in criminal proceedings as victims or witnesses:

1. Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.

2. Advice to the court concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.

3. Information about, and referrals to, appropriate social services programs to assist the child and the child's family members in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

4. Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

N.D. CENT. CODE § 12.1-35-05.2 (2011). CONFIDENTIALITY OF TESTIMONY

In any criminal proceeding in which the defendant is charged with a violation of chapter 12.1-20 involving a child, the court, upon the motion of the prosecuting attorney, shall conduct a hearing to determine whether the testimony of and relating to a child may be closed to the public in order to protect the child's reputation. In making the determination to close the proceedings, the court shall consider:

1. The nature and seriousness of the offense;
2. The age of the child;
3. The extent to which the size of the community would preclude the anonymity of the victim;
4. The likelihood of public opprobrium due to the status of the victim;
5. Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during the proceeding and that the disclosure would cause serious harm to the witness;
6. Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means; and
7. Any other factor the court may find necessary to protect the interests of justice.

OHIO

**OHIO ADMIN. CODE § 5101:2-42-95 (2011). OBTAINING PERMANENT CUSTODY:
TERMINATION OF PARENTAL RIGHTS**

(A) Unless the public children services agency (PCSA) or private child placing agency (PCPA) has compelling reasons for not pursuing a request for permanent custody of a child, the agency, pursuant to section 2151.413 of the Revised Code, shall petition the court that issued the current order of disposition to request permanent custody of a child when any of the following conditions are present:

- (1) A court of competent jurisdiction has determined that the parent from whom the child was removed has:
 - (a) Been convicted of or pleaded guilty to one of the following:

(i) An offense under section 2903.01 (aggravated murder), 2903.02 (murder), or 2903.03 (voluntary manslaughter) of the Revised Code or under existing or former law of this state, another state, or the United States that is substantially equivalent to an offense described in those sections and the victim was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense.

(ii) An offense under section 2903.11 (felonious assault), 2903.12 (aggravated assault), or 2903.13 (assault) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(iii) An offense under division (B)(2) of section 2919.22 (endangering children) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(iv) An offense under section 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (sexual corruption of a minor), 2907.05 (gross sexual imposition), or 2907.06 (sexual imposition) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(v) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (A)(1)(a)(i) or (A)(1)(a)(iv) of this rule.

(b) Repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food. If the parent has withheld medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the court or agency shall comply with the requirements of division (A)(1) of section 2151.419 of the Revised Code.

(c) Placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refuses to participate in further treatment two or more time after a case plan was developed pursuant to rule 5101:2-39-10, 5101:2-38-05, 5101:2-39-11 or 5101:2-40-02 of the Administrative Code, if applicable, requiring such treatment of the parent and was journalized as part of the dispositional order issued with respect to the child or an order was issued by any other court requiring such treatment of the parent.

(d) Abandoned the child pursuant to rule 5101:2-1-01 of the Administrative Code.

(e) Had parental rights involuntarily terminated pursuant to section 2151.353 (disposition of abused, neglected or dependent child), 2151.414 (hearing on motion for permanent custody), or 2151.415 (motion requesting disposition order upon expiration of temporary custody order) of

the Revised Code with respect to a sibling of the child.

(2) A court of competent jurisdiction has determined the child to be a deserted child pursuant to section 2151.3520 of the Revised Code.

(3) Any PCSA or PCPA has had temporary custody of the child under one or more orders of disposition for twelve or more months (three hundred and sixty- five days or more) of a consecutive twenty-two month period ending on or after March 18, 1999. For the purpose of calculating the twelve or more months of a consecutive twenty-two month period, a child shall be considered to have entered the temporary custody of an agency on the earlier of the following:

(a) The date the child is adjudicated abused, neglected or dependent pursuant to section 2151.28 of the Revised Code.

(b) Sixty days after the child was removed from his or her home and placed into substitute care.

The PCSA or PCPA must not include trial home visits or runaway episodes when calculating the twelve of the most recent twenty-two months. Trial home visits and runaway episodes are included when calculating the twenty-two month period.

(B) The PCSA or PCPA is not required to file a motion for permanent custody of a child when one of the following is met:

(1) The PCSA or PCPA has documented in the case plan there is a compelling reason for determining that the filing of a motion to seek permanent custody of the child and terminate parental rights is not in the best interest of the child.

(2) The PCSA or PCPA has documented in the case plan that the agency has not provided the child's parent, guardian, or custodian with services outlined in the case plan which were deemed necessary for the safe return of the child to the child's home.

(C) The PCSA or PCPA shall meet with the parent to review the agency's decision to file a motion with the court to terminate parental rights. The PCSA or PCPA shall seek to amend the case plan prior to filing a motion to terminate parental rights.

(D) At the time a motion is filed with the court to obtain permanent custody of the child, the PCSA or PCPA shall submit a case plan to the court which includes a specific plan to seek an adoptive family or planned permanent living arrangement for the child and to prepare the child for adoption or permanency with a specified individual.

OHIO REV. CODE ANN. § 2945.481 (2011). DEPOSITION OF CHILD SEX OFFENSE VICTIM; PRESENCE OF DEFENDANT; ADDITIONAL DEPOSITIONS; VIDEOTAPED DEPOSITION; ADMISSIBILITY OF DEPOSITION; TELEVISED OR RECORDED TESTIMONY

(A)(1) As used in this section, "victim" includes any person who was a victim of a violation

National Center for Prosecution of Child Abuse

National District Attorneys Association

identified in division (A)(2) of this section or an offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a violation identified in division (A)(2) of this section or an offense of violence.

(2) In any proceeding in the prosecution of a charge of a violation of section 2905.03, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.09, 2907.21, 2907.23, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 2919.22 of the Revised Code or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the judge of the court in which the prosecution is being conducted, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition. The prosecution also may request that the deposition be videotaped in accordance with division (A)(3) of this section. The judge shall notify the child victim whose deposition is to be taken, the prosecution, and the defense of the date, time, and place for taking the deposition. The notice shall identify the child victim who is to be examined and shall indicate whether a request that the deposition be videotaped has been made. The defendant shall have the right to attend the deposition and the right to be represented by counsel. Depositions shall be taken in the manner provided in civil cases, except that the judge shall preside at the taking of the deposition and shall rule at that time on any objections of the prosecution or the attorney for the defense. The prosecution and the attorney for the defense shall have the right, as at trial, to full examination and cross-examination of the child victim whose deposition is to be taken. If a deposition taken under this division is intended to be offered as evidence in the proceeding, it shall be filed in the court in which the action is pending and is admissible in the manner described in division (B) of this section. If a deposition of a child victim taken under this division is admitted as evidence at the proceeding under division (B) of this section, the child victim shall not be required to testify in person at the proceeding. However, at any time before the conclusion of the proceeding, the attorney for the defense may file a motion with the judge requesting that another deposition of the child victim be taken because new evidence material to the defense has been discovered that the attorney for the defense could not with reasonable diligence have discovered prior to the taking of the admitted deposition. A motion for another deposition shall be accompanied by supporting affidavits. Upon the filing of a motion for another deposition and affidavits, the court may order that additional testimony of the child victim relative to the new evidence be taken by another deposition. If the court orders the taking of another deposition under this provision, the deposition shall be taken in accordance with this division; if the admitted deposition was a videotaped deposition taken in accordance with division (A)(3) of this section, the new deposition also shall be videotaped in accordance with that division and in other cases, the new deposition may be videotaped in accordance with that division.

(3) If the prosecution requests that a deposition to be taken under division (A)(2) of this section be videotaped, the judge shall order that the deposition be videotaped in accordance with this division. If a judge issues an order that the deposition be videotaped, the judge shall exclude from the room in which the deposition is to be taken every person except the child victim giving the testimony, the judge, one or more interpreters if needed, the attorneys for the prosecution and the defense, any person needed to operate the equipment to be used, one person chosen by the child victim giving the deposition, and any person whose presence the judge determines would

contribute to the welfare and well-being of the child victim giving the deposition. The person chosen by the child victim shall not be a witness in the proceeding and, both before and during the deposition, shall not discuss the testimony of the child victim with any other witness in the proceeding. To the extent feasible, any person operating the recording equipment shall be restricted to a room adjacent to the room in which the deposition is being taken, or to a location in the room in which the deposition is being taken that is behind a screen or mirror, so that the person operating the recording equipment can see and hear, but cannot be seen or heard by, the child victim giving the deposition during the deposition. The defendant shall be permitted to observe and hear the testimony of the child victim giving the deposition on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the deposition, except on a monitor provided for that purpose. The child victim giving the deposition shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. The judge, at the judge's discretion, may preside at the deposition by electronic means from outside the room in which the deposition is to be taken; if the judge presides by electronic means, the judge shall be provided with monitors on which the judge can see each person in the room in which the deposition is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge and with an electronic means of communication with the judge. A deposition that is videotaped under this division shall be taken and filed in the manner described in division (A)(2) of this section and is admissible in the manner described in this division and division (B) of this section, and, if a deposition that is videotaped under this division is admitted as evidence at the proceeding, the child victim shall not be required to testify in person at the proceeding. No deposition videotaped under this division shall be admitted as evidence at any proceeding unless division (B) of this section is satisfied relative to the deposition and all of the following apply relative to the recording:

- (a) The recording is both aural and visual and is recorded on film or videotape, or by other electronic means.
- (b) The recording is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred, and the recording is not altered other than at the direction and under the supervision of the judge in the proceeding.
- (c) Each voice on the recording that is material to the testimony on the recording or the making of the recording, as determined by the judge, is identified.
- (d) Both the prosecution and the defendant are afforded an opportunity to view the recording before it is shown in the proceeding.

(B)(1) At any proceeding in a prosecution in relation to which a deposition was taken under division (A) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the

Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; if the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; if the child victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or if both of the following apply:

(a) The defendant had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination.

(b) The judge determines that there is reasonable cause to believe that, if the child victim who gave the testimony in the deposition were to testify in person at the proceeding, the child victim would experience serious emotional trauma as a result of the child victim's participation at the proceeding.

(2) Objections to receiving in evidence a deposition or a part of it under division (B) of this section shall be made as provided in civil actions.

(3) The provisions of divisions (A) and (B) of this section are in addition to any other provisions of the Revised Code, the Rules of Criminal Procedure, or the Rules of Evidence that pertain to the taking or admission of depositions in a criminal proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (A) of this section or otherwise taken.

(C) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the jury, if applicable, the defendant, and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this section, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. The judge, at the judge's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in division (A)(3) of this section. To the extent feasible, any person operating the televising equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and

hear the testimony of the child victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant.

(D) In any proceeding in the prosecution of any charge of a violation listed in division (A)(2) of this section or an offense of violence and in which an alleged victim of the violation or offense was a child who was less than thirteen years of age when the complaint, indictment, or information was filed, whichever occurred earlier, the prosecution may file a motion with the judge requesting the judge to order the testimony of the child victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the child victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the child victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of the reasons set forth in division (E) of this section. If a judge issues an order of that nature, the judge shall exclude from the room in which the testimony is to be taken every person except a person described in division (A)(3) of this section. To the extent feasible, any person operating the recording equipment shall be hidden from the sight and hearing of the child victim giving the testimony, in a manner similar to that described in division (A)(3) of this section. The defendant shall be permitted to observe and hear the testimony of the child victim who is giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the child victim giving the testimony, except on a monitor provided for that purpose. The child victim giving the testimony shall be provided with a monitor on which the child victim can observe, during the testimony, the defendant. No order for the taking of testimony by recording shall be issued under this division unless the provisions set forth in divisions (A)(3)(a), (b), (c), and (d) of this section apply to the recording of the testimony.

(E) For purposes of divisions (C) and (D) of this section, a judge may order the testimony of a child victim to be taken outside the room in which the proceeding is being conducted if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the defendant due to one or more of the following:

- (1) The persistent refusal of the child victim to testify despite judicial requests to do so;
- (2) The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;

(3) The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

(F)(1) If a judge issues an order pursuant to division (C) or (D) of this section that requires the testimony of a child victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the child victim to whose testimony it applies, the order applies only during the testimony of the specified child victim, and the child victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order.

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (A) and (B) of this section, the videotaping of a deposition under division (A)(3) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (C) or (D) of this section, shall enter the determination and findings on the record in the proceeding.

OKLAHOMA

OKLA. STAT. ANN. TIT. § 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.

OREGON

OR. REV. STAT. § 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. § 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. § 44.547 (2011). NOTICE TO COURT; ACCOMMODATIONS

(1) In any case in which a child under 12 years of age or a person with a developmental disability described in subsection (2) of this section is called to give testimony, the attorney or party who plans to call the witness must notify the court at least seven days before the trial or proceeding of any special accommodations needed by the witness. Upon receiving the notice, the court shall order such accommodations as are appropriate under the circumstances considering the age or disability of the witness. Accommodations ordered by the court may include:

- (a) Break periods during the proceedings for the benefit of the witness.
- (b) Designation of a waiting area appropriate to the special needs of the witness.
- (c) Conducting proceedings in clothing other than judicial robes.
- (d) Relaxing the formalities of the proceedings.
- (e) Adjusting the layout of the courtroom for the comfort of the witness.
- (f) Conducting the proceedings outside of the normal courtroom.

(2) For the purposes of this section, “developmental disability” means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other disabling neurological condition that

requires training or support similar to that required by persons with mental retardation, if either of the following apply:

- (a) The disability originates before the person attains 22 years of age, or if the disability is attributable to mental retardation the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.
- (b) The disability results in a significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

PENNSYLVANIA

23 PA. CONST. STAT. § 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 (relating to records and access to information).

