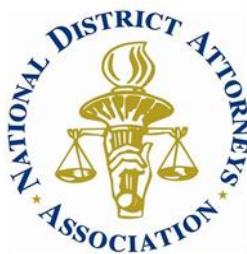


Emotional Maltreatment Compilation

Last Updated January 2015



Summary of Content

Psychological abuse is the sustained, repetitive, inappropriate behavior that damages or substantially reduces a child's emotional development.¹ Psychological abuse can affect intelligence, memory, recognition, perception, attention, imagination, and moral development.² Domestic violence and animal abuse in front of a child, desertion, unpredictability, lies, deception, and exploitation can all be forms of psychological abuse.³

In 1974, Congress added mental injury as a form of child abuse into federal Child Abuse and Prevention Act (CAPTA).⁴ The federal statute defines "mental injury" as "harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition."⁵ States have generally defined emotional mal-treatment, mental injury, and emotional abuse as malicious behavior which results in *observable* sustained, and adverse effect on the child's physical, mental, or emotional development.⁶ Many states have mental injury or a synonymous term within the definition of criminal child abuse and neglect statutes, as well as civil termination of parental rights statutes.

¹ Sana Loue, J.D., Ph.D., M.P.H., *Redefining The Emotional And Psychological Abuse And Maltreatment Of Children*, 26 J. Legal Medicine 311,314 (2005) Citing Depart. Of Health et al., *Working Together To Safeguard Children* 5-6 (Lon. 1999), available at www.Dh.Gov.Uk/Assesthoot/04/07/58/24/04075824.Pdf.

² Id. citing Kieran P. O'Hagan, *Emotional and Psychological Abuse: Problems of Definition*, 19 Child Abuse & Neglect 449, 456 (1995).
³ Id.

⁴ Lois A. Weithorn, J.D., Ph.D., *Protecting Children From Exposure To Domestic Violence: The Use And Abuse Of Child Maltreatment*, 53 HSTLJ 1. 73 (2001) citing Nicholson v. Williams, 2001 WL 951716 (E.D.N.Y. Aug. 16, 2001) (citing 42 U.S.C. §§ 5101-5106(a)).

⁵ 18 U.S.C.S. § 3509 (2015). Child victims' and child witnesses' rights

⁶ See Generally. VT. STAT. ANN. TIT. 33, § 4912 (2015); MINN. STAT. § 260C.007 (2015); ALASKA STAT. § 47.17.290 (9) (2015).

Scope of Compilation

This document is a survey of emotional maltreatment statutes from all U.S. jurisdictions including states, territories, and the federal government. It includes both civil termination of parental rights for emotional maltreatment and criminal child abuse statutes. It is up-to-date as of **[January 2015]**. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php



Funded By U.S. Department of Justice Grant # 2010-MC-CX-K065

Table of Contents

Click on the state heading to go to the statutes section.

<u>TABLE OF CONTENTS</u>	<u>3</u>
<u>ALABAMA</u>	<u>9</u>
Ala. Code § 12-15-301 (2015). Juvenile Code- Dependency and Termination of Parental Rights.....	9
Ala. Code § 26-14-1 (2015). Reporting of Child Abuse or Neglect - Definitions.	10
Ala. Code § 26-16-2 (2015). Child Abuse and Neglect Prevention. Definitions.	11
<u>ALASKA</u>	<u>13</u>
ALASKA STAT. § 47.10.019 (2015). Welfare, Social Services and Institutions -Children in Need of Aid- Children's Proceeding- Children in need of aid	13
ALASKA STAT. § 47.17.290 (2015). Child Protection. Mandated Reporting. Definitions	15
Alaska Court Rule 18 (2015). Termination of Parental Rights	17
<u>ARIZONA</u>	<u>19</u>
Ariz. Rev. Stat. § 8-201 (2015). Definitions	19
<u>ARKANSAS</u>	<u>24</u>
ARK. CODE ANN. § § 9-27-303 (2015). Juvenile Courts and Proceedings. Juvenile Code. Definitions.....	25
ARK. CODE ANN. § 9-30-103 (2015). Child Abuse and Neglect Prevention. Definitions.....	41
ARK. CODE ANN. § 12-18-103 (2015). Child Maltreatment Act Definitions	43
<u>CALIFORNIA</u>	<u>52</u>
CAL. PENAL CODE § 273a (2015). Willful harm or injury to child; endangering person or health; punishment; conditions of probation.....	52
CAL.WELF. & INST.CODE § 11165.3 (2015). Willful harming or endangering of child defined	53
CAL. PENAL CODE § 11165.6 (2015). Child abuse or neglect defined	53
CAL.WELF. & INST.CODE § 300 (2015). Children subject to jurisdiction; legislative intent and declarations; “guardian” defined	54
CAL.WELF. & INST.CODE § 18951 (2015). The Office of Child Abuse Prevention. Definitions.....	57
<u>COLORADO</u>	<u>59</u>
COLO. REV. STAT. § 19-1-103 (2015). Children's Code. Definitions.	59
<u>CONNECTICUT</u>	<u>80</u>
Conn. Gen. Stat. § 46b-120 (2015). Juvenile Matters. Definitions	80
Conn. Gen. Stat. § 45a-610 (2014). Removal of parent as guardian	83
<u>DELAWARE</u>	<u>84</u>
DEL. CODE ANN. TIT. 10, § 901 (2015). § 901. Definitions. Family Court of the State of Delaware.	84
DEL. CODE ANN. TIT. 11, § 1102 (2015). Endangering the welfare of a child; class E or G felony	89
DEL. CODE ANN. TIT. 11, § 1102 (2015). Endangering the welfare of a child; class E or G felony	91
<u>DISTRICT OF COLUMBIA</u>	<u>93</u>
D.C. Code § § 4-1341.01 (2015). Child Abuse and Neglect. Definitions.....	93
D.C. Code § 4-1301.06 (2015). Child Abuse and Neglect. Investigation.	94
D.C. Code § 16-2301 (2015). Proceedings Regarding Delinquency, Neglect, or Need of Supervision. Definitions.....	95

D.C. Code § 16-2320 (2015). Disposition of child who is neglected, delinquent, or in need of supervision.....	103
<u>FLORIDA.....</u>	<u>106</u>
FLA. STAT. ANN. § 39.01 (2015). Proceedings Relating to Children. Definitions.....	106
FLA. STAT. ANN. § 39.301 (2015). Proceedings Relating to Children. Initiation of protective investigations.	122
FLA. STAT. ANN. § 827.03 (2015). Abuse, aggravated abuse, and neglect of a child; penalties	131
<u>GEORGIA.....</u>	<u>133</u>
GA. CODE ANN. § § 15-11-2 (2015). Juvenile Proceedings. Definitions.....	133
GA. CODE ANN. § 15-11-310 (2015). Statutory grounds for termination; best interests of child	146
<u>HAWAII.....</u>	<u>147</u>
HAW. REV. STAT. ANN. § 350-1 (2015). Social Services. Child Abuse. Definitions.....	147
HAW. REV. STAT. ANN. § 709-904 (2015). Offenses Against the Family and Against Incompetents .	
Endangering the welfare of a minor in the second degree	149
<u>IDAHO.....</u>	<u>150</u>
IDAHO CODE ANN. § 16-1602 (2015). Juvenile Proceedings. Child Protective Act. Definitions.	150
IDAHO CODE ANN. § 18-1501 (2015). Injury to children.....	155
<u>ILLINOIS.....</u>	<u>156</u>
325 ILL. COMP. STAT. 325 Ill. Comp. Stat. Ann. 5/3 (2015). Abused and Neglected Child Reporting Act. Definitions.....	156
705 Ill. Comp. Stat. Ann. 405/2-3 (2015). Neglected or abused minor	159
<u>INDIANA.....</u>	<u>162</u>
Ind. Code Ann. § 31-9-2-14 (2015). Family Law and Juvenile Law. Definitions. Child abuse or neglect	162
Ind. Code Ann. § 31-34-1-1 (2015). Children in Need of Services. Circumstances Under Which a Child is a Child in Need of Services. Impairment or serious endangerment of physical or mental condition. ...	162
Ind. Code Ann. § 31-34-1-2 (2015). Endangerment of physical or mental health	163
Ind. Code Ann. § 31-37-23-5 (2015). "Dependent child" or "neglected child" defined.....	164
<u>IOWA.....</u>	<u>164</u>
Iowa Code § 232.2 (2015). Juvenile Justice. Definitions.....	164
Iowa Code § 232.116 (2015). Grounds for termination.....	177
Iowa Code § 726. 6 (2015). Child endangerment	182
<u>KANSAS.....</u>	<u>184</u>
Kan. Stat. Ann. § 38-2202 (2015). Kansas Code for Care of Children. Definitions	184
Kan. Stat. Ann. 38-2269 (2015). Factors to be considered in termination of parental rights; appointment of permanent custodian	188
<u>KENTUCKY.....</u>	<u>191</u>
Ky. Rev. Stat. Ann. § 508.090 (2015). Penal Code. Assault and Related Offense.Definitions for KRS 508.100 to 508.120.....	191
Ky. Rev. Stat. Ann. § 600.020 (2015). Unified Juvenile Code.Definitions for KRS Chapters 600 to 645	191
<u>LOUISIANA.....</u>	<u>202</u>

La. Child. Code Ann. art. 502 (2015).Protection of Children in Abuse Investigations . Definitions	202
La. Child. Code Ann. art. 603 (2015). Child in Need of Care. Definitions.....	204
La. Child. Code Ann. art. 606 (2015). Grounds; Child in Need of Care.....	209
<u>MAINE</u>	<u>210</u>
ME. REV. STAT. ANN. TIT. 22, § 4002 (2015). Child and Family Services and Child Protection Act. Definitions.....	210
<u>MARYLAND</u>	<u>214</u>
MD. CODE ANN., CTS. & JUD. PROC. § 3-801 (2015). Juvenile Causes--Children in Need of Assistance. Definitions.....	214
MD. CODE ANN., FAM. LAW § 5-701 (2015). Child Abuse and Neglect. Definitions.	220
<u>MASSACHUSETTS</u>	<u>225</u>
MASS. ANN. LAWS CH. 119, § 51A (2015). Reporting of suspected abuse or neglect; mandated reporters; collection of physical evidence; penalties; content of reports; liability; privileged communication.....	225
MASS. ANN. LAWS CH. 18C, § 11 (2015). Comprehensive plan for response to child abuse and neglect; advice of experts; contents.....	227
<u>MICHIGAN</u>	<u>231</u>
MICH. COMP. LAWS SERV. § 400.1501 (2015). Domestic Violence. Definitions.	231
Mich. Comp. Laws Serv. § 722.602 (2015).Child Abuse and Neglect Prevention Act. Definitions.	232
Mich. Comp. Laws Serv. § 722.622 (2015). Child Protection Law. Definitions	233
<u>MINNESOTA</u>	<u>237</u>
Minn. Stat. § 260C.007 (2015). Juvenile Safety and Placement. Definitions.....	237
Minn. Stat. § 609.378 (2015). Crimes Against the Family. Neglect or endangerment of child	245
<u>MISSISSIPPI</u>	<u>246</u>
Miss. Code Ann. § 43-21-105 (2015). Youth Court. Definitions.....	246
Miss. Code Ann. § 97-5-39 (2015). Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child	250
<u>MISSOURI</u>	<u>253</u>
Mo. Rev. Stat. § 210.110 (2012). Child Abuse. Definitions	253
Mo. Rev. Stat. § 210.165 (2012). Child Abuse. Penalty for violation	255
Mo. Rev. Stat. § 211.447 (2015). Petition to terminate parental rights filed, when--juvenile court may terminate parental rights, when--investigation to be made--grounds for termination	256
<u>MONTANA</u>	<u>262</u>
Mont. Code Ann. § 41-3-102 (2012). Child Abuse and Neglect. Definitions.....	262
<u>NEBRASKA</u>	<u>268</u>
Neb. Rev. Stat. Ann. § 28-707 (2015). Child abuse; privileges not available; penalties	268
Neb. Rev. Stat. Ann. § 28-710 (2015). Act, how cited; terms, defined	270
<u>NEVADA</u>	<u>271</u>
Nev. Rev. Stat. Ann. § 128.0137 (2015). "Mental injury" defined	271
Nev. Rev. Stat. Ann. § 128.014 (2015). "Neglected child" defined.....	272