42 PA. CONST. STAT. ANN. § 5988 (2011). VICTIMS OF SEXUAL OR PHYSICAL ABUSE

(a) Release of name prohibited.--Notwithstanding any other provision of law to the contrary, in a prosecution involving a child victim of sexual or physical abuse, unless the court otherwise orders, the name of the child victim shall not be disclosed by officers or employees of the court to the public, and any records revealing the name of the child victim will not be open to public inspection.

(b) Penalty.--Any person who violates this section commits a misdemeanor of the third degree.

RHODE ISLAND

R.I. GEN. LAWS § 40-11-2 (2011). DEFINITIONS.

When used in this chapter and unless the specific context indicates otherwise:

(1) “Abused and/or neglected child” means a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

(i) Inflicts or allows to be inflicted upon the child physical or mental injury, including excessive corporal punishment; or

(ii) Creates or allows to be created a substantial risk of physical or mental injury to the child, including excessive corporal punishment; or

(iii) Commits or allows to be committed, against the child, an act of sexual abuse; or

(iv) Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; or

(v) Fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child; or

(vi) Abandons or deserts the child; or

(vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled “Commercial Sexual Activity”; or

(viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

(ix) Commits or allows to be committed any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 of title 11, entitled “Sexual Assault”, as amended; or

(x) Commits or allows to be committed against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator knows or has reason to know that the victim is a severely impaired person as defined by the provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-6.

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

(3) “Child protective investigator” means an employee of the department charged with responsibility for investigating complaints and/or referrals of child abuse and/or neglect and institutional child abuse and/or neglect.

(4) “Department” means department of children, youth, and families.

(5) “Institution” means any private or public hospital or other facility providing medical and/or psychiatric diagnosis, treatment, and care.

(6) “Institutional child abuse and neglect” means situations of known or suspected child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent or the employee of a public or private residential child care institution or agency; or any staff person providing out-of-home care or situations where the suspected abuse or neglect occurs as a result of the institution's practices, policies, or conditions.

(7) “Law enforcement agency” means the police department in any city or town and/or the state police.

(8) “Mental injury” includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care toward the child.

(9) “Person responsible for child's welfare” means the child's parent, guardian, any individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to a child, foster parent, an employee of a public or private residential home or facility, or any staff person providing out-of-home care (out-of-home care means child day care to include family day care, group day care, and center-based day care). Provided further that an individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to the child, shall not have the right to consent to the removal and examination of the child for the purposes of § 40-11-6.

(10) “Physician” means any licensed doctor of medicine, licensed osteopathic physician, and any physician, intern, or resident of an institution as defined in subdivision (5).

(11) “Probable cause” means facts and circumstances based upon as accurate and reliable information as possible that would justify a reasonable person to suspect that a child is abused or neglected. The facts and circumstances may include evidence of an injury or injuries, and the statements of a person worthy of belief, even if there is no present evidence of injury.

(12) “Shaken baby syndrome” means a form of abusive head trauma, characterized by a constellation of symptoms caused by other than accidental traumatic injury resulting from the violent shaking of and/or impact upon an infant or young child's head.

R.I. GEN. LAWS § 40-11-1 (2011). POLICY.

The public policy of this state is: to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the mandatory reporting of known or suspected child abuse and neglect, investigation of those reports by a social agency, and provision of services, where needed, to the child and family.

R.I. GEN. LAWS § 40-11-5 (2011). PROTECTIVE CUSTODY BY PHYSICIAN OR LAW ENFORCEMENT OFFICER.

(a) Any physician or duly certified registered nurse practitioner treating a child who has suffered physical injury that appears to have been caused by other than accidental means or a child suffering from malnutrition or sexual molestation shall have the right to keep the child in the custody of a hospital or any licensed child care center or facility for no longer than seventy-two (72) hours, with or without the consent of the child's parents or guardian, pending the filing of an ex-parte petition to the family court. The expense for that temporary care shall be paid by the parents or legal guardian of the child or, if they are unable to pay, by the department.

(b) Any police or law enforcement officer may take a child into protective custody without the consent of the parents, or others exercising control over the child.

(c) If the officer has reasonable cause to believe that there exists an imminent danger to the child's life or health, unless he or she is taken into protective custody, the officer shall immediately notify, and place the child with the director of the department of children, youth, and families or his or her designated agent who shall care for the child; provided, however, that no child may be detained in protective custody longer than forty-eight (48) hours without the express approval of a justice of the family court.

(d) Any child protective investigator or social caseworker II employed by the department, may take a child into temporary protective custody without the consent of his or her parent or other person responsible for the welfare of the child, if the investigator or social caseworker II has reasonable cause to believe that the child or his or her sibling has been abused and/or neglected and that continued care of the child by his or her parent or other person responsible for the child's welfare will result in imminent further harm to the child. The investigator or social caseworker II shall have the child examined by a licensed physician or duly certified registered nurse

practitioner within twenty-four (24) hours in accordance with the provisions of § 40-11-6(c) and provide further that the child shall not be detained in protective custody longer than forty-eight (48) hours without the expressed approval of a justice of the family court.

R.I. GEN. LAWS § 40-11-7 (2011). INVESTIGATION OF REPORTS -- PETITION FOR REMOVAL FROM CUSTODY -- REPORT TO CHILD ADVOCATE -- ATTORNEY GENERAL -- COURT-APPOINTED SPECIAL ADVOCATE.

(a) The department shall investigate reports of child abuse and neglect made under this chapter in accordance with the rules the department has promulgated and in order to determine the circumstances surrounding the alleged abuse or neglect and the cause thereof. The investigation shall include personal contact with the child named in the report and any other children in the same household. Any person required to investigate reports of child abuse and/or neglect may question the subjects of those reports with or without the consent of the parent or other person responsible for the child's welfare. The interviewing of the child or children, if they are of the mental capacity to be interviewed, shall take place in the absence of the person or persons responsible for the alleged neglect or abuse. In the event that any person required to investigate child abuse and/or neglect is denied reasonable access to a child by the parents or other person, and that person required to investigate deems that the best interests of the child so require, they may request the intervention of a local law enforcement agency, or seek an appropriate court order to examine and interview the child. The department shall provide such social services and other services as are necessary to protect the child and preserve the family.

(b) In the event that after investigation it is determined by the department that the child is being or has been abused or neglected but that the circumstances of the child's family or otherwise do not require the removal of the child for his or her protection, the department may allow the child to remain at home and provide the family and child with access to preventative support and services.

(c) The department shall have the duty to petition the family court for removal of the child from the care and custody of the parents, or any other person having custody or care of the child if there is a determination that a child has been abused or neglected; which results in a child death, serious physical or emotional harm, sexual abuse or exploitation or an act or failure to act which represents an imminent risk of serious harm. In addition, in cases of alleged abuse and/or neglect, the department may petition the family court for the removal of the alleged perpetrator of that abuse, and/or neglect from the household of the child or children when the child or children are eleven (11) years of age or older. It shall be the responsibility of the department to make the parent or other person responsible for the child's welfare aware of the court action, the possible consequences of the court action, and to explain the rights of the parent relative to the court action.

(d) The department shall forward immediately any reports of institutional child abuse and neglect to the child advocate who shall investigate the report in accordance with chapter 73 of title 42, and also to any guardian ad litem and/or attorney of record for the child.

(e) In the event that after investigation the department takes any action regarding placement of the child, the department shall immediately notify the child advocate of such action.

(f) In the event that after investigation the department has reasonable cause to know or suspect that a child has been subjected to criminal abuse or neglect, the department shall forward immediately any information as it relates to that knowledge or suspicion to the law enforcement agency.

R.I. GEN. LAWS § 40-11-12.4 (2011). RESTRAINING ORDERS.

(a) Whenever the family court has assumed jurisdiction by way of the filing of a petition pursuant to chapter 1 of title 14 or chapter 11 of title 40, the court, upon notice to the individual to be restrained and after a hearing, may restrain the individual so notified from interfering with the personal liberty of another, and may restrain the individual so notified from maliciously causing or attempting to cause bodily harm to another and may restrain any individual so notified from maliciously causing or attempting to cause bodily harm to another and, upon a finding by the court that any person has been so harmed or threatened with harm, the court may prescribe treatment including, but not limited to, out-patient counseling to the individual so restrained.

(b) As used in this section, the term “individual” shall include any party to the petition or any person acting on behalf of the party.

(c) Restraining orders pursuant to this provision shall be issued in conformity with the hearing and notice requirements set forth in § 15-15-1 et seq.

(d)(1) The family court shall have the authority to enforce any violation of a restraining order entered pursuant to this section by contempt.

(2) The contempt order shall not be exclusive and shall not preclude any other available civil or criminal remedies.

(e) Any violation of a restraining order under this chapter protecting a person against bodily harm and/or against threat of imminent bodily injury shall be a misdemeanor which shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both. The penalties for violation of this section shall also include the penalties provided in § 12-29-5.

SOUTH CAROLINA

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.

S.C. CODE ANN. § 63-7-620 (2011). EMERGENCY PROTECTIVE CUSTODY.

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child's parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to Section 63-7-1660. When a child is taken into emergency protective custody following an incident of excessive corporal punishment, and the only injury to the child is external lesions or minor bruises, other children in the home shall not be taken into emergency protective custody solely on account of the injury of one child through excessive corporal punishment. However, the officer may take emergency protective custody of other children in the home if a threat of harm to them is further indicated by factors including, but not limited to, a prior history of domestic violence or other abuse in the home, alcohol or drug abuse if known or evident at the time of the initial contact, or other circumstances indicative of danger to the children;

(2) the child's parent, parents, or guardian has been arrested or the child has become lost accidentally and as a result the child's welfare is threatened due to loss of adult protection and supervision; and

(a) in the circumstances of arrest, the parent, parents, or guardian does not consent in writing to another person assuming physical custody of the child;

(b) in the circumstances of a lost child, a search by law enforcement has not located the parent, parents, or guardian.

(B)(1) If the child is in need of emergency medical care at the time the child is taken into emergency protective custody, the officer shall transport the child to an appropriate health care facility. Emergency medical care may be provided to the child without consent, as provided in

Section 63-5-350. The parent or guardian is responsible for the cost of emergency medical care that is provided to the child. However, the parent or guardian is not responsible for the cost of medical examinations performed at the request of law enforcement or the department solely for the purpose of assessing whether the child has been abused or neglected unless it is determined that the child has been harmed as defined in this chapter.

(2) If the child is not in need of emergency medical care, the officer or the department shall transport the child to a place agreed upon by the department and law enforcement, and the department within two hours shall assume physical control of the child and shall place the child in a licensed foster home or shelter within a reasonable period of time. In no case may the child be placed in a jail or other secure facility or a facility for the detention of criminal or juvenile offenders. While the child is in its custody, the department shall provide for the needs of the child and assure that a child of school age who is physically able to do so continues attending school.

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 § 26-7A-1 (2011). DEFINITION OF TERMS.

Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean:

(1) “Abused or neglected child,” a child as defined in § 26-8A-2;

(2) “Adjudicatory hearing,” a hearing to determine whether the allegations of a petition alleging that a child is abused or neglected are supported by clear and convincing evidence or whether the allegations of a petition alleging a child to be in need of supervision or a delinquent are supported by evidence beyond a reasonable doubt;

(3) “Adult,” a person eighteen years of age or over, except any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday;

(4) “Advisory hearing,” the initial hearing conducted by the court to inform the child and the child's parents, guardian, custodian, or other interested parties of their statutory and constitutional rights;

(5) “Association,” an association, institution, or corporation which includes in its purposes the care or disposition of children coming within the provisions of this chapter or chapter 26-8A, 26-8B, or 26-8C;

(6) “Child,” a person less than eighteen years of age and any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday;

(7) “Child in need of supervision,” a child as defined in § 26-8B-2;

(8) “Commit,” to transfer custody of a person;

(9) “Conservator,” a conservator of a child as defined in § 29A-1-201;

(10) “Court” or “juvenile court,” the circuit court;

- (11) “Custodian,” any foster parent, employee of a public or private residential home or facility, other person legally responsible for a child's welfare in a residential setting, or person providing in-home or out-of-home care; for purposes of this definition, out-of-home care means any day care as defined in §§ 26-6-14, 26-6-14.1, and 26-6-14.8;
- (12) “Delinquent child,” a child as defined in § 26-8C-2;
- (13) “Department of Social Services” or “department,” the South Dakota Department of Social Services;
- (14) “Deprivation of custody,” transfer of custody of a child by the court from the child's parents, guardian, or other custodian to another person, agency, department, or institution;
- (15) “Detention,” the temporary custody of a child in secured physically restricting facilities for children, sight and sound separated from adult prisoners;
- (16) “Detention facility,” a secured, physically- restricting facility designed, staffed, and operated for children and separated by sight and sound from adult prisoners or a facility for children in the same building or secure perimeter as an adult jail or lockup, where children are sight and sound separated from adult prisoners, where staff in the detention facility are trained and certified by the entity operating facility to work with children, and the facility had been approved as a collocated facility by the Office of Juvenile Justice and Delinquency Prevention;
- (17) “Dispositional hearing,” a hearing after adjudication at which the court makes an interim or final decision in the case;
- (18) “Guardian,” a guardian of a child as defined in § 29A-1-201;
- (19) “Guardian ad litem,” a representative of a child as defined in subdivision 15-6-17(c), including a court-appointed special advocate for a child;
- (20) “Intake officer,” a judge of a circuit court or the court's designee who may not be a court services officer, law enforcement officer, or prosecuting attorney. For purposes of chapters 26-7A, 26-8A, 26-8B, and 26-8C, intake officers may administer oaths or affirmations as provided by chapter 18-3;
- (21) “Minor,” a person who has not reached his or her eighteenth birthday;
- (22) “Parents,” biological or adoptive parents of a child, including either parent, any single or surviving parent, and any custodial or noncustodial parent, jointly or severally;
- (23) “Protective supervision,” a legal status created by court order under which an alleged or adjudicated abused or neglected child is permitted to remain in the home of the child's parents, guardian, or custodian or is placed with a relative or other suitable person and supervision and assistance is provided by the court, Department of Social Services, or another agency designated

by the court;

(24) “Qualified mental health professional,” a person as defined in § 27A-1-3;

(25) “Shelter,” a physically-unrestricting home or facility for temporary care of a child;

(26) “Temporary care,” the care given to a child in temporary custody;

(27) “Temporary custody,” the physical and legal control of a child prior to final disposition.

S.D. CODIFIED LAWS § 26-7A-6 (2011). CONSTRUCTION -- PROTECTION OF CHILD FROM ABUSE.

Provisions of this chapter and chapters 26-8A, 26-8B, and 26-8C shall be liberally construed in favor of the child, the child's parents, and the state for the purposes of protecting the child from abuse or neglect by the child's parents, guardian, or custodian and for the purposes of affording guidance, control, and rehabilitation of any child in need of supervision or any delinquent child.

S.D. CODIFIED LAWS § 26-7A-12 (2011). TEMPORARY CUSTODY WITHOUT COURT ORDER -- LAW ENFORCEMENT OR COURT SERVICES OFFICER.

A child may be taken into temporary custody by a law enforcement officer without order of the court:

(1) If the child is subject to arrest under the provisions of §§ 23A-3-2 and 23A-3-4;

(2) If the child is abandoned or seriously endangered in the child's surroundings or is seriously endangering others and immediate removal of the child appears to be necessary for the child's protection or for the protection of others;

(3) If there are reasonable grounds to believe the child has run away or escaped from the child's parents, guardian, or custodian;

(4) If the officer reasonably believes that temporary custody is warranted because there exists an imminent danger to the child's life or safety and there is no time to apply for a court order and the child's parents, guardian, or custodian refuse an oral request for consent to the child's removal from their custody or the child's parents, guardian, or custodian are unavailable; or

(5) If the child is under the influence of alcohol, inhalants, or a controlled drug or substance. A court services officer may take the child into temporary custody without order of the court if the child is under the continuing jurisdiction of the court.

S.D. CODIFIED LAWS § 26-7A-13 (2011). ORDER OF TEMPORARY CUSTODY -- TEMPORARY CUSTODY DIRECTIVE.

The court may order temporary custody of any child within the jurisdiction of the court during any noticed hearing. Without noticed hearing, the court or an intake officer may immediately issue a written temporary custody directive in the following instances on receipt of an affidavit or, in the absence of a written affidavit when circumstances make it reasonable, on receipt of sworn oral testimony communicated by telephone or other appropriate means:

(1) On application by a state's attorney, social worker of Department of Social Services, or law enforcement officer respecting an apparent, alleged, or adjudicated abused or neglected child stating good cause to believe as follows:

(a) The child is abandoned or is seriously endangered by the child's environment; or

(b) There exists an imminent danger to the child's life or safety and immediate removal of the child from the child's parents, guardian, or custodian appears to be necessary for the protection of the child;

(2) On application by a state's attorney, court services officer, or law enforcement officer respecting an apparent, alleged, or adjudicated child in need of supervision or delinquent child stating good cause pursuant to § 26-8B-3 or 26-8C-3, as applicable, to believe as follows:

(a) The child seriously endangers others or there is need for protection of the child; or

(b) The child has run away or escaped from the child's parents, guardian, or custodian.

S.D. CODIFIED LAWS § 26-7A-107 (2011). ORDER OF PROTECTION.

The court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this chapter or chapter 26-8A, 26-8B, or 26-8C. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the child's parents, guardian, custodian, or any other person who is a party to such proceedings. The order of protection may require any concerned person or party:

- (1) To stay away from a child or the child's home;
- (2) To permit a parent or other person to visit a child at stated periods and places, with or without supervision;
- (3) To abstain from offensive conduct against a child or the child's parents, guardian, custodian, or any other person having custody or temporary care of the child;
- (4) To give proper attention to the care, maintenance, and supervision of the child, and the child's home;
- (5) To cooperate in good faith with the Department of Social Services, court services, or any other agency which has been given custody or temporary custody of a child, which is providing protective supervision or probation supervision of a child pursuant to court order, or to which the

child has been referred by the court;

(6) To refrain from acts of commission or omission that tend to make a home an improper place for a child;

(7) To pay child support and all statutory fees and costs related to expenses incurred on behalf of the child, or any portion of them, as determined by the court;

(8) To cooperate with and participate in any physical or mental examination or evaluation, counseling, treatment, therapy, or child care or parenting classes considered necessary by the court for the benefit of the child;

(9) To take all reasonable steps necessary to insure the child's regular school attendance;

(10) To eliminate the specific conditions constituting or contributing to the problems which led to juvenile court action; and

(11) To take all reasonable steps necessary to insure the child's completion of court-ordered sanctions, treatment, therapy, counseling, or rehabilitation.

After notice and opportunity for a hearing is given to any person or party subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the court finds it in the best interests of the child, the public and the state. This provision is in addition to, and not a limitation of, §§ 26-7A-107.1 and 26-7A-107.2.

S.D. CODIFIED LAWS § 26-8A-26 (2011). TERMINATION OF PARENTAL RIGHTS – RETURN OF CHILD TO PARENTS OR CONTINUED PLAEMENT—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. § 37-1-602 (2011). DEFINITIONS

- (a) For purposes of this part and §§ 8-7-109, 37-1-152, 37-1-403, 37-1-406, 37-1-413 and 49-7-117, unless the context otherwise requires:
 - (1) “Child care agency” is as defined in §§ 71-3-501 and 37-5-501;
 - (2) “Child protection team” means the investigation team created by § 37-1-607;

(3)(A) “Child sexual abuse” means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that prior to November 1, 1989, constituted the criminal offense of:

- (i) Aggravated rape under § 39-2-603;
- (ii) Aggravated sexual battery under § 39-2-606;
- (iii) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608;
- (iv) Begetting child on wife's sister under § 39-4-307;
- (v) Crimes against nature under § 39-2-612;
- (vi) Incest under § 39-4-306;
- (vii) Promotion of performance including sexual conduct by minor under § 39-6-1138.
- (viii) Rape under § 39-2-604;
- (ix) Sexual battery under § 39-2-607; or
- (x) Use of minor for obscene purposes under § 39-6-1137;

(B) “Child sexual abuse” also means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that on or after November 1, 1989, constituted the criminal offense of:

- (i) Aggravated rape under § 39-13-502;
- (ii) Aggravated sexual battery under § 39-13-504;
- (iii) Aggravated sexual exploitation of a minor under § 39-17-1004;
- (iv) Criminal attempt as provided in § 39-12-101 for any of the offenses in (a)(3)(B)(i)--(iii);
- (v) Especially aggravated sexual exploitation of a minor under § 39-17-1005;
- (vi) Incest under § 39-15-302;
- (vii) Rape under § 39-13-503;
- (viii) Sexual battery under § 39-13-505; or

(ix) Sexual exploitation of a minor under § 39-17-1003;

(C) “Child sexual abuse” also means one (1) or more of the following acts:

(i) Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;

(ii) Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;

(iii) Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

(iv) 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 it shall not include:

(a) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

(b) Acts intended for a valid medical purpose;

(v) 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;

(vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

(a) Solicit for or engage in prostitution; or

(b) Engage in an act prohibited by § 39-17-1003; and

(D) For the purposes of the reporting, investigation, and treatment provisions of §§ 37-1-603--37-1-615 “child sexual abuse” also means the commission of any act specified in subdivisions (a)(3)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child;

(4) “Department” means the department of children's services;

(5) “Guardian ad litem” means a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, who shall be a party to any judicial proceeding as a representative of the child, and who shall serve until discharged by the

court;

(6) “Institutional child sexual abuse” means situations of known or suspected child sexual abuse in which the person allegedly perpetrating the child sexual abuse is an employee of a public or private child care agency, public or private school, or any other person responsible for the child's care;

(7) “Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible 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; and

(8) “Other person responsible for a child's care or welfare” includes, but is not limited to, the child's legal guardian, legal custodian, or foster parent; an employee of a public or private child care agency, public or private school; or any other person legally responsible for the child's welfare in a residential setting.

(b) Harm to a child's health or welfare can occur when the parent or other person responsible for the child's welfare:

(1) Commits, or allows to be committed, child sexual abuse as defined in subdivisions (a)(3)(A)-(C); or

(2) Exploits a child under eighteen (18) years of age, or allows such child to be exploited, as provided in §§ 39-17-1003--39-17-1005.

TENN. CODE ANN. § 37-1-601 (2011). LEGISLATIVE INTENT; PURPOSE

(a) The incidence of child sexual abuse has a tremendous impact on the victimized child, siblings, family structure, and inevitably on all citizens of this state, and has caused the general assembly to determine that the prevention of child sexual abuse shall be a priority of this state. To further this end, it is the intent of the general assembly that a comprehensive approach for the detection, intervention, prevention and treatment of child sexual abuse be developed for the state and that this planned, comprehensive approach be used as a basis for funding.

(b) The purpose of this part shall be the same as that of part 4 of this chapter, and, except as may be expressly herein provided, the provisions of this part shall not be construed as repealing any provisions of part 4 of this chapter or of any other statute, but shall be supplementary thereto and cumulative thereof.

TENN. CODE ANN. § 37-1-608 (2011). PROTECTIVE CUSTODY

(a) A law enforcement officer, authorized person of the department, or other authorized person may take a child into custody as provided in part 1 of this chapter.

(b) Any person in charge of a hospital or similar institution or any physician treating a child may keep that child in custody until the next regular weekday session of the juvenile court without the consent of the parents, legal guardian or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such, that continuing the child in the child's place of residence or in the care or custody of the parents, legal guardian or legal custodian presents an imminent danger to the child's life or physical or mental health. Any person taking a child into protective custody shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of § 37-1-606, and shall make every reasonable effort to immediately notify the parents, legal guardian or legal custodian that such child has been taken into protective custody. If the department determines, according to the criteria set forth in § 37-1-114, that the child should remain in protective custody longer than the next regular weekday session of the juvenile court, it shall petition the court for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

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.

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. § 40-38-115 (2011). EMOTIONAL SUPPORT FOR VICTIMS

(a) Any victim of crime may have a crime victim advocate from a crime assistance program or a victim-witness coordinator as provided for in § 8-7-206 present at any defense interviews with the victim. This section applies if practical and if the presence of the crime victim advocate or victim-witness coordinator does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate or victim-witness coordinator is to provide emotional support to the victim.

(b) As used in subsection (a), “crime assistance program” includes, but is not limited to, programs that provide appropriate counseling and support to victims.

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.

TEX. FAM. CODE ANN. § 261.301 (2011). INVESTIGATION OF REPORT

(a) With assistance from the appropriate state or local law enforcement agency as provided by this section, the department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. The investigation shall be conducted without regard to any pending suit affecting the parent-child relationship.

(b) A state agency shall investigate a report that alleges abuse or neglect occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:

(1) Subchapter E; and

(2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse or neglect by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.

(d) The department shall by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. The rules must require the department, subject to the availability of funds, to:

(1) immediately respond to a report of abuse and neglect that involves circumstances in which the death of the child or substantial bodily harm to the child would result unless the department immediately intervenes;

(2) respond within 24 hours to a report of abuse and neglect that is assigned the highest priority, other than a report described by Subdivision (1); and

(3) respond within 72 hours to a report of abuse and neglect that is assigned the second highest priority.

(e) As necessary to provide for the protection of the child, the department or designated agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and

(7) all other pertinent data.

(f) An investigation of a report to the department that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department or the agency responsible for conducting an investigation under Subchapter E.

(g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under this section does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section.

(h) The department and the appropriate local law enforcement agency shall conduct an investigation, other than an investigation under Subchapter E, as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.

TEX. FAM. CODE ANN. § 262.101 (2011). FILING PETITION BEFORE TAKING POSSESSION OF CHILD

An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;

(2) there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and

(3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

TEX. FAM. CODE ANN. § 262.102 (2011). EMERGENCY ORDER AUTHORIZING POSSESSION OF CHILD

(a) Before a court may, without prior notice and a hearing, issue a temporary restraining order or attachment of a child in a suit brought by a governmental entity, the court must find that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;

(2) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; and

(3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

(b) In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has:

(1) abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) sexually abused another child.

(c) If, based on the recommendation of or a request by the department, the court finds that child abuse or neglect has occurred and that the child requires protection from family violence by a member of the child's family or household, the court shall render a temporary order under Chapter 71 for the protection of the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.