Nev. Rev. Stat. Ann. § 200.508 (2015). Abuse, neglect or endangerment of child: Penalties; definitions	272
Nev. Rev. Stat. Ann. § 432B.020 (2015). "Abuse or neglect of a child" defined	275
<u>NEW HAMPSHIRE</u>	<u>276</u>
N.H. Rev. Stat. Ann. § 169-C:3 (2012). Child Protection Act. Definitions.....	276
<u>NEW JERSEY</u>	<u>280</u>
N.J. Stat. Ann. § 9:6-1 (2015). Abuse, abandonment, cruelty and neglect of child; what constitutes ..	280
N.J. Stat. Ann. § 9:6-3 (2015). Cruelty and neglect of children; crime of fourth degree; remedies	281
N.J. Stat. Ann. § 9:6-8.9 (2015). "Abused child" defined	282
N.J. Stat. Ann. § 9:6-8.21 (2012). Adjudication of Alleged Child Abuse or Neglect.	283
<u>NEW MEXICO</u>	<u>284</u>
N.M. Stat. Ann. § 32A-4-2 (2012). Child Abuse and Neglect. Definitions	285
<u>NEW YORK</u>	<u>287</u>
N.Y. Penal Law § 260.10 (2015). Endangering the welfare of a child	287
N.Y. Soc. Serv. Law § 371 (2015). Definitions	288
N.Y. Fam. Ct. Act § 1012 (2015). Definitions.....	292
<u>NORTH CAROLINA</u>	<u>295</u>
N.C. Gen. Stat. § 7B-101 (2015). Juvenile Code. Definitions.....	295
N.C. Gen. Stat. § 7B-1111 (2015). Grounds for terminating parental rights	299
<u>NORTH DAKOTA</u>	<u>301</u>
N.D. Cent. Code § 14-09-22 (2015). Abuse or neglect of child – Penalty	301
N.D. Cent. Code § 50-25.1-02 (2012). Definitions	307
<u>OHIO</u>	<u>307</u>
OHIO REV. CODE ANN. § 2151.011 (2015). Juvenile Courts. Definitions.	307
OHIO REV. CODE ANN. § 2151.03 (2015). Juvenile Courts. "Neglected child" defined	315
OHIO REV. CODE ANN. § 2151.031 (2015). "Abused child" defined	316
OHIO REV. CODE ANN. § 2919.22 (2015). ENDANGERING CHILDREN	317
<u>OKLAHOMA</u>	<u>324</u>
OKLA. STAT. ANN. TIT. 10A, § 1-1-105 (2015). Children and Juvenile Code. Definitions.....	324
<u>OREGON</u>	<u>335</u>
OR. REV. STAT. § 12.117 (2015). Child Abuse	335
OR. REV. STAT. § 419B.005 (2015). Juvenile Code. Definitions	336
<u>PENNSYLVANIA</u>	<u>340</u>
23 Pa. Cons. Stat. Ann. § 6303 (2015). Child Protective Services. Definitions	340
<u>RHODE ISLAND</u>	<u>352</u>
R.I. GEN. LAWS § 14-1-3 (2015). Delinquent and Dependent Children. Definitions.....	352
R.I. GEN. LAWS § 40-11-2 (2015). Abused and Neglected Children. Definitions.	354
<u>SOUTH CAROLINA</u>	<u>356</u>

S.C. CODE ANN. § 63-7-20 (2015).Child Protection and Permanency. General Provisions. Definitions. .	356
<u>SOUTH DAKOTA</u>	<u>360</u>
S.D. CODIFIED LAWS § 25-5-30 (2015). Domestic Relations. Circumstances suggesting serious detriment to child	360
S.D. CODIFIED LAWS § 26-8A-2 (2015). Abused or neglected child defined.	361
S.D. CODIFIED LAWS § 26-8A-26.1 (2015).Additional reasons for termination of parental rights	362
<u>TENNESSEE</u>	<u>364</u>
TENN. CODE ANN. § 37-1-102 (2015). Definitions.....	364
TENN. CODE ANN. § 37-1-130 (2015). Disposition of dependent or neglected child; abuse; written findings of fact; trial home visits.....	370
TENN. CODE ANN. 37-1-409 (2015). Confidential and privileged information; criminal penalties	372
TENN. CODE ANN. § 37-1-602 (2015). Juvenile Courts and Proceedings. Definitions.	374
<u>TEXAS</u>	<u>376</u>
TEX. FAM. CODE ANN. § 261.001 (2015). The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship. Definitions.....	376
TEX. FAM. CODE ANN. § 32.005 (2015). Examination Without Consent of Abuse or Neglect of Child .	380
<u>UTAH</u>	<u>380</u>
UTAH CODE ANN. § 76-5-109 (2015). Utah Criminal Code. Child abuse--Child abandonment.....	380
UTAH CODE ANN. § 78A-6-105 (2015). Judiciary and Judicial Administration. Juvenile Court Act. Definitions.....	384
UTAH CODE ANN. § 78A-6-508 (2015). Judiciary and Judicial Administration. Termination of Parental Rights Act. Evidence of grounds for termination.....	392
<u>VERMONT</u>	<u>395</u>
VT. STAT. ANN. TIT. 33, § 4912 (2015). Child Welfare Services. Reporting Abuse of Children. Definitions	395
VT. STAT. ANN. TIT. 15, § 1101 (2015). Domestic Relations. Abuse Prevention 352	397
<u>VIRGINIA</u>	<u>398</u>
VA. CODE ANN. §16.1-228 (2015). Crimes and Offenses Generally. Family Offenses; Crimes Against Children, Etc. Definitions	398
VA. CODE ANN. § 63.2-100 (2015). General Provisions Relating to Social Services. Definitions.	403
<u>WASHINGTON</u>	<u>411</u>
Wash. Rev. Code Ann. § 26.44.020 (2015). Abuse of Children. Definitions.	411
<u>WEST VIRGINIA</u>	<u>414</u>
W. Va. Code Ann. § 49-1-3 (2015). Definitions relating to abuse and neglect	414
<u>WISCONSIN</u>	<u>420</u>
WIS. STAT. ANN. § 48.02 (2015). Children's Code. Definitions	420
WIS. STAT. ANN. § 948.01 (2015). Crimes Against Children. Definitions.....	426
WIS. STAT. ANN. § 948.04 (2015). Causing mental harm to a child	428
<u>WYOMING</u>	<u>428</u>
Wyo. Stat. Ann. § 14-3-202 (2015). Child Protective Services. Definitions.....	428

<u>FEDERAL LEGISLATION</u>	<u>430</u>
18 U.S.C.S. § 3509 (2015). Child victims' and child witnesses' rights	430
42 U.S.C.S. § 13031 (2015). Child abuse reporting	440
<u>AMERICAN SAMOA</u>	<u>443</u>
Am. Samoa Code Ann. § 45.0103 (2015). Definitions.....	443
Am. Samoa Code Ann. § 45.2001 (2015). Definitions.....	446
<u>GUAM</u>	<u>447</u>
GUAM CODE ANN. TIT. 19, § 13101 (2015). Child Protective Act. Definitions.	448
<u>PUERTO RICO</u>	<u>452</u>
P.R. Laws Ann. tit. 8, § 444 (2015). Comprehensive Child Wellbeing and Protection Act. Definitions..	452
<u>VIRGIN ISLANDS</u>	<u>457</u>
V.I. CODE ANN. TIT. 5, § 2502 (2015). Delinquency, Persons in Need of Supervision, Abuse and Neglect. Definitions.....	457
V.I. CODE ANN. TIT. 14, § 503 (2015). Crimes. Child Protection.....	461
V.I. CODE ANN. TIT. 14, § 504 (2012). Crimes. Child Protection. Child neglect	462
V.I. CODE ANN. TIT. 14, § 505 (2015). Child abuse	463
V.I. CODE ANN. TIT. 14, § 506 (2015). Aggravated child abuse and neglect.....	463

ALABAMA

Ala. Code § 12-15-301 (2015). Juvenile Code- Dependency and Termination of Parental Rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

(Act 2008-277, p. 441, § 16; Act 2010-712, p. 1744, § 13.) Current through Act 2014-457 of the 2014 Regular Session.

Ala. Code § 26-14-1 (2015). Reporting of Child Abuse or Neglect - Definitions.

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

(1) Abuse. Harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through nonaccidental physical or mental injury, sexual abuse or attempted sexual abuse, or sexual exploitation or attempted sexual exploitation.

"Sexual abuse" includes 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 the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law.

"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 for commercial purposes.

(2) Neglect. Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing, or shelter.

(3) Child. A person under the age of 18 years.

(4) Duly constituted authority. The chief of police of a municipality or municipality and county; or the sheriff, if the observation of child abuse or neglect is made in an unincorporated territory; or the Department of Human Resources; or any person, organization, corporation, group, or agency authorized and designated by the Department of Human Resources to receive reports of child abuse and neglect; provided, that a "duly constituted authority" shall not include an agency involved in the acts or omissions of the reported child abuse or neglect.

CREDIT(S)

(Acts 1975, No. 1124, p. 2213, § 1; Acts 1981, No. 81-615, p. 1031; Acts 1981, No. 81-789, p. 1387; Acts 1993, 1st Ex. Sess., No. 93-890, p. 162, § 2.) Current through Act 2014-457 of the 2014 Regular Session.

Ala. Code § 26-16-2 (2015). Child Abuse and Neglect Prevention. Definitions.

As used in this article, the following words and phrases shall have the meanings herein ascribed to them:

(1) Child. A person under 18 years of age.

(2) Child abuse. Harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which harm occurs or is threatened through nonaccidental physical or mental injury; sexual abuse, which includes a violation of any provision of Article 4, Chapter 6, Title 13A.

(3) Cultural competency. The ability of an individual or organization to understand and act respectfully toward, in a cultural text, the beliefs, interpersonal styles, attitudes, and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(4) Department. The Department of Child Abuse and Neglect Prevention.

(5) Local council. An organization which meets the criteria described in Section 26-16-10.

(6) Neglect. Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(7) Organization. A nonprofit organization or a public agency which provides or proposes to provide child abuse and neglect prevention, early intervention services, or parent education.

(8) Prevention program. A system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian.

(9) State board. The State Child Abuse and Neglect Prevention Board created in Section 26-16-3.

(10) Trust fund. The Children's Trust Fund established in the State Treasury.