TEX. FAM. CODE ANN. § 262.104 (2011). TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER

(a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

(b) An authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

TEX. CODE CRIM. PROC. ANN. ART. 7A.01 (2011). APPLICATION FOR PROTECTIVE ORDER

<Text of subsec. (a), as amended by Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 2.02>

(a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code;

(2) a person who is the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or Section 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (1) or (2); or

(4) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

<Text of subsec. (a), as amended by Acts 2011, 82nd Leg., ch. 135 (S.B. 250), § 2>

(a) A person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code, a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of such an offense, or a prosecuting attorney acting on behalf of the person may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

(b) An application for a protective order under this chapter may be filed in a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:

(1) the county in which the applicant resides; or

(2) the county in which the alleged offender resides.

TEX. CODE CRIM. PROC. ANN. ART. 38.07 (2011). TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE

(a) A conviction under Chapter 21, Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.

(b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:

(1) 17 years of age or younger;

(2) 65 years of age or older; or

(3) 18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

TEX. CODE CRIM. PROC. ANN. ART. 38.071 (2011). TESTIMONY OF CHILD WHO IS VICTIM OF OFFENSE

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

(1) Section 19.02 (Murder);

(2) Section 19.03 (Capital Murder);

(3) Section 19.04 (Manslaughter);

(4) Section 20.04 (Aggravated Kidnapping);

(5) Section 21.11 (Indecency with a Child);

(6) Section 22.011 (Sexual Assault);

(7) Section 22.02 (Aggravated Assault);

(8) Section 22.021 (Aggravated Sexual Assault);

(9) Section 22.04(e) (Injury to a Child, Elderly Individual, or Disabled Individual);

(10) Section 22.04(f) (Injury to a Child, Elderly Individual, or Disabled Individual), if the conduct is committed intentionally or knowingly;

(11) Section 25.02 (Prohibited Sexual Conduct);

- (12) Section 29.03 (Aggravated Robbery);
- (13) Section 43.25 (Sexual Performance by a Child);
- (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
- (15) Section 43.05(a)(2) (Compelling Prostitution); or
- (16) Section 20A.02(a)(7) or (8) (Trafficking of Persons).

Sec. 2. (a) The recording of an oral statement of the child made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.

(b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.

(c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Sec. 3. (a) On its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact. To the extent practicable, only the judge, the court reporter, the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons necessary to operate the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but the court shall attempt to ensure that the child cannot hear or see the defendant. The court shall permit the attorney for the defendant adequate opportunity to confer with the defendant during cross-examination of the child. On application of the attorney for the defendant, the court may recess the proceeding before or during cross-examination of the child for a reasonable time to allow the attorney for the defendant to confer with defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 4. (a) After an indictment has been returned or a complaint filed, on its own motion or on the motion of the attorney representing the state or the attorney representing the defendant, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. To the extent practicable, only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact but shall attempt to ensure that the child cannot hear or see the defendant.

(b) The court may set any other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors. The court shall also ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and is not altered;

(3) each voice on the recording is identified;

(4) the defendant, the attorneys for each party, and the expert witnesses for each party are afforded an opportunity to view the recording before it is shown in the courtroom;

(5) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(6) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time the recording was made; and

(7) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings is established at the hearing or proceeding.

(c) After a complaint has been filed or an indictment returned charging the defendant, on the motion of the attorney representing the state, the court may order that the deposition of the child be taken outside of the courtroom in the same manner as a deposition may be taken in a civil

matter. A deposition taken under this subsection is admissible into evidence.

Sec. 5. (a) On the motion of the attorney representing the state or the attorney representing the defendant and on a finding by the court that the following requirements have been substantially satisfied, the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if:

- (1) no attorney or peace officer was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) every voice on the recording is identified;
- (6) the person conducting the interview of the child in the recording is expert in the handling, treatment, and investigation of child abuse cases, present at the hearing or proceeding, called by the state, and subject to cross-examination;
- (7) immediately after a complaint was filed or an indictment returned, the attorney representing the state notified the court, the defendant, and the attorney representing the defendant of the existence of the recording;
- (8) the defendant, the attorney for the defendant, and the expert witnesses for the defendant were afforded an opportunity to view the recording before it is offered into evidence and, if a proceeding was requested as provided by Subsection (b) of this section, in a proceeding conducted before a district court judge but outside the presence of the jury were afforded an opportunity to cross-examine the child as provided by Subsection (b) of this section from any time immediately following the filing of the complaint or the returning of an indictment charging the defendant until the date the hearing or proceeding begins;
- (9) the recording of the cross-examination, if there is one, is admissible under Subsection (b) of this section;
- (10) before giving his testimony, the child was placed under oath or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully;

(11) the court finds from the recording or through an in camera examination of the child that the child was competent to testify at the time that the recording was made; and

(12) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings has been established at the hearing or proceeding.

(b) On the motion of the attorney representing the defendant, a district court may order that the cross-examination of the child be taken and be recorded before the judge of that court at any time until a recording made in accordance with Subsection (a) of this section has been introduced into evidence at the hearing or proceeding. On a finding by the court that the following requirements were satisfied, the recording of the cross-examination of the child is admissible into evidence and shall be viewed by the finder of fact only after the finder of fact has viewed the recording authorized by Subsection (a) of this section if:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, the quality of the recording is sufficient to allow the court and the finder of fact to assess the demeanor of the child and the attorney representing the defendant, and the recording is accurate and has not been altered;

(3) every voice on the recording is identified;

(4) the defendant, the attorney representing the defendant, the attorney representing the state, and the expert witnesses for the defendant and the state were afforded an opportunity to view the recording before the hearing or proceeding began;

(5) the child was placed under oath before the cross-examination began or was otherwise admonished in a manner appropriate to the child's age and maturity to testify truthfully; and

(6) only one continuous recording of the child was made or the necessity for pauses in the recordings or for multiple recordings was established at the hearing or proceeding.

(c) During cross-examination under Subsection (b) of this section, to the extent practicable, only a district court judge, the attorney representing the defendant, the attorney representing the state, persons necessary to operate the equipment, and any other person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys and the judge may question the child. To the extent practicable, the persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child and to communicate contemporaneously with his attorney during periods of recess or by audio contact, but shall attempt to ensure that the child cannot hear or see the

defendant.

(d) Under Subsection (b) of this section the district court may set any other conditions and limitations on the taking of the cross-examination of a child that it finds just and appropriate, taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors.

Sec. 6. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article or if the court finds the testimony of the child taken under Section 2 or 5 of this article is admissible into evidence, the child may not be required to testify in court at the proceeding for which the testimony was taken, unless the court finds there is good cause.

Sec. 7. In making any determination of good cause under this article, the court shall consider the rights of the defendant, the interests of the child, the relationship of the defendant to the child, the character and duration of the alleged offense, any court finding related to the availability of the child to testify, the age, maturity, and emotional stability of the child, the time elapsed since the alleged offense, and any other relevant factors.

Sec. 8. (a) In making a determination of unavailability under this article, the court shall consider relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

(1) of emotional or physical causes, including the confrontation with the defendant; or

(2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

Sec. 9. If the court finds the testimony taken under Section 2 or 5 of this article is admissible into evidence or if the court orders the testimony to be taken under Section 3 or 4 of this article and if the identity of the perpetrator is a contested issue, the child additionally must make an in-person identification of the defendant either at or before the hearing or proceeding.

Sec. 10. In ordering a child to testify under this article, the court shall take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by relevant factors, including the confrontation with the defendant and the ordinary participation of the witness in the courtroom.

Sec. 11. In a proceeding under Section 2, 3, or 4 or Subsection (b) of Section 5 of this article, if the defendant is not represented by counsel and the court finds that the defendant is not able to

obtain counsel for the purposes of the proceeding, the court shall appoint counsel to represent the defendant at the proceeding.

Sec. 12. In this article, “cross-examination” has the same meaning as in other legal proceedings in the state.

Sec. 13. The attorney representing the state shall determine whether to use the procedure provided in Section 2 of this article or the procedure provided in Section 5 of this article.

TEX. CODE CRIM. PROC. ANN. ART. 38.072 (2011). HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct);
- (3) Section 43.25 (Sexual Performance by a Child);
- (4) Section 43.05(a)(2) (Compelling Prostitution);
- (5) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or
- (6) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), or (5) of this section.

Sec. 2. (a) This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child or person with a disability against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, “person with a disability” means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

TEX. CODE CRIM. PROC. ANN. ART. 38.37 (2011). EVIDENCE OF EXTRANEIOUS OFFENSES OR ACTS

Sec. 1. This article applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1) if committed against a child under 17 years of age:

(A) Chapter 21 (Sexual Offenses);

(B) Chapter 22 (Assaultive Offenses); or

(C) Section 25.02 (Prohibited Sexual Conduct); or

(2) if committed against a person younger than 18 years of age:

(A) Section 43.25 (Sexual Performance by a Child);

(B) Section 20A.02(a)(7) or (8); or

(C) Section 43.05(a)(2) (Compelling Prostitution) .

Sec. 2. Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1) the state of mind of the defendant and the child; and

(2) the previous and subsequent relationship between the defendant and the child.

Sec. 3. On timely request by the defendant, the state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 2 in the same manner as the state is required to give notice under Rule 404(b), Texas Rules of Evidence.

Sec. 4. This article does not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law.

TEX. CODE CRIM. PROC. ANN. ART. 42.0191 (2011). FINDING REGARDING VICTIMS OF TRAFFICKING OR OTHER ABUSE.

(a) In the trial of an offense, on the motion of the attorney representing the state the judge shall make an affirmative finding of fact and enter the affirmative finding in the papers in the case if the judge determines that, regardless of whether the conduct at issue is the subject of the prosecution or part of the same criminal episode as the conduct that is the subject of the prosecution, a victim in the trial:

(1) is or has been a victim of a severe form of trafficking in persons, as defined by 22 U.S.C. Section 7102(8); or

(2) has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described by 8 U.S.C. Section 1101(a)(15)(U)(iii).

(b) That part of the papers in the case containing an affirmative finding under this article:

(1) must include specific information identifying the victim, as available;

(2) may not include information identifying the victim's location; and

(3) is confidential, unless written consent for the release of the affirmative finding is obtained from the victim or, if the victim is younger than 18 years of age, the victim's parent or guardian.

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. § 62A-4A-101 (2011). DEFINITIONS.

As used in this chapter:

- (1) “Abuse” is as defined in Section 78A-6-105.
- (2) “Adoption services” means:
 - (a) placing children for adoption;
 - (b) subsidizing adoptions under Section 62A-4a-105;
 - (c) supervising adoption placements until the adoption is finalized by the court;
 - (d) conducting adoption studies;
 - (e) preparing adoption reports upon request of the court; and
 - (f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.
- (3) “Child” means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.
- (4) “Consumer” means a person who receives services offered by the division in accordance with this chapter.
- (5) “Chronic abuse” means repeated or patterned abuse.
- (6) “Chronic neglect” means repeated or patterned neglect.
- (7) “Custody,” with regard to the division, means the custody of a minor in the division as of the date of disposition.
- (8) “Day-care services” means care of a child for a portion of the day which is less than 24 hours:
 - (a) in the child's own home by a responsible person; or
 - (b) outside of the child's home in a:
 - (i) day-care center;
 - (ii) family group home; or

(iii) family child care home.

(9) “Dependent child” or “dependency” means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(10) “Director” means the director of the Division of Child and Family Services.

(11) “Division” means the Division of Child and Family Services.

(12) “Domestic violence services” means:

(a) temporary shelter, treatment, and related services to:

(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of a person described in Subsection (12)(a)(i); and

(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

(13) “Harm” is as defined in Section 78A-6-105.

(14) “Homemaking service” means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(15) “Incest” is as defined in Section 78A-6-105.

(16) “Minor” means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) a person:

(i) who is at least 18 years of age and younger than 21 years of age; and

(ii) for whom the division has been specifically ordered by the juvenile court to provide services.

(17) “Molestation” is as defined in Section 78A-6-105.

(18) “Natural parent” means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.

(19) “Neglect” is as defined in Section 78A-6-105.

(20) “Protective custody,” with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:

- (a) the shelter hearing; or
- (b) the child's return home.

(21) “Protective services” means expedited services that are provided:

- (a) in response to evidence of neglect, abuse, or dependency of a child;
- (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
 - (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- (c) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:
 - (A) removal from the child's home;
 - (B) placement in substitute care; and
 - (C) petitioning the court for termination of parental rights.

(22) “Severe abuse” is as defined in Section 78A-6-105.

(23) “Severe neglect” is as defined in Section 78A-6-105.

(24) “Sexual abuse” is as defined in Section 78A-6-105.

(25) “Sexual exploitation” is as defined in Section 78A-6-105.

(26) “Shelter care” means the temporary care of a minor in a nonsecure facility.

(27) “State” means:

- (a) a state of the United States;
- (b) the District of Columbia;
- (c) the Commonwealth of Puerto Rico;
- (d) the Virgin Islands;
- (e) Guam;
- (f) the Commonwealth of the Northern Mariana Islands; or
- (g) a territory or possession administered by the United States.

(28) “State plan” means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

(29) “Status offense” means a violation of the law that would not be a violation but for the age of the offender.

(30) “Substance abuse” is as defined in Section 78A-6-105.

(31) “Substantiated” or “substantiation” means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

(32) “Substitute care” means:

- (a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;
- (b) services provided for a minor awaiting placement; and
- (c) the licensing and supervision of a substitute care facility.

(33) “Supported” means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

(34) “Temporary custody,” with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

(35) “Transportation services” means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(36) “Unsubstantiated” means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

(37) “Unsupported” means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

(38) “Without merit” means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

**UTAH CODE ANN. § 62A-4A-203 (2011). REMOVAL OF A CHILD FROM HOME --
REASONABLE EFFORTS TO MAINTAIN CHILD IN HOME -- EXCEPTION --
REASONABLE EFFORTS FOR REUNIFICATION.**

(1) Because removal of a child from the child's home affects protected, constitutional rights of the parent and has a dramatic, long-term impact on a child, the division shall:

(a) when possible and appropriate, without danger to the child's welfare, make reasonable efforts to prevent or eliminate the need for removal of a child from the child's home prior to placement in substitute care;

(b) determine whether there is substantial cause to believe that a child has been or is in danger of abuse or neglect, in accordance with the guidelines described in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from the child's home; and

(c) when it is possible and appropriate, and in accordance with the limitations and requirements of Sections 78A-6-312 and 78A-6-314, make reasonable efforts to make it possible for a child in substitute care to return to the child's home.

(2)(a) In determining the reasonableness of efforts needed to maintain a child in the child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or (c), the child's health, safety, and welfare shall be the paramount concern.

(b) The division shall consider whether the efforts described in Subsections (1) and (2) are likely to prevent abuse or continued neglect of the child.

(3) When removal and placement in substitute care is necessary to protect a child, the efforts described in Subsections (1) and (2):

(a) are not reasonable or appropriate; and

(b) should not be utilized.

(4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, the state has no duty to make reasonable efforts to, in any way, attempt to:

(a) maintain a child in the child's home;

(b) provide reunification services; or

(c) rehabilitate the offending parent or parents.

(5) Nothing in Subsection (4) exempts the division from providing court ordered services.

**UTAH CODE ANN. § 62A-4A-203.5 (2011). MANDATORY PETITION FOR
TERMINATION OF PARENTAL RIGHTS.**

(1) For purposes of this section, “abandoned infant” means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to maintain physical custody, and have failed to exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 78A, Chapter 6, Juvenile Court Act of 1996, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) a parent, whenever a court has determined that the parent has:

(i) committed murder or child abuse homicide of another child of that parent;

(ii) committed manslaughter of another child of that parent;

(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or

(iv) committed a felony assault or abuse that has resulted in serious physical injury to another child of that parent, or to the other parent of that child.

(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:

(a) the child is being cared for by a relative;

(b) the division has:

(i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and

(ii) made that child and family plan available to the court for its review; or

(c)(i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and

(ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

UTAH CODE ANN. § 62A-4A-208 (2011). CHILD PROTECTION OMBUDSMAN -- RESPONSIBILITY – AUTHORITY.

(1) As used in this section:

(a) “Complainant” means a person who initiates a complaint with the ombudsman.

(b) “Ombudsman” means the child protection ombudsman appointed pursuant to this section.

(2)(a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3)(a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

(i) receiving and processing complaints;

(ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;

(iii) prioritizing workload;

(iv) maximum time within which investigations shall be completed;

(v) conducting investigations;

(vi) notifying complainants and the division regarding the results of investigations; and

(vii) making recommendations based on the findings and results of recommendations;

- (b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;
 - (c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;
 - (d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;
 - (e) annually report to the:
 - (i) Child Welfare Legislative Oversight Panel;
 - (ii) governor;
 - (iii) Division of Child and Family Services;
 - (iv) executive director of the department; and
 - (v) director of the division; and
 - (f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.
- (5)(a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.
- (b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.
 - (c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.
 - (d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody, as that term is defined in Section 78A-6-105.
 - (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6)(a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7)(a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

(i) a matter should be further considered by the division;

(ii) an administrative act should be addressed, modified, or canceled;

(iii) action should be taken by the division with regard to one of its employees; or

(iv) any other action should be taken by the division.

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.

UTAH CODE ANN. § 78A-6-508 (2011). EVIDENCE OF GROUNDS FOR TERMINATION

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78A-6-316(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4)(a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent 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.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide ; or

(e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

UTAH CODE ANN. § 62A-4A-202.1 (2011). ENTERING HOME OF A CHILD – TAKING A CHILD INTO PROTECTIVE CUSTODY – CASEWORKER ACCOMPANIED BY PEACE OFFICER – PREVENTIVE SERVICES – SHELTER FACILITY OR EMERGENCY PLACEMENT

(1) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless authorized under Subsection 78A-6-106(2).

(2) A child welfare worker within the division may take action under Subsection (1) accompanied by a peace officer, or without a peace officer when a peace officer is not reasonably available.

(3)(a) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the child welfare worker shall also determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.

(b) If the services described in Subsection (3)(a) are reasonably available, they shall be utilized.

(c) In determining whether the services described in Subsection (3)(a) are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the child welfare worker's paramount concern.

(4)(a) A child removed or taken into custody under this section may not be placed or kept in a secure detention facility pending court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A child removed from the custody of the child's parent or guardian but who does not require physical restriction shall be given temporary care in:

(i) a shelter facility; or

(ii) an emergency placement in accordance with Section 62A-4a-209.

(c) When making a placement under Subsection (4)(b), the Division of Child and Family Services shall give priority to a placement with a noncustodial parent, relative, or friend, in accordance with Section 62A-4a-209.

UTAH CODE ANN. § 77-37-4 (2011). ADDITIONAL RIGHTS—CHILDREN

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

(5) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to have their investigative interviews that are conducted at a Children's Justice Center, including both video and audio recordings, protected. Except as provided in Subsection (5)(b) and (c), interviews may not be distributed, released, or

displayed to anyone without a court order.

(a) The court order:

(i) shall describe with particularity to whom the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and

(ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.

(b) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.

(c)(i) The Division of Child and Family Services or law enforcement may distribute a copy of the interview:

(A) to the prosecutor's office;

(B) the Attorney General's child protection division;

(C) to another law enforcement agency; and

(D) to the attorney for the child who is the subject of the interview.

(ii) Any further distribution, release, or display is subject to this Subsection (5).

(d) In a criminal case, the prosecutor may distribute a copy of the interview to the attorney for the defendant or a pro se defendant pursuant to a valid request for discovery. The attorney for the defendant in a criminal case may permit the defendant to view the interview, but may not distribute or release the interview to their client. Any further distribution, release, or display is subject to this Subsection (5).

(e) Pro se defendants shall be advised by the court that an interview received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court. A court's failure to give this notice may not be used as a defense to prosecution for a violation of the disclosure rule.

(f) Multidisciplinary teams or other state agencies that provide services to children and families may view interviews of children, and families for whom they are providing services, but may not receive copies.

(g) Violation of this section is:

(i) punishable by contempt if distribution, release, or display occurs before the resolution of the case and the court still has jurisdiction over the defendant; or

(ii) a class B misdemeanor if the case has been resolved and the court no longer has jurisdiction over the defendant.

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. 13 §2652(E)(2011). HUMAN TRAFFICKING

...

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

VT. STAT. ANN. TIT. 13 §2661 (2011). RESOURCE GUIDE POSTING

(a) A notice offering help to victims of human trafficking shall be accessible on the official website of the Vermont department of labor and may be posted in a prominent and accessible location in workplaces.

(b) The notice should provide contact information for at least one local law enforcement agency and provide information regarding the National Human Trafficking Resource Center (NHTRC) hotline as follows:

“If you or someone you know is being forced to engage in any activity and cannot leave--whether it is commercial sex, housework, farm work, or any other activity--call the toll-free National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. The toll-free hotline is:

- Available 24 hours a day, 7 days a week
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information.”

(c) The notice described in this section should be made available in English, Spanish, and, if requested by an employer, another language.

(d) The Vermont department of labor shall develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before January 15, 2013, the department shall report to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

VT. STAT. ANN. TIT. 13 §3255 (2011). EVIDENCE

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of a vulnerable adult under chapter 28 of this title or chapter 69 of Title 33:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) Evidence of the complaining witness' past sexual conduct with the defendant;

(B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of a vulnerable adult under subsection 6913(b) of Title 33, if a defendant proposes to offer evidence described in subdivision (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the complaining witness, questions concerning the evidence

described in subdivisions (a)(1) and (3) of this section shall not be permitted.

VIRGINIA

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

National Center for Prosecution of Child Abuse

National District Attorneys Association

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.

VA. CODE ANN. § 18.2-67.7 (2011). ADMISSION OF EVIDENCE

A. In prosecutions under this article, or under clause (iii) or (iv) of § 18.2-48, 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution.

B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

C. Evidence described in subsections A and B of this section shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of subsections A and B of this section, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

WASHINGTON

WASH. REV. CODE ANN. § 13.34.132 (2011). PETITION SEEKING TERMINATION OF PARENT-CHILD RELATIONSHIP—REQUIREMENTS

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

- (1) The court has removed the child from his or her home pursuant to RCW 13.34.130;
- (2) Termination is recommended by the department or the supervising agency;
- (3) Termination is in the best interests of the child; and
- (4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:
 - (a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;
 - (b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;
 - (c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;
 - (d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;
 - (e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;
 - (f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;
 - (g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

WASH. REV. CODE ANN. § 13.34.180 (2011). ORDER TERMINATING PARENT AND CHILD RELATIONSHIP—PETITION—FILING—ALLEGATIONS

(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.

WEST VIRGINIA

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.

W. VA. CODE ANN. § 49-6-5A (2011). PERMANENCY HEARING WHEN COURT DETERMINES REASONABLE EFFORTS TO PRESERVE FAMILIES NOT REQUIRED

(a) If the court finds, pursuant to the provisions of subdivision (7), subsection (a), section five of this article that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any other provision, a permanency hearing must be held within thirty days following the entry of the court order so finding and must be conducted at least once every three calendar months thereafter until a permanent placement is achieved.

(b) The purpose of the permanency hearing is to determine the permanency plan for the child that includes: (1) When the child will be returned to the parent; (2) when the child will be placed for adoption, in which event the state will file a petition for termination of parental rights; or (3) when the child will be referred for legal guardianship. In cases where the department has demonstrated a compelling reason for determining it would not be in the best interests of the child to return home, the court shall determine whether the child should be referred for termination of parental rights, be placed for adoption, be placed with a fit and willing relative, be placed with a legal guardian or placed in another planned permanent living arrangement. At the conclusion of each permanency hearing, the court must enter an order stating whether or not the

department made reasonable efforts to finalize the permanency plan.

(c) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the opportunity to be heard at the permanency hearing provided in this section.

W. VA. CODE ANN. § 49-6-5B (2011). WHEN EFFORTS TO TERMINATE PARENTAL RIGHTS REQUIRED

(a) Except as provided in subsection (b) of this section, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

(1) If a child has been in foster care for fifteen of the most recent twenty-two months as determined by the earlier of the 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 the home;

(2) If a court has determined the child is abandoned; or

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children or the other parent of his or her children; has attempted or conspired to commit such murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children or to the other parent of his or her children; or the parental rights of the parent to a sibling have been terminated involuntarily.

(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed with a relative;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child's age and preference regarding termination or the child's placement in custody of the department based on any proceedings initiated under article five of this chapter, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child's family as the department deems necessary for the safe return of the child to the home.

W. VA. CODE ANN. § 61-8B-11A (2011). CONVICTIONS FOR OFFENSES AGAINST CHILDREN

In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take such further action

in accord with the provisions of said article.

W. VA. CODE ANN. § 49-6A-2 (2011). PERSONS MANDATED TO REPORT SUSPECTED ABUSE AND NEGLECT

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the Department of Health and Human Resources: *Provided*, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: *Provided, however*, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

W. VA. CODE ANN. § 49-6-3 (2011). PETITION TO COURT WHEN CHILD BELIEVED NEGLECTED OR ABUSED – TEMPORARY CUSTODY

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that:

(1) There exists imminent danger to the physical well-being of the child; and

(2) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: *Provided*, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less

than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why; and

(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: *Provided*, That the court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and

(4) What efforts should be made by the department, if any, to facilitate the child's return home: *Provided, however*, That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary

custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: *Provided*, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or

permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.

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

W. VA. CODE ANN. § 49-5-8 (2011). TAKING A JUVENILE INTO CUSTODY

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court, a juvenile referee or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand such custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section eight-a of this article shall be held by the judge, juvenile referee or magistrate authorized to conduct such hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exists: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which, in the judgment of the officer, pose imminent danger to the health, safety and welfare of the juvenile; (3) the official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of such person and the health, safety and welfare of the juvenile is endangered; (4) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; (5) the official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood; or (6) the juvenile is the named respondent in an emergency protective order issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code and the individual filing the petition for the emergency protective order is the juvenile's parent, guardian or custodian or other person with whom the juvenile resides.

(c) Upon taking a juvenile into custody, with or without a court order, the official shall:

(1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered:

Provided, That each day the juvenile is detained, a written record must be made of all attempts to locate such a responsible adult; or

(C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.

(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6), subsection (b) of this section, immediately notify the Department of Health and Human Resources and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a juvenile referee or judge of the circuit court for a detention hearing pursuant to section eight-a of this article: *Provided*, That if no judge or juvenile referee is then available in the county, the official shall take the juvenile without unnecessary delay before any magistrate then available in the county for the sole purpose of conducting such a detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the court or juvenile referee. The sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center director's custody, that official shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile has been placed in detention after a hearing conducted pursuant to section eight-a of this article.

(e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under arrest is responsible for the juvenile's initial transportation to a juvenile detention center or other Division of Juvenile Services' residential facility.