CREDIT(S)

(Acts 1983, No. 83-736, p. 1198, § 2; Act 98-601, p. 1313, § 1; Act 2006-228, p. 393, § 1.) Current through Act 2014-457 of the 2014 Regular Session.

ALASKA

ALASKA STAT. § 47.10.019 (2015). Welfare, Social Services and Institutions -Children in Need of Aid-Children's Proceeding- Children in need of aid

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

- (1) a parent or guardian has abandoned the child as described in AS 47.10.013, and the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid under this chapter;
- (2) a parent, guardian, or custodian is incarcerated, the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid under this chapter, and the incarcerated parent has not made adequate arrangements for the child;
- (3) a custodian with whom the child has been left is unwilling or unable to provide care, supervision, or support for the child, and the whereabouts of the parent or guardian is unknown;
- (4) the child is in need of medical treatment to cure, alleviate, or prevent substantial physical harm or is in need of treatment for mental injury and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;
- (5) the child is habitually absent from home or refuses to accept available care and the child's conduct places the child at substantial risk of physical or mental injury;
- (6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately;
- (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this

conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused;

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

ALASKA STAT. § 47.17.290 (2015). Child Protection. Mandated Reporting. Definitions

In this chapter,

(1) “athletic coach” includes a paid leader or assistant of a sports team;

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

(3) “child abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, “mental injury” means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function;

(4) “child care provider” means an adult individual, including a foster parent or an employee of an organization, who provides care and supervision to a child for compensation or reimbursement;

(5) “criminal negligence” has the meaning given in AS 11.81.900;

(6) “department” means the Department of Health and Social Services;

(7) “immediately” means as soon as is reasonably possible, and no later than 24 hours;

(8) “institution” means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(9) “maltreatment” means an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011, except that, for purposes of this chapter, the act or omission need not have been committed by the child's parent, custodian, or guardian;

(10) “mental injury” means a serious injury to the child as evidenced by an observable and substantial impairment in the child's ability to function in a developmentally appropriate manner and the existence of that impairment is supported by the opinion of a qualified expert witness;

(11) “neglect” means the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child;

(12) “organization” means a group or entity that provides care and supervision for compensation to a child not related to the caregiver, and includes a child care facility, pre-elementary school, head start center, child foster home, residential child care facility, recreation program, children's camp, and children's club;

(13) “person responsible for the child's welfare” means the child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged child abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution;

<Text of subsec. (14) effective until July 1, 2015.>

(14) “practitioner of the healing arts” includes chiropractors, mental health counselors, social workers, dental hygienists, dentists, health aides, nurses, nurse practitioners, certified nurse aides, occupational therapists, occupational therapy assistants, optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists and speech-language pathologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, marital and family therapists licensed under AS 08.63, behavior analysts, assistant behavior analysts, religious healing practitioners, acupuncturists, and surgeons;

<Text of subsec. (14) effective July 1, 2015.>

(14) “practitioner of the healing arts” includes athletic trainers, chiropractors, mental health counselors, social workers, dental hygienists, dentists, health aides, nurses, nurse practitioners, certified nurse aides, occupational therapists, occupational therapy assistants, optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists and speech-language pathologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, marital and family therapists licensed under AS 08.63, religious healing practitioners, acupuncturists, and surgeons;

(15) “reasonable cause to suspect” means cause, based on all the facts and circumstances known to the person, that would lead a reasonable person to believe that something might be the case;

(16) “school district” means a city or borough school district or regional educational attendance area;

(17) “sexual exploitation” includes

(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 - 11.66.150, by a person responsible for the child's welfare;

(B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare.

CREDIT(S)

SLA 1971, ch. 100, § 1; SLA 1971, ch. 104, § 6; SLA 1976, ch. 222, § 3; SLA 1980, ch. 94, §§ 56, 57; SLA 1982, ch. 104, §§ 8, 9; SLA 1985, ch. 39, §§ 15, 16; SLA 1986, ch. 56, § 8; SLA 1986, ch. 114, § 3; SLA 1986, ch. 131, § 14; 1st Sp. Sess. 1987, ch. 2, § 31; SLA 1990, ch. 6, § 14; SLA 1990, ch. 29, § 5; SLA 1990, ch. 205, §§ 15--19; SLA 1992, ch. 129, § 9; SLA 1996, ch. 59, § 48; SLA 1998, ch. 2, § 12; SLA 1998, ch. 99, §§ 62, 63; SLA 1998, ch. 118, § 25; SLA 2000, ch. 42, § 22. Amended by SLA 2013, ch. 43, § 40, eff. July 1, 2013; SLA 2014, ch. 36, § 4, eff. July 1, 2015; SLA 2014, ch. 41, § 5, eff. Sept. 16, 2014. Current through Ch. 116 (End) of the 2014 2nd Reg. Sess. of the 28th Legislature

Alaska Court Rule 18 (2015). Termination of Parental Rights

(a) Petition. The Department may file a petition seeking termination of parental rights combined with or after the filing of a petition for adjudication of that child as a child in need of aid. The title of the petition must clearly state that termination of parental rights is sought. A petition for termination of parental rights must be served as provided by CINA Rule 7(d) and (e).

(b) Purpose of Hearing. The termination hearing is a disposition hearing to the court on the question of whether the parental rights to an adjudicated child in need of aid should be terminated. Upon a showing of good cause and with adequate notice to the parties, an adjudication hearing and a termination hearing may be consolidated.

(c) Burden of Proof. Before the court may terminate parental rights, the Department must prove:

(1) by clear and convincing evidence that

- (A) the child has been subjected to conduct or conditions described in AS 47.10.011 and
 - (i) the parent has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or
 - (ii) the parent 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; or
- (B) a parent is incarcerated and the requirements of AS 47.10.080(o) are met; and

(2) by clear and convincing evidence that

(A) the Department has complied with the provisions of AS 47.10.086 concerning reasonable efforts; or

(B) in the case of an Indian child, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful; and

(3) by a preponderance of the evidence that termination of parental rights is in the best interests of the child; and

(4) in the case of an Indian child, by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(d) Relinquishment. Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089 and Adoption Rule 9. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. § 1913(c) and Adoption Rule 9(b) and (d).

(e) Trial. A trial on the petition to terminate parental rights shall be held within six months after the date on which the petition to terminate parental rights is filed, 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.

(f) Evidence. Hearsay that is not admissible under a recognized exception to the hearsay rule is not admissible at a trial on a petition to terminate parental rights to prove that the child has been subjected to conduct or conditions described in AS 47.10.011. Otherwise, hearsay may be admissible at the trial if it is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(g) Judgment. The court shall make findings of fact and enter an order within 90 days after the last day of trial on the petition to terminate parental rights. The court shall commit the child to the custody of the Department if parental rights are terminated.

(h) Post-Termination Reports. If a permanent placement for the child was not approved at the termination hearing, the Department shall report to the court within 30 days on the efforts being made to recruit a permanent placement. Thereafter, the Department shall report quarterly on efforts being made to find a permanent placement for the child. Copies of the Department's reports shall not be served on a parent whose rights have been terminated.

CREDIT(S)

[Amended effective January 15, 1990; July 15, 1999; July 1, 2005; October 15, 2007; April 15, 2010.]

ARIZONA

Ariz. Rev. Stat. § 8-201 (2015). 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.

CREDIT(S)

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

ARKANSAS

ARK. CODE ANN. §§ 9-27-303 (2015). Juvenile Courts and Proceedings. Juvenile Code. Definitions

As used in this subchapter:

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

(2) “Abandonment” means:

(A) The failure of the parent to provide reasonable support for a juvenile and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;

(B) The failure of a parent to support or maintain regular contact with a child without just cause; or

(C) An articulated intent to forego parental responsibility;

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

(i) Extreme or repeated cruelty to a juvenile;

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

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

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

(v) Any nonaccidental physical injury;

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

- (a) Throwing, kicking, burning, biting, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child; or
- (d) Striking a child on the face; or
- (vii) Any of the following intentional or knowing acts, with or without physical injury:
 - (a) Striking a child six (6) years of age or younger on the face or head;
 - (b) Shaking a child three (3) years of age or younger;
 - (c) Interfering with a child's breathing;
 - (d) Urinating or defecating on a child;
 - (e) Pinching, biting, or striking a child in the genital area;
 - (f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
 - (g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
 - (h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
 - (1) Marijuana;
 - (2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;
 - (3) Narcotics; or
 - (4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;
 - (i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C) "Abuse" shall not include:

(i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

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

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

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

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

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

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

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

(g) The restraint is:

(1) For a reasonable period of time; and

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

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

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

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

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

(6) "Aggravated circumstances" means:

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

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

(C) A child or a sibling has been neglected or abused such that the abuse or neglect could endanger the life of the child;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, significant other of the child's parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.

(B) "Cash assistance" does not include:

(i) Long-term financial assistance or financial assistance that is the equivalent of the board payment, adoption subsidy, or guardianship subsidy; or

(ii) Financial assistance for car insurance;

(11) “Commitment” means an order of the court that places a juvenile in the physical custody of the Division of Youth Services of the Department of Human Services for placement in a youth services facility;

(12) “Court” means the juvenile division of circuit court;

(13) “Court-appointed special advocate” means a volunteer appointed by the court to advocate for the best interest of juveniles in dependency-neglect proceedings;

(14)(A) “Custodian” means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order.

(B) For the purposes of who has a right to counsel under § 9-27-316(h), “custodian” includes a person to whom a court of competent jurisdiction has given custody, including a legal guardian;

(15) “Delinquent juvenile” means:

(A) A juvenile ten (10) years old or older who:

(i) Has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state;

(ii) Has violated § 5-73-119; or

(iii) Has violated § 5-71-217(d)(2), cyberbullying of a school employee; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16)(A) “Department” means the Department of Human Services and its divisions and programs.

(B) Unless otherwise stated in this subchapter, any reference to the department shall include all of its divisions and programs;

(17) “Dependent juvenile” means:

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

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

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

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

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

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

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

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

(H)(i) A child who has been a victim of human trafficking as a result of threats, coercion, or fraud.

(ii) If the parent knew or should have known the child was a victim of human trafficking as a result of threats, coercion, or fraud, the child is not a dependent juvenile but may be dependent-neglected;

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

(i) Abandonment;

(ii) Abuse;

(iii) Sexual abuse;

(iv) Sexual exploitation;

(v) Neglect;

(vi) Parental unfitness; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling; or

(ix) Treatment.

(B) Family services are provided in order to:

(i) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed;

(iii) Implement a permanent plan of adoption or guardianship for a juvenile in a dependency-neglect case; or

(iv) Rehabilitate a juvenile in a delinquency or family in need of services case;

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

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

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

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

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

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

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

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

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

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

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

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

(32) "Juvenile" means an individual who is:

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

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

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

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

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

interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

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

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

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

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

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

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

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

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone:

(a) At an inappropriate age, creating a dangerous situation or a situation that puts the juvenile at risk of harm; or

(b) In inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm;

(viii) Failure to appropriately supervise the juvenile that results in the juvenile being placed in:

(a) Inappropriate circumstances, creating a dangerous situation; or

(b) A situation that puts the juvenile at risk of harm; or

(ix)(a) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home-schooled; or

(b) As a result of the acts or omissions by the juvenile's parent or guardian, the juvenile is habitually and without justification absent from school.