(f) Notwithstanding any other provision of this code, a juvenile detention center, or other Division of Juvenile Services' residential facility, is not required to accept a juvenile if the juvenile appears to be in need of medical attention of a degree necessitating treatment by a physician. If a juvenile is refused pursuant to the provisions of this subsection, the juvenile

detention center, or other Division of Juvenile Services' residential facility, may not subsequently accept the juvenile for detention until the arresting or transporting officer provides the juvenile detention center, or other Division of Juvenile Services' residential facility, with a written clearance from a licensed physician reflecting that the juvenile has been examined and, if necessary, treated and which states that in the physician's medical opinion the juvenile can be safely confined in the juvenile detention center or other Division of Juvenile Services' residential facility.

WISCONSIN

WIS. STAT. § 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.

WIS. STAT. § 48.205 (2011). CRITERIA FOR HOLDING A CHILD OR EXPECTANT MOTHER IN PHYSICAL CUSTODY

(1) A child may be held under s. 48.207 (1), 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will cause injury to himself or herself or be subject to injury by others.

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21(4) that if another child in the home is not held that child will be subject to injury by others.

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate.

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21(4) that another child in the home meets those criteria.

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to

her.

(2) The criteria for holding a child or the expectant mother of an unborn child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

WIS. STAT. § 48.207 (2011). PLACES WHERE A CHILD OR EXPECTANT MOTHER MAY BE HELD IN NONSECURE CUSTODY

(1) A child held in physical custody under s. 48.205 (1) may be held in any of the following places:

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a license under s. 48.62 refused, revoked, or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the child is held under s. 48.20 (4) or (4m).

(h) A place listed in s. 51.15(2) if the child is held under s. 48.20(5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20(6).

(k) A facility under s. 48.58.

(1g) An Indian child held in physical custody under s. 48.205(1) shall be placed in compliance with s. 48.028(7)(b) or, if applicable, s. 48.028(7)(c), unless the person responsible for determining the placement finds good cause, as described in s. 48.028(7)(e), for departing from the order of placement preference under s. 48.028(7)(b) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child shall be placed in compliance with the order of placement preference under s. 48.028(7)(b) or, if applicable, s. 48.028(7)(c).

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.01 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

(2)(a) If a facility listed in sub. (1) (b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1) (a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m) (b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m) (a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than

500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

(3) A child taken into custody under s. 48.981 may be held in a hospital, foster home, relative's home, or other appropriate medical or child welfare facility that is not used primarily for the detention of delinquent children.

WIS. STAT. § 972.11 (2011). EVIDENCE AND PRACTICE; CIVIL RULES APPLICABLE

(1) Except as provided in subs. (2) to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895 and 995, except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal proceedings.

(2)(a) In this subsection, “sexual conduct” means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual intercourse or sexual contact, use of contraceptives, living arrangement and life-style.

(b) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.085, or 948.095, or under s. 940.302(2), if the court finds that the crime was sexually motivated, as defined in s. 980.01(5), any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. 971.31(11):

1. Evidence of the complaining witness's past conduct with the defendant.
2. Evidence of specific instances of sexual conduct showing the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered.
3. Evidence of prior untruthful allegations of sexual assault made by the complaining witness.

(c) Notwithstanding s. 901.06, the limitation on the admission of evidence of or reference to the prior sexual conduct of the complaining witness in par. (b) applies regardless of the purpose of the admission or reference unless the admission is expressly permitted under par. (b)1, 2 or 3.

(d)1. If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the manner of dress of the complaining witness at the time when the crime occurred is admissible only if it is relevant to a contested issue at trial and its probative value substantially outweighs all of the following:

- a. The danger of unfair prejudice, confusion of the issues or misleading the jury.

b. The considerations of undue delay, waste of time or needless presentation of cumulative evidence.

2. The court shall determine the admissibility of evidence under subd. 1 upon pretrial motion before it may be introduced at trial.

(2m)(a) At a trial in any criminal prosecution, the court may, on its own motion or on the motion of any party, order that the testimony of any child witness be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed-circuit audiovisual equipment if all of the following apply:

1. The court finds all of the following:

a. That the presence of the defendant during the taking of the child's testimony will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

b. That taking the testimony of the child in a room other than the courtroom and simultaneously televising the testimony in the courtroom by means of closed-circuit audiovisual equipment is necessary to minimize the trauma to the child of testifying in the courtroom setting and to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

2. The trial in which the child may be called as a witness will commence:

a. Prior to the child's 12th birthday; or

b. Prior to the child's 16th birthday and, in addition to its finding under subd. 1., the court finds that the interests of justice warrant that the child's testimony be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed-circuit audiovisual equipment.

(b) Among the factors which the court may consider in determining the interests of justice under par. (a) 2. b. are any of the following:

1. The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.

2. The child's general physical and mental health.

3. Whether the events about which the child will testify constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.

4. The child's custodial situation and the attitude of other household members to the events about which the child will testify and to the underlying proceeding.
5. The child's familial or emotional relationship to those involved in the underlying proceeding.
6. The child's behavior at or reaction to previous interviews concerning the events involved.
7. Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.
8. Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.
9. The number of separate investigative, administrative and judicial proceedings at which the child's testimony may be required.

(bm) If a court orders the testimony of a child to be taken under par. (a), the court shall do all of the following:

1. To the extent it is practical and subject to s. 972.10 (3), schedule the testimony on a date when the child's recollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.
2. Provide a room for the child to testify from that provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental level.
3. Order a recess whenever the energy, comfort or attention span of the child or other circumstances so warrant.
4. Determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate.
5. Before questioning by the parties begins, attempt to place the child at ease, explain to the child the purpose of the testimony and identify all persons attending.
6. Supervise the spatial arrangements of the room and the location, movement and deportment of all persons in attendance.

7. Allow the child to testify while sitting on the floor, on a platform or on an appropriately sized chair, or while moving about the room within range of the visual and audio recording equipment.

8. Bar or terminate the attendance of any person whose behavior is disruptive or unduly stressful to the child.

(c) Only the following persons may be present in the room in which the child is giving testimony under par. (a):

1m. Any person necessary to operate the closed-circuit audiovisual equipment.

2m. The parents of the child, the guardian or legal custodian of the child or, if no parent, guardian or legal custodian is available or the legal custodian is an agency, one individual whose presence would contribute to the welfare and well-being of the child.

3m. One person designated by the attorney for the state and approved by the court and one person designated by either the defendant or the attorney for the defendant and approved by the court.

(3)(a) In a prosecution under s. 940.22 involving a therapist and a patient or client, evidence of the patient's or client's personal or medical history is not admissible except if:

1. The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the evidence; and

2. The court finds that the evidence is relevant and that its probative value outweighs its prejudicial nature.

(b) The court shall limit the evidence admitted under par. (a) to relevant evidence which pertains to specific information or examples of conduct. The court's order shall specify the information or conduct that is admissible and no other evidence of the patient's or client's personal or medical history may be introduced.

(c) Violation of the terms of the order is grounds for a mistrial but does not prevent the retrial of the defendant.

(3m) A court may not exclude evidence in any criminal action or traffic forfeiture action for violation of s. 346.63(1) or (5), or a local ordinance in conformity with s. 346.63(1) or (5), on the ground that the evidence existed or was obtained outside of this state.

(4) Upon the motion of any party or its own motion, a court may order that any exhibit or evidence be delivered to the party or the owner prior to the final determination of the action or proceeding if all of the following requirements are met:

- (a) There is a written stipulation by all the parties agreeing to the order.
- (b) No party will be prejudiced by the order.
- (c) A complete photographic or other record is made of any exhibits or evidence so released.

WYOMING

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. § 14-3-205 (2011). CHILD ABUSE OR NEGLECT; PERSONS REQUIRED TO REPORT

(a) Any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, shall immediately report it to the child protective agency or local law enforcement agency or cause a report to be made.

(b) If a person reporting child abuse or neglect is a member of the staff of a medical or other public or private institution, school, facility or agency, he shall notify the person in charge or his designated agent as soon as possible, who is thereupon also responsible to make the report or cause the report to be made. Nothing in this subsection is intended to relieve individuals of their obligation to report on their own behalf unless a report has already been made or will be made.

(c) Any employer, public or private, who discharges, suspends, disciplines or penalizes an employee solely for making a report of neglect or abuse under W.S. 14-3-201 through 14-3-215 is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(d) Any person who knowingly and intentionally makes a false report of child abuse or neglect, or who encourages or coerces another person to make a false report of child abuse or neglect, is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

WYO. STAT. ANN. § 14-3-405 (2011). TAKING OF CHILD INTO CUSTODY; WHEN PERMITTED

(a) A child may be taken into custody by a law enforcement officer without a warrant or court order and without the consent of the parents, guardians or others exercising temporary or permanent control over the child when:

(i) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection; or

(ii) The child's conduct or behavior seriously endangers himself and immediate custody appears necessary.

(b) A child may be taken into temporary protective custody by a physician, physician's assistant or nurse practitioner without a warrant or court order and without the consent of the parents, guardians or others exercising temporary or permanent control over the child when the physician, physician's assistant or nurse practitioner treating the child, or a hospital in which the child is being treated, finds that there is reasonable cause to believe an imminent danger to the child's life, health or safety exists unless the child is taken into protective custody, whether or not additional medical treatment is required, and there is not time to apply for a court order.

(c) A district attorney may file an emergency petition, or the department of family services, a local law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician, physician's assistant or nurse practitioner who treated the child may request the court for a protective order. After considering the emergency petition or request, the judge or commissioner, upon finding that there is reasonable cause to believe that a child has been abused or neglected and that the child, by continuing in his place of residence or in the care and custody of the person responsible for his health, safety and welfare, would be in imminent danger of his life, health or safety, may:

(i) Issue an ex parte order or search warrant. The order shall place the child in the temporary protective custody of the local child protection agency;

(ii) Issue an emergency order or search warrant upon application and hearing, authorizing ordinary or emergency care of the child or authorizing a forensic examination to collect evidence.

(d) Temporary protective custody shall not exceed forty-eight (48) hours, excluding weekends and legal holidays.

(e) When necessary for the best interest or welfare of the child in temporary protective custody, a court may order medical or other necessary health care, including mental health and substance abuse care, notwithstanding the absence of a prior finding of child abuse or neglect.

FEDERAL LEGISLATION

18 U.S.C.S. § 5106G (2011). DEFINITIONS.

For purposes of this title [42 USCS §§ 5101 et seq.]--

- (1) the term "child" means a person who has not attained the lesser of--
 - (A) the age of 18; or
 - (B) except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides;
- (2) the term "child abuse and neglect" means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm;
- (3) the term "Secretary" means the Secretary of Health and Human Services;
- (4) the term "sexual abuse" includes--
 - (A) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or
 - (B) the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;
- (5) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;
- (6) 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 such 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--
 - (A) the infant is chronically and irreversibly comatose;
 - (B) the provision of such treatment would--
 - (i) merely prolong dying;
 - (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 - (iii) otherwise be futile in terms of the survival of the infant; or
 - (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

42 U.S.C.A. § 5101 (2011). OFFICE ON CHILD ABUSE AND NEGLECT.

(a) Establishment

The Secretary of Health and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

(b) Purpose

The purpose of the Office established under subsection (a) of this section shall be to execute and coordinate the functions and activities of this subchapter and subchapters III and V of this chapter. In the event that such functions and activities are performed by another entity or entities within the Department of Health and Human Services, the Secretary shall ensure that such functions and activities are executed with the necessary expertise and in a fully coordinated manner involving regular intradepartmental and interdepartmental consultation with all agencies involved in child abuse and neglect activities.

42 U.S.C.A. § 5105 (2012). RESEARCH AND ASSISTANCE ACTIVITIES

(a) Research

(1) Topics

The Secretary shall, in consultation with other Federal agencies and recognized experts in the field, carry out a continuing interdisciplinary program of research, including longitudinal research, that is designed to provide information needed to better protect children from child abuse or neglect and to improve the well-being of victims of child abuse or neglect, with at least a portion of such research being field initiated. Such research program may focus on--

(A) the nature and scope of child abuse and neglect;

(B) causes, prevention, assessment, identification, treatment, cultural and socio-economic distinctions, and the consequences of child abuse and neglect, including the effects of child abuse and neglect on a child's development and the identification of successful early intervention services or other services that are needed;

(C) effective approaches to improving the relationship and attachment of infants and toddlers who experience child abuse or neglect with their parents or primary caregivers in circumstances where reunification is appropriate;

(D) appropriate, effective and culturally sensitive investigative, administrative, and judicial systems, including multidisciplinary, coordinated decisionmaking procedures with respect to cases of child abuse and neglect;

(E) the evaluation and dissemination of best practices, including best practices to meet the needs of special populations, consistent with the goals of achieving improvements in the child protective services systems of the States in accordance with paragraphs (1) through (14) of section 5106a(a) of this title;

(F) effective approaches to interagency collaboration between the child protection system and the juvenile justice system that improve the delivery of services and treatment, including

methods for continuity of treatment plan and services as children transition between systems;

(G) effective practices and programs to improve activities such as identification, screening, medical diagnosis, forensic diagnosis, health evaluations, and services, including activities that promote collaboration between--

(i) the child protective service system; and

(ii)(I) the medical community, including providers of mental health and developmental disability services; and

(II) providers of early childhood intervention services and special education for children who have been victims of child abuse or neglect;

(H) an evaluation of the redundancies and gaps in the services in the field of child abuse and neglect prevention in order to make better use of resources;

(I) effective collaborations, between the child protective system and domestic violence service providers, that provide for the safety of children exposed to domestic violence and their nonabusing parents and that improve the investigations, interventions, delivery of services, and treatments provided for such children and families;

(J) the nature, scope, and practice of voluntary relinquishment for foster care or State guardianship of low-income children who need health services, including mental health services;

(K) the impact of child abuse and neglect on the incidence and progression of disabilities;

(L) the nature and scope of effective practices relating to differential response, including an analysis of best practices conducted by the States;

(M) child abuse and neglect issues facing Indians, Alaska Natives, and Native Hawaiians, including providing recommendations for improving the collection of child abuse and neglect data from Indian tribes and Native Hawaiian communities;

(N) the information on the national incidence of child abuse and neglect specified in clauses (i) through (x) of subparagraph (O); and

(O) the national incidence of child abuse and neglect, including--

(i) the extent to which incidents of child abuse and neglect are increasing or decreasing in number and severity;

(ii) the incidence of substantiated and unsubstantiated reported child abuse and neglect cases;

(iii) the number of substantiated cases that result in a judicial finding of child abuse or neglect or related criminal court convictions;

(iv) the extent to which the number of unsubstantiated, unfounded and false reported cases of child abuse or neglect have contributed to the inability of a State to respond effectively to serious cases of child abuse or neglect;

(v) the extent to which the lack of adequate resources and the lack of adequate training of individuals required by law to report suspected cases of child abuse and neglect have contributed to the inability of a State to respond effectively to serious cases of child abuse and neglect;

(vi) the number of unsubstantiated, false, or unfounded reports that have resulted in a child being placed in substitute care, and the duration of such placement;

(vii) the extent to which unsubstantiated reports return as more serious cases of child abuse or neglect;

(viii) the incidence and prevalence of physical, sexual, and emotional abuse and physical and emotional neglect in substitute care;

(ix) the incidence and prevalence of child maltreatment by a wide array of demographic characteristics such as age, sex, race, family structure, household relationship (including the living arrangement of the resident parent and family size), school enrollment and education attainment, disability, grandparents as caregivers, labor force status, work status in previous year, and income in previous year;

(x) the extent to which reports of suspected or known instances of child abuse or neglect involving a potential combination of jurisdictions, such as intrastate, interstate, Federal-State, and State-Tribal, are being screened out solely on the basis of the cross-jurisdictional complications; and

(xi) the incidence and outcomes of child abuse and neglect allegations reported within the context of divorce, custody, or other family court proceedings, and the interaction between this venue and the child protective services system.

(2) Research

The Secretary shall conduct research on the national incidence of child abuse and neglect, including the information on the national incidence on child abuse and neglect specified in clauses (i) through (xi) of paragraph (1)(O).

(3) Report

Not later than 4 years after December 20, 2010, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee

on Health, Education, Labor and Pensions of the Senate a report that contains the results of the research conducted under paragraph (2).

(4) Priorities

(A) In general

The Secretary shall establish research priorities for making grants or contracts for purposes of carrying out paragraph (1).

(B) Public comment

Not later than 1 years after December 20, 2010, and every 2 years thereafter, the Secretary shall provide an opportunity for public comment concerning the priorities proposed under subparagraph (A) and maintain an official record of such public comment.

(4) Study on shaken baby syndrome

The Secretary shall conduct a study that--

(A) identifies data collected on shaken baby syndrome;

(B) determines the feasibility of collecting uniform, accurate data from all States regarding--

(i) incidence rates of shaken baby syndrome;

(ii) characteristics of perpetrators of shaken baby syndrome, including age, gender, relation to victim, access to prevention materials and resources, and history of substance abuse, domestic violence, and mental illness; and

(iii) characteristics of victims of shaken baby syndrome, including gender, date of birth, date of injury, date of death (if applicable), and short- and long-term injuries sustained.

(b) Provision of technical assistance

(1) In general

The Secretary shall provide technical assistance to State and local public and private agencies and community-based organizations, including disability organizations and persons who work with children with disabilities and providers of mental health, substance abuse treatment, and domestic violence prevention services, to assist such agencies and organizations in planning, improving, developing, and carrying out programs and activities, including replicating successful program models, relating to the prevention, assessment, identification, and treatment of child abuse and neglect.

(2) Evaluation

Such technical assistance may include an evaluation or identification of--

(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

(B) ways to mitigate psychological trauma to the child victim;

(C) effective programs carried out by the States under this subchapter and subchapter III of this chapter; and

(D) effective approaches being utilized to link child protective service agencies with health care, mental health care, and developmental services to improve forensic diagnosis and health evaluations, and barriers and shortages to such linkages.

(3) Dissemination

The Secretary may provide for and disseminate information relating to various training resources available at the State and local level to--

(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, child welfare, substance abuse, and domestic violence services personnel in appropriate methods of interacting during investigative, administrative, and judicial proceedings with children who have been subjected to, or whom the personnel suspect have been subjected to, child abuse or neglect.

(c) Authority to make grants or enter into contracts

(1) In general

The functions of the Secretary under this section may be carried out either directly or through grant or contract.

(2) Duration

Grants under this section shall be made for periods of not more than 5 years.

(3) Preference for long-term studies

In making grants for purposes of conducting research under subsection (a) of this section, the Secretary shall give special consideration to applications for long-term projects.

(d) Peer review for grants

(1) Establishment of peer review process

(A) In general

To enhance the quality and usefulness of research in the field of child abuse and neglect, the Secretary shall, in consultation with experts in the field and other Federal agencies, establish a formal, rigorous, and meritorious peer review process for purposes of evaluating and reviewing applications for assistance through a grant or contract under this section and determining the relative merits of the project for which such assistance is requested.

(B) Members

In establishing the process required by subparagraph (A), the Secretary shall only appoint to the peer review panels members who--

(i) are experts in the field of child abuse and neglect or related disciplines, with appropriate expertise related to the applications to be reviewed; and

(ii) are not individuals who are officers or employees of the Administration for Children and Families.

(C) Meetings

The peer review panels shall meet as often as is necessary to facilitate the expeditious review of applications for grants and contracts under this section, but shall meet not less often than once a year.

(D) Criteria and guidelines

The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines in the review of the applications for grants and contracts.

(2) Review of applications for assistance

Each peer review panel established under paragraph (1)(A) that reviews any application for a grant shall--

(A) determine and evaluate the merit of each project described in such application;

(B) rank such application with respect to all other applications it reviews in the same priority area for the fiscal year involved, according to the relative merit of all of the projects that are described in such application and for which financial assistance is requested; and

(C) make recommendations to the Secretary concerning whether the application for the project shall be approved.

The Secretary shall award grants under this section on the basis of competitive review.

(3) Notice of approval

(A) Meritorious projects

The Secretary shall provide grants and contracts under this section from among the projects which the peer review panels established under paragraph (1)(A) have determined to have merit.

(B) Explanation

In the instance in which the Secretary approves an application for a program without having approved all applications ranked above such application (as determined under paragraph (2)(B)), the Secretary shall append to the approved application a detailed explanation of the reasons relied on for approving the application and for failing to approve each pending application that is superior in merit, as indicated on the list under paragraph (2)(B).

(e) Demonstration programs and projects

The Secretary may award grants to, and enter into contracts with, entities that are States, Indian tribes or tribal organizations, or public or private agencies or organizations (or combinations of such entities) for time-limited, demonstration projects for the following:

(1) Promotion of safe, family-friendly physical environments for visitation and exchange

The Secretary may award grants under this subsection to entities to assist such entities in establishing and operating safe, family-friendly physical environments--

(A) for court-ordered, supervised visitation between children and abusing parents; and

(B) to facilitate the safe exchange of children for visits with noncustodial parents in cases of domestic violence.

(2) Education identification, prevention, and treatment

The Secretary may award grants under this subsection to entities for projects that provide educational identification, prevention, and treatment services in cooperation with child care and early childhood education and care providers, preschools, and elementary and secondary schools.

(3) Risk and safety assessment tools

The Secretary may award grants under this subsection to entities for projects that provide for the development of research-based strategies for risk and safety assessments relating to child abuse

and neglect.

(4) Training

The Secretary may award grants under this subsection to entities for projects that involve research-based strategies for innovative training for mandated child abuse and neglect reporters.

42 U.S.C.A. § 5106A (2012). GRANTS TO STATES FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS.

(a) Development and operation grants

The Secretary shall make grants to the States, from allotments made under subsection (f) for each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective services system of each such State in--

(1) the intake, assessment, screening, and investigation of reports of child abuse or neglect;

(2)(A) creating and improving the use of multidisciplinary teams and interagency, intra-agency, interstate, and intrastate protocols to enhance investigations; and

(B) improving legal preparation and representation, including--

(i) procedures for appealing and responding to appeals of substantiated reports of child abuse or neglect; and

(ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;

(3) case management, including ongoing case monitoring, and delivery of services and treatment provided to children and their families;

(4) enhancing the general child protective system by developing, improving, and implementing risk and safety assessment tools and protocols, including the use of differential response;

(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final disposition and allow interstate and intrastate information exchange;

(6) developing, strengthening, and facilitating training including--

(A) training regarding research-based strategies, including the use of differential response, to promote collaboration with the families;

(B) training regarding the legal duties of such individuals;

- (C)** personal safety training for case workers; and
- (D)** training in early childhood, child, and adolescent development;
- (7)** improving the skills, qualifications, and availability of individuals providing services to children and families, and the supervisors of such individuals, through the child protection system, including improvements in the recruitment and retention of caseworkers;
- (8)** developing, facilitating the use of, and implementing research-based strategies and training protocols for individuals mandated to report child abuse and neglect;
- (9)** developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including--
 - (A)** existing social and health services;
 - (B)** financial assistance;
 - (C)** services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption; and
 - (D)** the use of differential response in preventing child abuse and neglect;
- (10)** developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect, including the use of differential response;
- (11)** developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level;
- (12)** supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems;
- (13)** supporting and enhancing interagency collaboration among public health agencies, agencies in the child protective service system, and agencies carrying out private community-based programs--
 - (A)** to provide child abuse and neglect prevention and treatment services (including linkages with education systems), and the use of differential response; and
 - (B)** to address the health needs, including mental health needs, of children identified as victims of child abuse or neglect, including supporting prompt, comprehensive health and developmental

evaluations for children who are the subject of substantiated child maltreatment reports; or

(14) developing and implementing procedures for collaboration among child protective services, domestic violence services, and other agencies in--

(A) investigations, interventions, and the delivery of services and treatment provided to children and families, including the use of differential response, where appropriate; and

(B) the provision of services that assist children exposed to domestic violence, and that also support the caregiving role of their nonabusing parents.

(b) Eligibility requirements

(1) State plan

(A) In general

To be eligible to receive a grant under this section, a State shall submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) that the State will address with amounts received under the grant.

(B) Duration of plan

Each State plan shall--

(i) remain in effect for the duration of the State's participation under this section; and

(ii) be periodically reviewed and revised as necessary by the State to reflect changes in the State's strategies and programs under this section.

(C) Additional information

The State shall provide notice to the Secretary--

(i) of any substantive changes, including any change to State law or regulations, relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section; and

(ii) of any significant changes in how funds provided under this section are used to support activities described in this section, which may differ from the activities described in the current State application.

(2) Contents

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this

subchapter, including--

(A) an assurance that the State plan, to the maximum extent practicable, is coordinated with the State plan under part B of title IV of the Social Security Act (42 U.S.C. 621 et seq.) relating to child welfare services and family preservation and family support services;

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes--

(i) provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances;”;

(ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants, except that such notification shall not be construed to--

(I) establish a definition under Federal law of what constitutes child abuse or neglect; or

(II) require prosecution for any illegal action;

(iii) the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder;

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

(v) triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of a victim of child abuse or neglect and of any other child under the same care who may also be in danger of child abuse or neglect and ensuring their placement in a safe environment;

(vii) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect;

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III of

this chapter shall only be made available to--

- (I)** individuals who are the subject of the report;
- (II)** Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);
- (III)** child abuse citizen review panels;
- (IV)** child fatality review panels;
- (V)** a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and
- (VI)** other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;
- (ix)** provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect;
- (x)** provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;
- (xi)** the cooperation of State law enforcement officials, court of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse and neglect;
- (xii)** provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment;
- (xiii)** provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings--
- (I)** to obtain first-hand, a clear understanding of the situation and needs of the child; and
- (II)** to make recommendations to the court concerning the best interests of the child;

(xiv) the establishment of citizen review panels in accordance with subsection (c);

(xv) provisions, procedures, and mechanisms--

(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

(II) by which individuals who disagree with an official finding of child abuse or neglect can appeal such finding;

(xvi) provisions, procedures, and mechanisms, that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction--

(I) to have committed murder (which would have been an offense under section 1111(a) of Title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter;

(IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;

(V) to have committed sexual abuse against the surviving child or another child of such parent;
or

(VI) to be required to register with a sex offender registry under section 16913(a) of this title;

(xvii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xvi), conviction of any one of the felonies listed in clause (xvi) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State);

(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse or neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

(xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers;

(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(xxii) provisions and procedures for requiring criminal background record checks that meet the requirements of section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household; and

(xxiii) provisions for systems of technology that support the State child protective service system described in subsection (a) and track reports of child abuse and neglect from intake through final disposition;

(C) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for--

(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions); and

(iii) authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions;

(D) a description of--

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and supervisory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected

instances of child abuse and neglect;

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect;

(iv) policies and procedures encouraging the appropriate involvement of families in decisionmaking pertaining to children who experienced child abuse or neglect;

(v) policies and procedures that promote and enhance appropriate collaboration among child protective service agencies, domestic violence service agencies, substance abuse treatment agencies, and other agencies in investigations, interventions, and the delivery of services and treatment provided to children and families affected by child abuse or neglect, including children exposed to domestic violence, where appropriate; and

(vi) policies and procedures regarding the use of differential response, as applicable;

(E) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act (42 U.S.C.A. § 621 et seq.) comply with the requirements set forth in paragraph (1) and this paragraph;

(F) an assurance or certification that programs and training conducted under this subchapter address the unique needs of unaccompanied homeless youth, including access to enrollment and support services and that such youth are eligible for under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq., 670 et seq.) and meet the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(G) an assurance that the State, in developing the State plan described in paragraph (1), has collaborated with community-based prevention agencies and with families affected by child abuse or neglect.