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

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

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

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

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

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(6) of this section;

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

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

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

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

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

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

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

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

(41) “Paternity hearing” means a legal proceeding to determine the biological father of a juvenile;

(42) “Permanent custody” means custody that is transferred to a person as a permanency disposition in a juvenile case and the case is closed;

(43) “Pornography” means:

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

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

(C) Obscene or licentious material;

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

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

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

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

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

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

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

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

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

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

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

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed manslaughter of any child;

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

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

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

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

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

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

(49) “Residence” means:

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

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

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

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

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

(52) “Sexual abuse” means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

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

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

(iii) Indecent exposure; or

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

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

- (i) Sexual intercourse, deviant sexual activity, or sexual contact;
 - (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or
 - (iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact.
- (C) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:

- (i) Sexual intercourse, deviant sexual activity, or sexual contact;
- (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or
- (iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

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

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

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

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

(53)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

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

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

(54) "Sexual exploitation" includes:

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

(i) Prostitution;

(ii) Obscene photographing; or

(iii) Obscene filming; and

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

(55) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities under an order for placement pending or under an adjudication of dependency-neglect or family in need of services;

(56) "Significant other" means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

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

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

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

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

(61) “Victim” means any person or entity entitled to restitution as defined in subdivision (50) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

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

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

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

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

CREDIT(S)

Acts of 1989, Act 273, § 3; Acts of 1993, Act 468, § 4, eff. March 12, 1993; Acts of 1993, Act 1126, §§ 1, 2, eff. Sept. 1, 1993; Acts of 1993, Act 1227, § 1; 1994 (2nd Ex. Sess.), Act 11, § 1, 1994 (2nd Ex. Sess.), Act 36, § 1; Acts of 1995, Act 532, §§ 1 to 4; Acts of 1995, Act 804, § 1; Acts of 1995, Act 811, § 2; Acts of 1995, Act 1261, § 13; Acts of 1997, Act 208, § 8; Acts of 1997, Act 1227, § 1, eff. April 7, 1997; Acts of 1999, Act 401, §§ 2 to 4, eff. March 4, 1999; Acts of 1999, Act 1192, § 12, eff. July 30, 1999; Acts of 1999, Act 1340, §§ 1 to 7, 35, eff. July 30, 1999; Acts of 2001, Act 1503, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 1610, § 1, eff. Aug. 13, 2001; Acts of 2003, Act 1166, § 2, eff. July 16, 2003; Acts of 2003, Act 1319, §§ 1 to 8, eff. July 16, 2003; Acts of 2005, Act 1176, § 3, eff. March 24, 2005; Acts of 2005, Act 1191, § 1, eff. Aug. 12, 2005; Acts of 2005, Act 1990, § 1, eff. Aug. 12, 2005; Acts of 2007, Act 587, §§ 3 to 9, eff. July 31, 2007; Acts of 2009, Act 956, § 5, eff. April 6, 2009; Acts of 2011, Act 792, § 1 to 5, eff. July 27, 2011; Acts of 2011, Act 793, § 7, eff. July 27, 2011; Acts of 2011, Act 1175, § 1, eff. July 27, 2011; Acts of 2013, Act 761, § 1, eff. Aug. 16, 2013; Acts of 2013, Act 1055, §§ 1 to 7, 18, eff. Aug. 16, 2013; Acts of 2013, Act 1431, § 3, eff. Aug. 16, 2013. Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 11/15/2014.

ARK. CODE ANN. § 9-30-103 (2015). Child Abuse and Neglect Prevention. Definitions

As used in this chapter:

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

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

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

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

(5) "Neglect" means:

(A) Failure to provide, by those legally responsible for:

(i) The care and maintenance of the child and the proper or necessary support;

(ii) Education, as required by law; or

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

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

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

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

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

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

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

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

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

CREDIT(S)

Acts of 1987, Act 397, § 3; Acts of 2003, Act 1224, § 1, eff. July 16, 2003.

Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 11/15/2014.

ARK. CODE ANN. § 12-18-103 (2015). Child Maltreatment Act Definitions

As used in this chapter:

(1)(A) “Abandonment” means:

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

(ii) An articulated intent to forego parental responsibility.

(B) “Abandonment” does not include acts or omissions of a parent toward a married minor;

(2)(A) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) “Abortion” does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

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

(i) Extreme or repeated cruelty to a child;

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

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

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

(v) Any nonaccidental physical injury;

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

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

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face or head; or

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

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

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Pinching, biting, or striking a child in the genital area;

(e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) A narcotic; or

(4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

(h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or

(i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel.

(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is:

(1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and

(2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

- (b) The agency has policy and procedures regarding restraints;
 - (c) No other alternative exists to control the child except for a restraint;
 - (d) The child is in danger or hurting himself or herself or others;
 - (e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;
 - (f) The restraint is for a reasonable period of time; and
 - (g) The restraint is in conformity with training and agency policy and procedures.
- (iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.
- (iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;
- (4) “Caretaker” means a parent, guardian, custodian, foster parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;
- (5)(A) “Central intake”, otherwise referred to as the “Child Abuse Hotline”, means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.
- (B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;
- (6) “Child” or “juvenile” means an individual who is from birth to eighteen (18) years of age;
- (7) “Child maltreatment” means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;
- (8) “Department” means the Department of Human Services;
- (9) “Deviate sexual activity” means any act of sexual gratification involving:

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

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

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

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

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

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

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

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

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

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

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

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

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

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

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

(vii) Failure to appropriately supervise the child that results in the child's being left alone:

(a) At an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm; or

(b) In inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

(viii) Failure to appropriately supervise the child that results in the child being placed in:

(a) Inappropriate circumstances creating a dangerous situation; or

(b) A situation that puts the child at risk of harm; or

(ix) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled or as a result of an act or omission by the child's parent or guardian, the child is habitually and without justification absent from school.

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

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

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

(ii) As used in this subdivision (14)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(b) of this section;

(15) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(16) "Pornography" means:

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

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

(C) Obscene or licentious material;

(17) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services;

(18) "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;

(19) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(20) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

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

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

(iii) Indecent exposure; or

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

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

- (i) Sexual intercourse, deviate sexual activity, or sexual contact;
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or
- (iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

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

- (i) Sexual intercourse, deviate sexual activity, or sexual contact;
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or
- (iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

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

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

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

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

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

- (a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

(b) The encouraging of a child to touch the offender in a sexual manner; or

(c) The offender requesting to touch a child in a sexual manner.

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

(B) “Sexual contact” does not include normal affectionate hugging;

(22) “Sexual exploitation” means:

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

(i) Prostitution;

(ii) Obscene photography; or

(iii) Obscene filming; or

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

(23) “Significant other” means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

(24) “Subject of the report” means:

(A) The offender;

(B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and

(C) The child who is the subject of suspected maltreatment;

(25) “Underaged juvenile offender” means any child younger than fourteen (14) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child; and

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

CREDIT(S)

Acts of 2009, Act 749, § 1, eff. July 31, 2009; Acts of 2011, Act 779, §§ 15 to 17, eff. July 27, 2011; Acts of 2011, Act 1143, §§ 2 to 5, eff. July 27, 2011; Acts of 2013, Act 725, §§ 2 to 4, eff. Aug. 16, 2013; Acts of 2013, Act 1006, §§ 1 to 6, eff. Aug. 16, 2013. Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 11/15/2014

CALIFORNIA

CAL. PENAL CODE § 273a (2015). Willful harm or injury to child; endangering person or health; punishment; conditions of probation

(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or **inflicts thereon unjustifiable physical pain or mental suffering**, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

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

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

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

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

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

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

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

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

CREDIT(S)

(Added by Stats.1905, c. 568, p. 759, § 5. Amended by Stats.1963, c. 783, p. 1811, § 1; Stats.1965, c. 697, p. 2091, § 1; Stats.1976, c. 1139, p. 5108, § 165, operative July 1, 1977; Stats.1980, c. 1117, p. 3590, § 4; Stats.1984, c. 1423, § 2, eff. Sept. 26, 1984; Stats.1993, c. 1253 (A.B.897), § 1; Stats.1994, c. 1263 (A.B.1328), § 3; Stats.1996, c. 1090 (A.B.3215), § 1; Stats.1997, c. 134 (A.B.273), § 1.) Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

CAL.WELF. & INST.CODE § 11165.3 (2015). Willful harming or endangering of child defined

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

CREDIT(S)

(Added by Stats.1987, c. 1459, § 9. Amended by Stats.2004, c. 842 (S.B.1313), § 1.) Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

CAL. PENAL CODE § 11165.6 (2015). Child abuse or neglect defined

As used in this article, the term “child abuse or neglect” includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. “Child abuse or neglect” does not include a mutual affray between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

CREDIT(S)

(Added by Stats.2000, c. 916 (A.B.1241), § 4. Amended by Stats.2001, c. 133 (A.B.102), § 2, eff. July 31, 2001; Stats.2004, c. 842 (S.B.1313), § 4; Stats.2007, c. 393 (A.B.673), § 2.) Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

CAL.WELF. & INST.CODE § 300 (2015). 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) (1) 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.

(2) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

(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.

CREDIT(S)

(Added by Stats.1987, c. 1485, § 4, operative Jan. 1, 1989. Amended by Stats.1989, c. 913, § 3; Stats.1991, c. 1203 (S.B.1125), § 1.5; Stats.1992, c. 382 (S.B.1646), § 1; Stats.1996, c. 1082 (A.B.2679), § 1; Stats.1996, c. 1084 (S.B.1516), § 1.5; Stats.1998, c. 1054 (A.B.1091), § 2; Stats.2000, c. 824 (S.B.1368), § 3; Stats.2005, c. 625 (S.B.116), § 3; Stats.2005, c. 630 (S.B.500), § 1; Stats.2014, c. 29 (S.B.855), § 64, eff. June 20, 2014.) Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

CAL.WELF. & INST.CODE § 18951 (2015). The Office of Child Abuse Prevention. Definitions.

As used in this chapter:

- (a) “Child” means an individual under 18 years of age.
- (b) “Child services” means services for or on behalf of children, and includes the following:
 - (1) Protective services.
 - (2) Caretaker services.
 - (3) Day care services, including dropoff care.
 - (4) Homemaker services or family aides.
 - (5) Counseling services.
- (c) “Adult services” means services for or on behalf of a parent of a child, which shall include, but not be limited to, the following:
 - (1) Access to voluntary placement, long or short term.
 - (2) Counseling services before and after a crisis.
 - (3) Homemaker services or family aides.
- (d) “Multidisciplinary personnel” means any team of three or more persons who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases and who are qualified to provide a broad range of services related to child abuse or neglect. The team may include, but need not be limited to, any of the following:

- (1) Psychiatrists, psychologists, marriage and family therapists, or other trained counseling personnel.
- (2) Police officers or other law enforcement agents.
- (3) Medical personnel with sufficient training to provide health services.
- (4) Social workers with experience or training in child abuse prevention, identification, management, or treatment.
- (5) A public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee.
- (6) A CalWORKs case manager whose primary responsibility is to provide cross program case planning and coordination of CalWORKs and child welfare services for those mutual cases or families that may be eligible for CalWORKs services and that, with the informed written consent of the family, receive cross program case planning and coordination.

(e) "Child abuse" as used in this chapter means a situation in which a child suffers from any one or more of the following:

- (1) Serious physical injury inflicted upon the child by other than accidental means.
- (2) Harm by reason of intentional neglect or malnutrition or sexual abuse.
- (3) Going without necessary and basic physical care.
- (4) Willful mental injury, negligent treatment, or maltreatment of a child under the age of 18 years by a person who is responsible for the child's welfare under circumstances that indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Director of Social Services.
- (5) Any condition that results in the violation of the rights or physical, mental, or moral welfare of a child or jeopardizes the child's present or future health, opportunity for normal development, or capacity for independence.

(f) "Parent" means any person who exercises care, custody, and control of the child as established by law.

CREDIT(S)

(Added by Stats.1978, c. 1334, § 2, operative Dec. 31, 1979. Amended by Stats.1993, c. 856 (A.B.1820), § 1; Stats.2006, c. 99 (A.B.1907), § 1; Stats.2007, c. 130 (A.B.299), § 259; Stats.2010, c. 551 (A.B.2322), § 5, eff. Sept. 29, 2010; Stats.2011, c. 296 (A.B.1023), § 341.) Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

COLORADO

COLO. REV. STAT. § 19-1-103 (2015). Children's Code. Definitions.

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

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

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

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

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

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

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

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

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

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates including, but not limited to,

accepted work-related practices of agricultural communities. Nothing in this subsection (1) shall refer to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2-502 that are performed by a peace officer, as described in section 16-2.5-101, C.R.S., acting in the good faith performance of the officer's duties.

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

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

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

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

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

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

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

(II) The final decree of adoption;

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

(IV) The final order of relinquishment; and

(V) The order of termination of parental rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

accordance with the provisions of the “Uniform Parentage Act”, article 4 of this title, prior to the termination of parental rights.

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

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

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

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

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

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

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

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

(22) “Child protection team”, as used in part 3 of article 3 of this title, means a multidisciplinary team consisting, where possible, of a physician, a representative of the juvenile court or the district court with juvenile jurisdiction, a representative of a local law enforcement agency, a representative of the county department, a representative of a mental health clinic, a representative of a county, district, or municipal public health agency, an attorney, a representative of a public school district, and one or more representatives of the lay community, at least one of whom shall be a person who serves as a foster parent in the county. Each public agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each public agency shall have only one vote. In no event

shall an attorney member of the child protection team be appointed as guardian ad litem for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. When any racial, ethnic, or linguistic minority group constitutes a significant portion of the population of the jurisdiction of the child protection team, a member of each such minority group shall serve as an additional lay member of the child protection team. At least one of the preceding members of the team shall be chosen on the basis of representing low-income families. The role of the child protection team shall be advisory only.

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

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

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

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

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

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

(28) “Consent”, as used in part 3 of article 5 of this title, means voluntary, informed, written consent. When used in the context of confidential intermediaries, “consent” always shall be preceded by an explanation that consent permits the confidential intermediary to arrange a personal contact among biological relatives. “Consent” may also mean the agreement for contact or disclosure of records by any of the parties identified in section 19-5-304(2) as a result of an inquiry by a confidential intermediary pursuant to section 19-5-304.

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

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

(28.7)(a) "Contact preference form" means a written statement signed by a birth parent indicating whether the birth parent prefers future contact with an adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or the descendant and, if contact is preferred, whether the contact should be through a confidential intermediary or a designated employee of a child placement agency.

(b)(I) A contact preference form includes an option for a birth parent to authorize the release of an original birth certificate.

(II) This paragraph (b) is repealed, effective January 1, 2016.

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

(29.3) "Convicted" or "conviction", as used in section 19-5-105.5, means a plea of guilty accepted by the court, including a plea of guilty entered pursuant to a deferred sentence under section 18-1.3-102, C.R.S., a verdict of guilty by a judge or jury, or a plea of no contest accepted by the court, or having received a disposition as a juvenile or having been adjudicated a juvenile delinquent based on the commission of any act that constitutes sexual assault, as defined in subsection (96.5) of this section.

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

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

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

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

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

(b) “County department”, as used in section 19-3-211 and in article 3.3 of this title, means a county or a city and county department of social services.

(33) “County director”, as used in section 19-3-211 and part 3 of article 3 of this title, means the county director or district director appointed pursuant to section 26-1-117, C.R.S.

(34) “Court”, as used in part 3 of article 5 of this title, means any court of record with jurisdiction over the matter at issue.

(34.3) “Court-appointed special advocate” or “CASA volunteer” means a volunteer appointed by a court pursuant to the provisions of part 2 of this article to assist in advocacy for children.

(34.5) “Court-appointed special advocate program” or “CASA program” means a program established pursuant to the provisions of part 2 of this article.

(34.6) “Criminal justice agency”, as used in section 19-1-303, shall have the same meaning as set forth in section 24-72-302(3), C.R.S.

(34.7) “Custodial adoption”, as used in part 2 of article 5 of this title, means an adoption of a child by any person and such person's spouse, as required under section 19-5-202(3), who:

(a) Has been awarded custody or allocated parental responsibilities by a court of law in a dissolution of marriage, custody or allocation of parental responsibilities proceeding, or has been awarded guardianship of the child by a court of law in a probate action, such as pursuant to part 2 of article 14 of title 15, C.R.S.; and

(b) Has had physical custody of the child for a period of one year or more.

(35) “Custodian” means a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.

(35.3)(a)(I) “Custodian of records”, as used in section 19-5-305(1.5) and (2), means any of the following individuals or entities that have custody of records relating to the relinquishment or adoption of a child:

(A) A court;

(B) A state agency; or

(C) The legal agent or representative of any entity described in sub-subparagraphs (A) and (B) of this subparagraph (I).

(II) “Custodian of records”, as used in section 19-5-305(1.5) and (2), does not include a licensed child placement agency.

(b) “Custodian of records”, as used in section 19-5-109, means an entity that has custody of records relating to the relinquishment of a child, including a court, state agency, licensed child placement agency, maternity home, or the legal agent or representative of any such entity.

(36) “Delinquent act”, as used in article 2 of this title, means a violation of any statute, ordinance, or order enumerated in section 19-2-104(1)(a). If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense shall be determined by the statute, ordinance, or order that the petition alleges was violated.

(37) “Department”, as used in article 5 of this title, means the department of human services.

(38) “Deprivation of custody” means the transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

(39) “Designated adoption” means an adoption in which:

(a) The birth parent or parents designate a specific applicant with whom they wish to place their child for purposes of adoption; and

(b) The anonymity requirements of section 19-1-309 are waived.

(40) “Detention” means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(40.5) “Determinate period”, as used in article 2 of this title, means that the department of human services may not transfer legal or physical custody of a juvenile until the juvenile has completed the period of commitment imposed by the court, unless otherwise ordered by the court; except that the department may release the juvenile on parole prior to completion of the determinate period, as provided in section 19-2-1002.

(41) “Diagnostic and evaluation center”, as used in article 2 of this title, means a facility for the examination and study of persons committed to the custody of the department of human services.

(42) “Director”, as used in section 19-2-303, means the executive director of the department of public safety.

(43) “Dispositional hearing” means a hearing to determine what order of disposition should be made concerning a child who is neglected or dependent. Such hearing may be part of the proceeding that includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.

(44) “Diversion” means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 or a disposition as a part of sentencing pursuant to section 19-2-907. “Services”, as used in this subsection (44), includes but is not limited to diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive recreational activities, general counseling and counseling during a crisis situation, and follow-up activities. Services may include restorative justice practices as defined in section 18-1-901(3)(o.5), C.R.S., and as deemed suitable by the probation department or a designated restorative justice practices facilitator. Restorative justice practices shall be conducted by facilitators recommended by the district attorney.

(44.5) “Donor”, as used in section 19-4-106, means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. “Donor” does not include a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife.

(45) “Emancipated juvenile”, as used in section 19-2-511, means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters of care, custody, and earnings. The term may include, but shall not be limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

(46) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(47)(a) “Estate”, as used in section 19-2-114, means any tangible or intangible properties, real or personal, belonging to or due to a person, including income or payments to such person from previously earned salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever except federal benefits of any kind.

(b)(I) Real property that is held in joint ownership or ownership in common with the juvenile's spouse, while being used and occupied by the spouse as a place of residence, shall not be considered a part of the estate of the juvenile for the purposes of section 19-2-114.

(II) Real property that is held by the juvenile's parent, while being used and occupied by such parent as a place of residence, shall not be considered a part of the estate of the parent for the purposes of section 19-2-114.

(47.5) "Executive director", as used in article 3.3 of this title, means the executive director of the department of human services.

(48) "Expungement", as used in section 19-1-306, means the designation of juvenile delinquency records whereby such records are deemed never to have existed.

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

(50) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(51) "Fire investigator" means a person who:

(a) Is an officer or member of a fire department, fire protection district, or fire fighting agency of the state or any of its political subdivisions;

(b) Is engaged in conducting or is present for the purpose of engaging in the conduct of a fire investigation; and

(c) Is either a volunteer or is compensated for services rendered by the person.

(51.3) "Foster care" means the placement of a child into the legal custody or legal authority of a county department of social services for physical placement of the child in a kinship care placement or certified or licensed facility or the physical placement of a juvenile committed to the custody of the state department of human services into a community placement.

(51.5) "Foster care home" means a foster care home certified pursuant to article 6 of title 26, C.R.S.

(52) "Gang", as used in sections 19-2-205 and 19-2-508, means a group of three or more individuals with a common interest, bond, or activity, characterized by criminal or delinquent conduct, engaged in either collectively or individually.

(53) “Good faith mistake”, as used in section 19-2-803, means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause.

(54) “Governing body”, as used in section 19-3-211, means the board of county commissioners of a county or the city council of a city and county.

(55) “Governmental unit”, as used in section 19-2-303, means any county, city and county, city, town, judicial district attorney office, or school district.

(56)(a) “Grandparent” means a person who is the parent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage.

(b) “Grandparent”, as used in sections 19-1-117 and 19-1-117.5, has the same meaning as set forth in paragraph (a) of this subsection (56); except that “grandparent” does not include the parent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104(1)(d).

(56.5) “Great-grandparent”, as used in sections 19-1-117 and 19-1-117.5, means a person who is the grandparent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage. “Great-grandparent” does not include the grandparent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104(1)(d).

(57) “Grievance”, as used in section 19-3-211, means a dispute between a complainant and a county department concerning the conduct of county department personnel in performing their duties pursuant to article 3 of this title.

(58) “Group care facilities and homes” means places other than foster family care homes providing care for small groups of children that are licensed as provided in article 6 of title 26, C.R.S., or meet the requirements of section 25.5-10-214, C.R.S.

(59) “Guardian ad litem” means a person appointed by a court to act in the best interests of a person whom the person appointed is representing in proceedings under this title and who, if appointed to represent a person in a dependency and neglect proceeding under article 3 of this title, shall be an attorney-at-law licensed to practice in Colorado.

(60) “Guardianship of the person” means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(61) “Habitual juvenile offender”, as used in section 19-2-517, means a juvenile offender who has previously been twice adjudicated a juvenile delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes, that constitute felonies.

(61.5) “Half-sibling” shall have the same meaning as biological sibling provided in subsection (14) of this section.

(62) “Halfway house”, as used in article 2 of this title, means a group care facility for juveniles who have been placed on probation or parole under the terms of this title.

(63) “Identifying” means giving, sharing, or obtaining information.