Nothing in subparagraph (B) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.

(3) Limitation

With regard to clauses (vi) and (vii) of paragraph (2)(B), nothing in this section shall be construed as restricting the ability of a State to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the State may not refuse such a disclosure where a court orders such disclosure after such court has reviewed, in camera, the record of the State related to the report or complaint and has found it has reason to believe that the reporter knowingly made a false report.

(4) Definitions

For purposes of this subsection--

(A) the term “near fatality” means an act that, as certified by a physician, places the child in serious or critical condition; and

(B) the term “serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(c) Citizen review panels

(1) Establishment

(A) In general

Except as provided in subparagraph (B), each State to which a grant is made under this section shall establish not less than 3 citizen review panels.

(B) Exceptions

(i) Establishment of panels by States receiving minimum allotment

A State that receives the minimum allotment of \$175,000 under section 5116b(b)(1)(A) of this title for a fiscal year shall establish not less than 1 citizen review panel.

(ii) Designation of existing entities

A State may designate as panels for purposes of this subsection one or more existing entities established under State or Federal law, such as child fatality panels or foster care review panels, if such entities have the capacity to satisfy the requirements of paragraph (4) and the State ensures that such entities will satisfy such requirements.

(2) Membership

Each panel established pursuant to paragraph (1) shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect, and may include adult former victims of child abuse or neglect.

(3) Meetings

Each panel established pursuant to paragraph (1) shall meet not less than once every 3 months.

(4) Functions

(A) In general

Each panel established pursuant to paragraph (1) shall, by examining the policies, procedures, and practices of State and local agencies and where appropriate, specific cases, evaluate the extent to which State and local child protection system agencies are effectively discharging their child protection responsibilities in accordance with--

- (i) the State plan under subsection (b) of this section;
- (ii) the child protection standards set forth in subsection (b) of this section; and
- (iii) any other criteria that the panel considers important to ensure the protection of children, including--
 - (I) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established under part E of title IV of the Social Security Act (42 U.S.C.A. § 670 et seq.); and
 - (II) a review of child fatalities and near fatalities (as defined in subsection (b)(4) of this section).

(B) Confidentiality

(i) In general

The members and staff of a panel established under paragraph (1)--

- (I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and
- (II) shall not make public other information unless authorized by State statute.

(ii) Civil sanctions

Each State that establishes a panel pursuant to paragraph (1) shall establish civil sanctions for a violation of clause (i).

(C) Public outreach

Each panel shall provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to meet its obligations under subparagraph (A).

(5) State assistance

Each State that establishes a panel pursuant to paragraph (1)--

(A) shall provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions under paragraph (4); and

(B) shall provide the panel, upon its request, staff assistance for the performance of the duties of the panel.

(6) Reports

Each panel established under paragraph (1) shall prepare and make available to the State and the public, on an annual basis, a report containing a summary of the activities of the panel and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system.

(d) Annual State data reports

Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as victims of child abuse or neglect.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were--

(A) substantiated;

(B) unsubstantiated; or

(C) determined to be false.

(3) Of the number of children described in paragraph (2)--

(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) the number that received services during the year under the State program funded under this section or an equivalent State program; and

- (C) the number that were removed from their families during the year by disposition of the case.
- (4) The number of families that received preventive services, including use of differential response, from the State during the year.
- (5) The number of deaths in the State during the year resulting from child abuse or neglect.
- (6) Of the number of children described in paragraph (5), the number of such children who were in foster care.
- (7)(A) The number of child protective service personnel responsible for the--
- (i) intake of reports filed in the previous year;
 - (ii) screening of such reports;
 - (iii) assessment of such reports; and
 - (iv) investigation of such reports.
- (B) The average caseload for the workers described in subparagraph (A).
- (8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.
- (9) The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.
- (10) For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the State--
- (A) information on the education, qualifications, and training requirements established by the State for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;
 - (B) data on the education, qualifications, and training of such personnel;
 - (C) demographic information of the child protective service personnel; and
 - (D) information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.
- (11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or

neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6) of this section.

(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

(15) The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

(16) The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.).

(e) Annual report by Secretary

Within 6 months after receiving the State reports under subsection (d) of this section, the Secretary shall prepare a report based on information provided by the States for the fiscal year under such subsection and shall make the report and such information available to the Congress and the national clearinghouse for information relating to child abuse and neglect.

(f) Allotments

(1) Definitions

In this subsection:

(A) Fiscal year 2009 grant funds

The term “fiscal year 2009 grant funds” means the amount appropriated under section 5106h of this title for fiscal year 2009, and not reserved under section 5106h(a)(2) of this title.

(B) Grant funds

The term “grant funds” means the amount appropriated under section 5106h of this title for a fiscal year and not reserved under section 5106h(a)(2) of this title.

(C) State

The term “State” means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(D) Territory

The term “territory” means Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(2) In general

Except as otherwise provided in this section, the Secretary shall make allotments to each State and territory that applies for a grant under this section in an amount equal to the sum of--

(A) \$50,000; and

(B) an amount that bears the same relationship to any grant funds remaining after all such States and territories have received \$50,000, as the number of children under the age of 18 in the State or territory bears to the number of such children in all States and territories that apply for such a grant.

(3) Allotments for decreased appropriation years

In the case where the grant funds for a fiscal year are less than the fiscal year 2009 grant funds, the Secretary shall ratably reduce each of the allotments under paragraph (2) for such fiscal year.

(4) Allotments for increased appropriation years

(A) Minimum allotments to States for increased appropriations years

In any fiscal year for which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000, the Secretary shall adjust the allotments under paragraph (2), as necessary, such that no State that applies for a grant under this section receives an allotment in an amount that is less than--

(i) \$100,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by more than \$1,000,000 but less than \$2,000,000;

(ii) \$125,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$2,000,000 but less than \$3,000,000; and

(iii) \$150,000, for a fiscal year in which the grant funds exceed the fiscal year 2009 grant funds by at least \$3,000,000.

(B) Allotment adjustment

In the case of a fiscal year for which subparagraph (A) applies and the grant funds are insufficient to satisfy the requirements of such subparagraph (A), paragraph (2), and paragraph (5), the Secretary shall, subject to paragraph (5), ratably reduce the allotment of each State for

which the allotment under paragraph (2) is an amount that exceeds the applicable minimum under subparagraph (A), as necessary to ensure that each State receives the applicable minimum allotment under subparagraph (A).

(5) Hold harmless

Notwithstanding paragraphs (2) and (4), except as provided in paragraph (3), no State or territory shall receive a grant under this section in an amount that is less than the amount such State or territory received under this section for fiscal year 2009.

AMERICAN SAMOA

AM. SAMOA CODE ANN. §47.0302 (2004). FACTORS IN DETERMINING CUSTODY AND VISITATION

(a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic or family violence:

(1) The Court shall consider as primary the safety and well being of the child and of the parent who is the victim of domestic or family violence.

(2) The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(c) In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

GUAM

GUAM CODE ANN. TIT. 19 , §13302(2011). PROTECTIVE CUSTODY BY POLICE OFFICER, CHILD PROTECTIVE SERVICES SOCIAL WORKER OR PHYSICIAN WITHOUT COURT ORDER

§ 13302. Protective Custody by Police Officer, Child Protective Services Social Worker or Physician Without Court Order.

(a) A police officer, Child Protective Services social worker or physician shall assume protective custody of a child without a court order and without the consent of the child's family regardless of whether the child's family is absent if, in the discretion of such police officer, Child Protective Services social worker or physician, the child is in such circumstances or condition that the

child's continuing in the custody or care of the person responsible for the child's welfare presents a situation of harm or threatened harm to the child.

(b) A police officer or physician who assumes protective custody of a child who is harmed or threatened with harm shall immediately transfer protective custody to Child Protective Services by presenting physical custody of the child to Child Protective Services, unless the child is or presently will be admitted to a hospital or similar institution, in which case the police officer or physician shall immediately transfer protective custody to Child Protective Services by so informing Child Protective Services and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the protective custody of Child Protective Services.

(c) When Child Protective Services receives physical custody of a child pursuant to subsection (b) of this section, Child Protective Services shall assume protective custody of a child without an order of the court and without the consent of the child's family regardless of whether the child's family is absent if, in the discretion of Child Protective Services, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of harm or threatened harm to the child.

(d) Upon assuming protective custody of a child under this Chapter, any authorized individual taking a child into protective custody shall immediately and within 24 hours, orally and in writing, notify the person responsible for the child's welfare, the reasons for the need to take the child into protective custody and shall immediately notify Child Protective Services.

(e) Upon assuming protective custody of a child under this Chapter, Child Protective Services shall place the child in a home approved by Child Protective Services unless the child is admitted to a hospital or similar institution, and obtain a verbal ex parte order from the court for temporary custody while Child Protective Services or the Guam Police Department conducts an appropriate investigation.

(f) Children appearing to suffer any physical or mental trauma which may constitute harm or threatened harm shall be admitted to and treated in appropriate facilities of private and public hospitals, with or without the consent of the child's family, on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care.

(g) If a child has been taken into protective custody, within one day of Child Protective Services' assumption of protective custody, excluding Saturday, Sunday and holidays, Child Protective Services shall file a declaration with the court in support of an ex parte order and obtain a written order to extend protective custody beyond the one working day.

(h) In no case shall protective custody be maintained longer than three working days without a preliminary hearing. If at the hearing it is determined that protective custody shall be continued, Child Protective Services shall, within 48 hours of the time of the hearing, file a petition with the Superior Court of Guam pursuant to § 13305.

(i) A conference between the person responsible for the welfare of a child taken into protective custody pursuant to this section and the social worker designated by Child Protective Services to be responsible for such child shall be held within two working days if possible from the time that the child is taken into such custody for the purposes of explaining to such person the reasons for the protective custody of the child and the whereabouts of the child is appropriate, and to expedite, wherever possible, the return of the child to the custody of such person when protective custody is no longer necessary.

PUERTO RICO

P.R. LAWS ANN. TIT. 8, § 447v (2009). PARENTAL RIGHTS; PETITION FOR TERMINATION

The Department may initiate a proceeding for the termination, restriction or suspension of parental rights under any of the following circumstances:

(a) When the father and/or mother consent to the termination of patria potestas. The parents may only waive their right to patria potestas if assisted by an attorney. Consent shall be given in writing, consciously and voluntarily, in court before a judge for its verification. The judge shall advise the parents on the consequences of the order of termination of patria potestas. If the court had accepted said waiver without complying with the admonishments stated above, said waiver shall be null and shall only be valid when proceeding pursuant to what is established in this subsection.

(b) When a minor has remained in a foster or substitute home for six (6) months, provided the Department has rendered services according to the permanent placement plan that has been established so the minor may return to his/her home.

(c) When the court has determined, in accordance with the provisions of this chapter, that reasonable efforts are not in order, and directs that efforts to reunite not be made.

(d) When the court determines, pursuant to the requirements set forth in this chapter, that the father and/or mother is unwilling or unable to assume responsibility and protect the minor from risks to his/her health and physical, mental, emotional and/or sexual integrity, and that such circumstances will not change within a period of six (6) months after having initiated the proceedings according to the hearing presented in the case.

(e) When the court determines that the father and/or mother has not made efforts in good faith to rehabilitate himself or herself and be reunited with the minor.

(f) When any of the grounds within our body of laws for withdrawing, restricting or suspending patria potestas is present.

(g) When the minor has been abandoned, as evidenced by any of the following circumstances:

(1) When the father or mother has not communicated with the minor for a period of at least three (3) months, except when the court believes there is just cause for the non-communication;

(2) when the father or mother has not participated in any plan or program designed to reunite him or her with the minor, after the Department has made the necessary arrangements to obtain the participation of the father or mother, making use of its internal resources and/or the services of other outside agencies;

(3) when the father or mother fails to appear at the hearings for the protection of the minor, except when the court believes that there is just cause for such nonappearance;

(4) when the minor is found in circumstances that make it impossible to ascertain the identity of his or her father or mother; or when their identity is known, but their whereabouts are unknown in spite of the efforts made to locate them; and when the father or mother fails to claim the minor within thirty (30) days of the minor having been found.

The Department shall not need to file a petition for termination of patria potestas if it decides to place the minor with a relative, or if it informs the court that termination of patria potestas is detrimental to the best interests of the minor.

U.S. VIRGIN ISLANDS