(63.5) “Identifying information”, as used in section 19-5-305(3), means copies of any adoption records, as that term is defined in subsection (6.5) of this section, that are in the possession of the child placement agency. “Identifying information” also includes the name of the adoptee before placement in adoption; the name and address of each consenting birth parent as they appear in the birth records; the current name, address, and telephone number of the adult adoptee; and the current name, address, and telephone number of each consenting birth parent to the extent such information is available to the child placement agency.

(64) “Imminent placement out of the home”, as used in section 19-1-116(2), means that without intercession the child will be placed out of the home immediately.

(65) “Independent living” means a form of placement out of the home arranged and supervised by the county department of social services wherein the child is established in a living situation designed to promote and lead to the child's emancipation. Independent living shall only follow some other form of placement out of the home.

(65.3) “Indian child” means an unmarried person who is younger than eighteen years of age and who is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

(65.5) “Indian child's tribe” means:

(a) The Indian tribe in which an Indian child is a member or eligible for membership; or

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(65.7) “Indian tribe” means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the federal governmental services provided to Indians because of their status as Indians.

(66) “Institutional abuse”, as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs in any public or private facility in the state that provides child care out of the home, supervision, or maintenance. “Facility” includes, but is not limited to, family child care homes, foster care homes, and any other facility subject to the Colorado “Child Care Licensing Act” and described in section 26-6-102, C.R.S. “Institutional abuse” shall not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day services, abuse that occurs while such services are provided shall be institutional abuse.

(67) “Intrafamilial abuse”, as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, as defined in subsection (101) of this section, or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child; except that “intrafamilial abuse” shall not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

(68) “Juvenile”, as used in article 2 of this title, means a child as defined in subsection (18) of this section.

(69) “Juvenile community review board”, as used in article 2 of this title, means any board appointed by a board of county commissioners for the purpose of reviewing community placements under article 2 of this title. The board, if practicable, shall include but not be limited to a representative from a county department of social services, a local school district, a local law enforcement agency, a local probation department, a local bar association, the division of youth corrections, and private citizens.

(70) “Juvenile court” or “court” means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(71) “Juvenile delinquent”, as used in article 2 of this title, means a juvenile who has been found guilty of a delinquent act.

(71.5) “Kinship adoption”, as used in part 2 of article 5 of this title, means an adoption of a child by a relative of the child and such relative's spouse, as required under section 19-5-202(3), who:

(a) Is either a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin; and

(b) Has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title.

(72) “Law enforcement officer” means a peace officer, as described in section 16-2.5-101, C.R.S.

(73)(a) “Legal custody” means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. “Legal custody” may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in section 22-1-102(2)(b), C.R.S., guardianship shall be in the person to whom legal custody has been granted by the court.

(73.5)(a) “Legal representative”, as used in sections 19-5-304 and 19-5-305, means the person designated by a court to act on behalf of any person described in section 19-5-304(1)(b)(i) or 19-5-305(2).

(b) For purposes of the term “legal representative”, as used in section 19-5-304 and 19-5-305 and as defined in paragraph (a) of this subsection (73.5), “legal guardian” shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(74) “Local law enforcement agency”, as used in part 3 of article 3 of this title, means a police department in incorporated municipalities or the office of the county sheriff.

(75) “Locating” means engaging in the process of searching for or seeking out.

(76) “Mental health hospital placement prescreening” means a face-to-face mental health examination, conducted by a mental health professional, to determine whether a child should be placed in a facility for evaluation pursuant to section 27-65-105 or 27-65-106, C.R.S., and may include consultation with other mental health professionals and review of all available records on the child.

(77) “Mental health professional” means a person licensed to practice medicine or psychology in this state or any person on the staff of a facility designated by the executive director of the department of human services for seventy-two-hour treatment and evaluation authorized by the facility to do mental health hospital placement prescreenings and under the supervision of a person licensed to practice medicine or psychology in this state.

(77.5) “Need to know”, as used in section 19-1-303, means agencies or individuals who need access to certain information for the care, treatment, supervision, or protection of a child.

(78) “Neglect”, as used in part 3 of article 3 of this title, means acts that can reasonably be construed to fall under the definition of child abuse or neglect as defined in subsection (1) of this section.

(78.5) “Newborn child” means a child who is less than seventy-two hours old.

(79) “Nongovernmental agency”, as used in section 19-2-303, means any person, private nonprofit agency, corporation, association, or other nongovernmental agency.

(80) “Nonidentifying information”, as used in part 4 of article 5 of this title, means information that does not disclose the name, address, place of employment, or any other material information that would lead to the identification of the birth parents and that includes, but is not limited to, the following:

- (a) The physical description of the birth parents;
- (b) The educational background of the birth parents;
- (c) The occupation of the birth parents;
- (d) Genetic information about the birth family;
- (e) Medical information about the adult adoptee's birth;
- (f) Social information about the birth parents;
- (g) The placement history of the adoptee.

(81) “Nonpublic agency interstate and foreign adoption”, as used in section 19-5-205.5, means an interstate or foreign adoption that is handled by a private, licensed child placement agency.

(82)(a) “Parent” means either a natural parent of a child, as may be established pursuant to article 4 of this title, or a parent by adoption.

(b) “Parent”, as used in sections 19-1-114, 19-2-514, and 19-2-515, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, “parent” does not include a person whose parental rights have been terminated pursuant to the provisions of this title or the parent of an emancipated minor.

(83) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(83.5) “Permanency hearing” means a hearing in which the permanency plan for a child in foster care is determined by the court.

(84) “Physical custodian”, as used in section 19-2-511, means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

(85) “Placement out of the home” means placement for twenty-four-hour residential care in any facility or center operated or licensed by the department of human services, but the term does not include any placement that is paid for totally by private moneys or any placement in a home for the purposes of adoption in accordance with section 19-5-205. “Placement out of the home” may be voluntary or court-ordered. “Placement out of the home” includes independent living.

(85.5)(a) “Post-adoption record”, as used in part 3 of article 5 of this title, means information contained in the files subsequent to the completion of an adoption proceeding.

(b) The post-adoption record may contain information concerning, but not limited to:

(I) The written inquiries from persons requesting access to records;

(II) The search efforts of the confidential intermediary;

(III) The response, if any, to those search efforts by the persons sought;

(IV) Any updated medical information gathered pursuant to part 3 of article 5 of this title; and

(V) Any personal identifying information concerning any persons subject to the provisions of part 3 of article 5 of this title.

(86) “Prevention program”, as used in article 3.5 of this title, means a program of direct child abuse prevention services to a child, parent, or guardian and includes research or education programs related to the prevention of child abuse. Such a prevention program may be classified as a primary prevention program when it is available to the community on a voluntary basis and as a secondary prevention program when it is directed toward groups of individuals who have been identified as high risk.

(87) “Protective supervision” means a legal status created by court order under which the child is permitted to remain in the child's home or is placed with a relative or other suitable person and supervision and assistance is provided by the court, department of human services, or other agency designated by the court.

(87.5) “Public adoption”, as used in part 2 of article 5 of this title, means an adoption involving a child who is in the legal custody and guardianship of the county department of social services that has the right to consent to adoption for that child.

(88) Deleted by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997.

(89) “Reasonable efforts”, as used in articles 1, 2, and 3 of this title, means the exercise of diligence and care throughout the state of Colorado for children who are in out-of-home placement, or are at imminent risk of out-of-home placement. In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family, as described in section 19-3-208, or whether it is appropriate to find and finalize an alternative permanent plan for a child, and in making reasonable efforts, the child's health and safety shall be the paramount concern. Services provided by a county or city and county in accordance with section 19-3-208 are deemed to meet the reasonable effort standard described in this subsection (89). Nothing in this subsection (89) shall be construed to conflict with federal law.

(90) “Receiving center”, as used in article 2 of this title, means a facility used to provide temporary detention and care for juveniles by the department of human services pending placement in a training school, camp, or other facility.

(91) “Recipient”, as used in article 3.5 of this title, means and is limited to a nonprofit or public organization that receives a grant from the trust fund created in section 19-3.5-106.

(91.5) “Record”, as used in section 19-4-106, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(91.7) “Register of actions” means those portions of the electronic case management system necessary to carry out a statutory purpose or the duties of a court appointment.

(92) “Residential community placement”, as used in article 2 of this title, means any placement for residential purposes permitted under this title except in an institutional facility directly operated by, or a secure facility under contract with, the department of human services and except while a juvenile is under the jurisdiction of the juvenile parole board.

(93) “Residual parental rights and responsibilities”, as used in article 3 of this title, means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable parenting time unless restricted by the court, and the right to determine the child's religious affiliation.

(94) “Responsible person”, as used in part 3 of article 3 of this title, means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(94.1) “Restorative justice” means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include

victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(94.2) “Reunited parties”, as used in section 19-5-305, means any two persons who qualify as and meet any specified requirements for parties under the list of individuals in section 19-5-304(1)(b)(I).

(94.3) “School”, as used in sections 19-1-303 and 19-1-304, means a public or parochial or other nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. “Basic academic education” has the same meaning as set forth in section 22-33-104(2)(b), C.R.S.

(94.5) “Screening team” means the person or persons designated, pursuant to rule 3.7 of the Colorado rules of juvenile procedure, by the chief judge in each judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court to make recommendations to the juvenile court concerning whether a juvenile taken into temporary custody should be released or admitted to a detention or shelter facility pursuant to section 19-2-508.

(95) “Sentencing hearing”, as used in article 2 of this title, means a hearing to determine what sentence shall be imposed on a juvenile delinquent or what other order of disposition shall be made concerning a juvenile delinquent, including commitment. Such hearing may be part of the proceeding that includes the adjudicatory trial, or it may be held at a time subsequent to the adjudicatory trial.

(96) “Services”, as used in section 19-2-303, may include, but is not limited to, provision of diagnostic needs assessment, general counseling and counseling during a crisis situation, specialized tutoring, job training and placement, restitution programs, community service, constructive recreational activities, day reporting and day treatment programs, and follow-up activities.

(96.5) “Sexual assault”, as used in sections 19-5-105, 19-5-105.5, and 19-5-105.7, means:

(a) “Sexual assault” as defined in section 18-3-402, C.R.S.;

(b) “Sexual assault on a child” as defined in section 18-3-405, C.R.S.;

(c) “Sexual assault on a child by one in a position of trust” as defined in section 18-3-405.3, C.R.S.;

(d) “Sexual assault on a client by a psychotherapist” as defined in section 18-3-405.5, C.R.S.; or

(e) “Unlawful sexual contact” as defined in section 18-3-404, C.R.S.

(97) “Sexual conduct”, as used in section 19-3-304(2.5), means any of the following:

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

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sexual sadomasochistic abuse.

(98) “Shelter” means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(98.5) “Sibling group”, as used in article 3 and article 5 of this title, means biological siblings who have been raised together or have lived together.

(99) “Special county attorney”, as used in article 3 of this title, means an attorney hired by a county attorney or city attorney of a city and county or hired by a county department of social services with the concurrence of the county attorney or city attorney of a city and county to prosecute dependency and neglect cases.

(100) “Special respondent”, as used in article 3 of this title, means any person who is not a parent, guardian, or legal custodian and who is involuntarily joined as a party in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan.

(101) “Spousal equivalent” means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

(101.5) “Staff secure facility” means a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including but not limited to education and treatment, are provided on site. A staff secure facility may or may not be a locked facility.

(101.7) “Standardized mental illness screening” means the mental illness screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102, C.R.S.

(102) “State board”, as used in part 3 of article 3 of this title, means the state board of human services.

(103) “State department”, as used in section 19-3-211, part 3 of article 3 of this title, and article 3.3 of this title, means the department of human services created by section 24-1-120, C.R.S.

(103.5) “State registrar” means the state registrar of vital statistics in the department of public health and environment.

(103.7) “Status offense” shall have the same meaning as is defined in federal law in 28 CFR 31.304, as amended.

(104) “Stepparent” means a person who is married to a parent of a child but who has not adopted the child.

(105) “Technical violation”, as used in section 19-2-803, means a reasonable, good faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good faith mistake, or a court precedent that is later overruled.

(106) “Temporary holding facility” means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders.

(107) “Termination of the parent-child legal relationship”, as used in articles 3 and 5 of this title, means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities, as provided in section 19-3-608.

(108) “Third-party abuse”, as used in part 3 of article 3 of this title, means a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, as defined in subsection (101) of this section, or any other person not included in the definition of intrafamilial abuse, as defined in subsection (67) of this section.

(109) “Training school”, as used in article 2 of this title, means an institution providing care, education, treatment, and rehabilitation for juveniles in a closed setting and includes a regional center established in part 3 of article 10.5 of title 27, C.R.S.

(110) “Trust fund”, as used in article 3.5 of this title, means the Colorado children's trust fund created in section 19-3.5-106.

(111) “Unfounded report”, as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is not supported by a preponderance of the evidence.

(111.5) “Updated medical history statement” means a written narrative statement dated and signed by a birth parent about the medical history of the birth parent or other biological relatives of the adoptee that can be voluntarily submitted by the birth parent to the state

registrar for future disclosure to the birth parent's adult child who is an adult adoptee or an adult descendant of the adoptee or legal representative of such person in accordance with the provisions of section 19-5-305(1.5).

(112)(a) "Victim", as used in article 2 of this title, means the party immediately and directly aggrieved by the juvenile, that party's spouse, the party's parent, sibling, or child who is living with the party, a victim compensation board that has paid a victim compensation claim, a person or entity who has suffered losses because of a contractual relationship with such party, including, but not limited to, an insurer, or because of liability under section 14-6-110, C.R.S., or, in the absence of any of the above, the state.

(b) "Victim", as used in section 19-5-105.5, means any natural person against whom a crime of sexual assault or a crime in which the underlying factual basis was sexual assault has been perpetrated or is alleged to have been perpetrated.

CREDIT(S)

Repealed and reenacted by Laws 1987, S.B.144, § 1, eff. Oct. 1, 1987. Amended by Laws 1988, H.B.1004, § 1, eff. July 1, 1988; Laws 1988, H.B.1024, § 1, eff. March 18, 1988; Laws 1988, S.B.180, § 1, eff. July 1, 1988; Laws 1989, H.B.1090, § 1, eff. April 23, 1989; Laws 1990, S.B.90-61, § 3, eff. July 1, 1990; Laws 1991, H.B.91-1255, § 5, eff. May 31, 1991; Laws 1992, H.B.92-1287, § 2, eff. July 1, 1992; Laws 1993, H.B.93-1317, § 64, eff. July 1, 1994; Laws 1994, H.B.94-1029, § 144, eff. July 1, 1994; Laws 1994, H.B.94-1141, § 5, eff. April 28, 1994. Repealed and reenacted by Laws 1996, H.B.96-1019, § 1, eff. March 20, 1996. Amended by Laws 1996, H.B.96-1005, § 12, eff. Jan. 1, 1997; Laws 1996, H.B.96-1006, §§ 13, 15, eff. July 1, 1996; Laws 1996, H.B.96-1017, § 10, eff. Jan. 1, 1997; Laws 1996, H.B.96-1198, § 12, eff. Jan. 1, 1997; Laws 1996, S.B.96-30, § 1, eff. May 23, 1996; Laws 1997, H.B.97-1293, § 2, eff. July 1, 1997; Laws 1997, S.B.97-83, § 14, eff. July 1, 1997; Laws 1997, S.B.97-218, § 6, eff. July 1, 1997; Laws 1998, Ch. 310, § 60, eff. Feb. 1, 1999; Laws 1998, Ch. 311, § 2, eff. July 1, 1998; Laws 1999, Ch. 186, § 21, eff. Aug. 4, 1999; Laws 1999, Ch. 233, § 2, eff. July 1, 1999; Laws 1999, Ch. 259, § 6, eff. May 29, 1999; Laws 1999, Ch. 270, §§ 1, 2, eff. June 1, 1999; Laws 1999, Ch. 283, § 1, eff. July 1, 1999; Laws 2000, Ch. 106, § 7, eff. April 7, 2000; Laws 2000, Ch. 137, § 1, eff. July 1, 2000; Laws 2000, Ch. 281, § 1, eff. July 1, 2000; Laws 2000, Ch. 353, § 6, eff. June 1, 2000; Laws 2000, Ch. 374, § 9, eff. June 2, 2000; Laws 2001, Ch. 241, § 2, eff. June 1, 2001; Laws 2001, Ch. 242, § 1, eff. July 1, 2001; Laws 2002, Ch. 177, § 1, eff. May 24, 2002; Laws 2002, Ch. 179, § 4, eff. May 24, 2002; Laws 2002, Ch. 217, § 2, eff. May 30, 2002; Laws 2002, Ch. 297, § 43, eff. July 1, 2002; Laws 2002, Ch. 322, § 29, eff. July 1, 2002; Laws 2003, Ch. 91, § 1, eff. July 1, 2003; Laws 2003, Ch. 163, § 54, eff. July 1, 2003; Laws 2003, Ch. 196, § 5, eff. Jan. 1, 2004; Laws 2003, Ch. 242, §§ 28, 36, eff. Aug. 6, 2003; Laws 2003, Ch. 315, § 32, eff. May 22, 2003; Laws 2004, Ch. 140, § 3, eff. July 1, 2004; Laws 2004, Ch. 241, § 2, eff. May 21, 2004; Laws 2005, Ch. 166, § 1, eff. July 1, 2005; Laws 2005, Ch. 250, § 3, eff. July 1, 2005; Laws 2006, Ch. 82, § 1, eff. Mar. 31, 2006; Laws 2006, Ch. 134, § 1, eff. April 18, 2006; Laws 2007, Ch. 351, § 2, eff. May 31, 2007; Laws 2008, Ch. 76, § 1, eff. March 31, 2008; Laws 2008, Ch. 290, § 2, eff. Aug. 5, 2008; Laws 2010, Ch. 188, § 36, eff. April 29, 2010; Laws 2010, Ch. 225, § 2, eff. May 14, 2010; Laws 2010, Ch. 419, § 34, eff. Aug. 11, 2010; Laws 2011, Ch. 296, § 9, eff. Aug. 10, 2011; Laws 2013, Ch. 323, § 31, eff. March 1, 2014; Laws 2013, Ch. 341, § 3, eff.

Aug. 7, 2013; Laws 2013, Ch. 353, § 1, eff. July 1, 2013; Laws 2014, Ch. 167, § 9, eff. July 1, 2014; Laws 2014, Ch. 260, § 2, eff. July 1, 2014; Laws 2014, Ch. 261, § 1, eff. Aug. 6, 2014; Laws 2014, Ch. 374, § 1, eff. June 6, 2014. Current through the Second Regular Session of the Sixty-Ninth General Assembly (2014) and amendments adopted through the Nov. 4, 2014 General Election.

CONNECTICUT

Conn. Gen. Stat. § 46b-120 (2015). Juvenile Matters. Definitions

The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows:

(1) “Child” means any person under eighteen years of age who has not been legally emancipated, except that (A) for purposes of delinquency matters and proceedings, “child” means any person who (i) is at least seven years of age at the time of the alleged commission of a delinquent act and who is (I) under eighteen years of age and has not been legally emancipated, or (II) eighteen years of age or older and committed a delinquent act prior to attaining eighteen years of age, or (ii) is subsequent to attaining eighteen years of age, (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, and (B) for purposes of family with service needs matters and proceedings, child means a person who is at least seven years of age and is under eighteen years of age;

(2) “Youth” means any person sixteen or seventeen years of age who has not been legally emancipated;

(3) A child may be found “mentally deficient” who, by reason of a deficiency of intelligence that has existed from birth or from early age, requires, or will require, for such child's protection or for the protection of others, special care, supervision and control;

(4) (A) A child may be convicted as “delinquent” who has, while under sixteen years of age, (i) violated any federal or state law, except section 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or violated a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (ii) wilfully failed to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) violated any order of the Superior Court in a delinquency proceeding, except as provided in section 46b-148, or (iv) violated conditions of probation in a delinquency proceeding as ordered by the court;

(B) A child may be convicted as “delinquent” who has (i) while sixteen or seventeen years of age, violated any federal or state law, other than (I) an infraction, except an infraction under

subsection (d) of section 21a-267, (II) a violation, except a violation under subsection (a) of section 21a-279a, (III) a motor vehicle offense or violation under title 14, (IV) a violation of a municipal or local ordinance, or (V) a violation of section 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, (ii) while sixteen years of age or older, wilfully failed to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) while sixteen years of age or older, violated any order of the Superior Court in a delinquency proceeding, except as provided in section 46b-148, or (iv) while sixteen years of age or older, violated conditions of probation in a delinquency proceeding as ordered by the court;

(5) “Family with service needs” means a family that includes a child who is at least seven years of age and is under eighteen years of age who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth;

(6) A child or youth may be found “neglected” who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth;

(7) A child or youth may be found “abused” who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment;

(8) A child or youth may be found “uncared for” (A) who is homeless, (B) whose home cannot provide the specialized care that the physical, emotional or mental condition of the child or youth requires, or (C) who has been identified as a victim of trafficking, as defined in section 46a-170. For the purposes of this section, the treatment of any child or youth by an accredited Christian Science practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment;

(9) “Delinquent act” means (A) the violation by a child under the age of sixteen of any federal or state law, except the violation of section 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or the violation of a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (B) the violation by a child sixteen or seventeen years of age of any federal or state law, other than (i) an infraction, except an infraction under subsection (d) of section 21a-267, (ii) a violation, except a violation under subsection (a) of section 21a-279a, (iii) a motor vehicle offense or violation under title 14, (iv) the violation of a

municipal or local ordinance, or (v) the violation of section 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, (C) the wilful failure of a child, including a child who has attained the age of eighteen, to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child has notice, (D) the violation of any order of the Superior Court in a delinquency proceeding by a child, including a child who has attained the age of eighteen, except as provided in section 46b-148, or (E) the violation of conditions of probation in a delinquency proceeding by a child, including a child who has attained the age of eighteen, as ordered by the court;

(10) “Serious juvenile offense” means (A) the violation of, including attempt or conspiracy to violate, section 21a-277, 21a-278, 29-33, 29-34, 29-35, subdivision (2) or (3) of subsection (a) of section 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392, inclusive, 53a-54a to 53a-57, inclusive, 53a-59 to 53a-60c, inclusive, 53a-64aa, 53a-64bb, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-86, 53a-92 to 53a-94a, inclusive, 53a-95, 53a-100aa, 53a-101, 53a-102a, 53a-103a or 53a-111 to 53a-113, inclusive, subdivision (1) of subsection (a) of section 53a-122, subdivision (3) of subsection (a) of section 53a-123, section 53a-134, 53a-135, 53a-136a or 53a-167c, subsection (a) of section 53a-174, or section 53a-196a, 53a-211, 53a-212, 53a-216 or 53a-217b, or (B) running away, without just cause, from any secure placement other than home while referred as a delinquent child to the Court Support Services Division or committed as a delinquent child to the Commissioner of Children and Families for a serious juvenile offense;

(11) “Serious juvenile offender” means any child convicted as delinquent for the commission of a serious juvenile offense;

(12) “Serious juvenile repeat offender” means any child charged with the commission of any felony if such child has previously been convicted as delinquent or otherwise convicted at any age for two violations of any provision of title 21a, 29, 53 or 53a that is designated as a felony;

(13) “Alcohol-dependent” means a psychoactive substance dependence on alcohol as that condition is defined in the most recent edition of the American Psychiatric Association's “Diagnostic and Statistical Manual of Mental Disorders”; and

(14) “Drug-dependent” means a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the American Psychiatric Association's “Diagnostic and Statistical Manual of Mental Disorders”. No child shall be classified as drug-dependent who is dependent (A) upon a morphine-type substance as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or (B) upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant substances as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than drug dependence.

CREDIT(S)

(1949 Rev., § 2802; 1958 Rev., §§ 17-53, 51-301; 1959, P.A. 28, § 52; 1967, P.A. 630, § 1, eff. June 22, 1967; 1969, P.A. 794, § 1; 1971, P.A. 72, § 14; 1975, P.A. 75-602, § 1, eff. Jan. 1, 1976;

1976, P.A. 76-436, § 668, eff. July 1, 1978; 1977, P.A. 77-577, § 4; 1979, P.A. 79-567, § 1; 1979, P.A. 79-581, § 1; 1985, P.A. 85-226, § 1; 1987, P.A. 87-373, § 13; 1990, P.A. 90-161, § 1, eff. July 1, 1990; 1990, P.A. 90-240, § 2; 1990, P.A. 90-325, § 19; 1991, P.A. 91-303, § 11, eff. July 1, 1991; 1992, June Sp.Sess., P.A. 92-1, § 2; 1992, June Sp.Sess., P.A. 92-3; 1993, P.A. 93-91, § 1, eff. July 1, 1993; 1993, P.A. 93-340, § 16, eff. Oct. 1, 1993; 1995, P.A. 95-225, § 9, eff. Oct. 1, 1995; 1997, P.A. 97-319, § 18, eff. July 1, 1997; 1998, P.A. 98-256, § 1; 2000, P.A. 00-177, § 1, eff. July 1, 2001; 2002, P.A. 02-109, § 1, eff. June 7, 2002; 2002, P.A. 02-132, § 18; 2005, P.A. 05-250, § 1, eff. Oct. 1, 2007; 2007, June Sp.Sess., P.A. 07-4, § 73, eff. Jan. 1, 2010; 2009, Sept.Sp.Sess., P.A. 09-7, § 69, eff. Jan. 1, 2010; 2009, Sept.Sp.Sess., P.A. 09-7, § 82, eff. July 1, 2012; 2010, June Sp.Sess., P.A. 10-1, § 28, eff. June 22, 2010; 2011, P.A. 11-71, §§ 7, 8, eff. July 1, 2011; 2011, P.A. 11-240, § 2, eff. July 1, 2011; 2011, P.A. 11-157, §§ 9 to 11; 2011, P.A. 11-71, §§ 9, 10, eff. July 1, 2012; 2011, P.A. 11-157, § 12, eff. July 1, 2012; 2011, P.A. 11-240, § 3, eff. July 1, 2012; 2012, June 12 Sp.Sess., P.A. 12-1, §§ 266, 267; 2014, P.A. 14-186, § 5.) Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly.

Conn. Gen. Stat. § 45a-610 (2014). Removal of parent as guardian

If the Court of Probate finds that notice has been given or a waiver has been filed, as provided in section 45a-609, it may remove a parent as guardian, if the court finds by clear and convincing evidence one of the following: (1) The parent consents to his or her removal as guardian; or (2) the minor 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 for the minor child's welfare; or (3) the minor child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being, as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interests of the minor child be permitted to exercise, parental rights and duties at the time; or (4) the minor child has had physical injury or injuries inflicted upon the minor child by a person responsible for such child's health, welfare or care, or by a person given access to such child by such responsible person, other than by accidental means, or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment; or (5) the minor child has been found to be neglected or uncared for, as defined in section 46b-120. If, after removal of a parent as guardian under this section, the minor child has no guardian of his or her person, such a guardian may be appointed under the provisions of section 45a-616. Upon the issuance of an order appointing the Commissioner of Children and Families as guardian of the minor child, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety.

CREDIT(S)

(1958 Rev., § 45-44c; 1979, P.A. 79-460, § 10; 1983, P.A. 83-481, § 3; 1984, P.A. 84-294, § 3; 2000, P.A. 00-75, § 3; 2001, P.A. 01-195, § 28, eff. July 11, 2001; 2002, May 9 Sp.Sess., P.A. 02-7, § 32, eff. Aug. 15, 2002.) Current with enactments of Public Acts of the 2014 February Regular Session of the Connecticut General Assembly.

DELAWARE

DEL. CODE ANN. TIT. 10, § 901 (2015). § 901. Definitions. Family Court of the State of Delaware.

The

Full text of all sections at this level Subchapter I. Organization, Administration and Operation

Current selection

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

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

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

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

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

- a. A parent, guardian, or custodian;
- b. Other members of the child's family or household, meaning persons living together permanently or temporarily without regard to whether they are related to each other and

without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child's household;

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

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

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

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

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

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

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

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

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

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

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

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

2. The child is living in the home of an “adult individual” who fails to meet the definition of “relative” in this section on an extended basis without an assessment by DSCYF, or its licensed agency; or

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

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

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

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

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

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

- a. Mother;
- b. Father;
- c. Mother-in-law;
- d. Father-in-law;
- e. Brother;
- f. Sister;
- g. Brother-in-law;
- h. Sister-in-law;
- i. Son;
- j. Daughter;
- k. Son-in-law;

l. Daughter-in-law;

m. Grandfather;

n. Grandmother;

o. Grandson;

p. Granddaughter;

q. Stepfather;

r. Stepmother;

s. Stepson;

t. Stepdaughter.

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

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

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

a. A parent, guardian, or custodian;

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

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

(15) "Law" means the common law and statutes of this State, the laws of any subdivision thereof, and regulations promulgated by a governmental agency having the force and effect of law.

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

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

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

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

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

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

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

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

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

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

(20) “Relative” means any person within the immediate family, and any grandparent, uncle, aunt, first cousin, great-grandparent, grandaunt or granduncle, half brother or half sister.

(21) “Sexual abuse” means any act against a child that is described as a sex offense in § 761(h) of Title 11.

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

CREDIT(S)

Added by 58 Laws 1971, ch. 114, § 1. Amended by 60 Laws 1976, ch. 449, § 1; 61 Laws 1978, ch. 334, § 1; 63 Laws 1981, ch. 73, § 1; 63 Laws 1982, ch. 290, § 7; 64 Laws 1983, ch. 108, § 4; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 71 Laws 1997, ch. 176, § 2; 71 Laws 1998, ch. 240, § 1, eff. May 1, 1998; 73 Laws 2001, ch. 65, § 8, eff. June 27, 2001; 74 Laws 2003, ch. 175, § 12, eff. July 17, 2003; 76 Laws 2007, ch. 136, §§ 1-5, eff. July 12, 2007; 77 Laws 2009, ch. 43, § 1, eff. June 16, 2009; 77 Laws 2009, ch. 70, § 1, eff. June 26, 2009; 79 Laws 2014, ch. 206, §§ 1, 2, eff. April 8, 2014. Current through 79 Laws 2014, ch. 443. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication

DEL. CODE ANN. TIT. 11, § 1102 (2015). Endangering the welfare of a child; class E or G felony

§ 902. Definitions

As used in this chapter, the following terms mean:

- (1) “Abuse” or “abused child” as defined in § 901 of Title 10.
- (2) “Baby” shall mean a child not more than 14 days old, except that for hospitals and their employees and volunteers, “baby” shall mean a child reasonably believed to be not more than 14 days old.
- (3) “Child” shall mean any person who has not reached that person's own 18th birthday.
- (4) “Child Protection Registry” or “Registry” means a collection of information as described in subchapter II of this chapter about persons who have been substantiated for abuse or neglect as provided in subchapter II of this chapter or who were substantiated between August 1, 1994, and February 1, 2003.
- (5) “Child welfare proceeding” means any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption or other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by the Family Court.
- (6) “Conviction” or “convicted” means entry of a plea of guilty or nolo contendere, regardless of whether the plea was subsequently discharged or dismissed under the first offenders domestic violence diversion program pursuant to § 1024 of Title 10, or under the first offenders controlled substances diversion program pursuant to § 4767 of this title, or of a Robinson plea, or of a probation before judgment discharge without judgment of conviction notwithstanding the provisions of § 4218(f) of Title 11, or a finding of guilt after trial, or a finding of not guilty after trial as a result of the defense of mental disease or defect pursuant to Title 11, or adjudication

of delinquency for conduct which if committed by an adult, would constitute a crime; or “conviction” or “convicted” under similar proceedings of another state, territory or jurisdiction.

(7) “Department” shall mean the Department of Services for Children, Youth and Their Families.

(8) “Director” shall mean the Director of the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(9) “Division” shall mean the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(10) “Family assessment and services” shall mean a case management approach by the Division of Family Services that provides for a prompt assessment of a child and the child's family and the circumstances of the reported incident (including the known history of the child and/or the alleged perpetrator) when there has been a report to the Division that the child was a victim of abuse or neglect, or at risk of maltreatment by a person responsible for that child's care, custody or control. Family assessment and services shall be used in conjunction with the investigation approach defined in paragraph (13) of this section but may not supplant it in circumstances which require an investigation. The family assessment response shall focus on the integrity and preservation of the family and shall assess the status of the child and the family in terms of the risk of abuse and neglect and, if necessary, plan and provide for the provision of community-based services to reduce the risk and to otherwise support the family.

(11) “Good faith” shall be presumed in the absence of evidence of malice or wilful misconduct.

(12) “Internal information system” shall mean a system of maintaining information related to all reports of abuse, neglect, investigations, family assessments, services and other relevant information.

(13) “Investigation” shall mean the collection of evidence in response to a report of abuse, neglect, or risk of maltreatment by a person responsible for that child's care, custody or control in order to determine if a child has been abused, neglected, or is at risk of maltreatment. The Division shall develop protocols for its investigations that focus on ensuring the well-being and safety of the child. The Division may conduct an investigation in response to any report of abuse, neglect, or risk of maltreatment but shall conduct an investigation as enumerated under § 906(e)(3) of this title.

(14) “Investigation Coordinator” shall mean a Department employee, appointed by the Secretary, who is authorized to independently track each reported case of alleged child abuse or neglect within the Department's internal information system and who is responsible for monitoring each reported case involving the death of, serious physical injury to, or allegations of sexual abuse of a child from inception to final criminal and civil disposition.

(15) “Multidisciplinary tracking system” shall mean an electronic system which the Investigation Coordinator utilizes to track and monitor each case involving the death of, or serious injury to, a

child, or allegations of sexual abuse of a child, from inception to final criminal and civil disposition.

(16) “Neglect” as defined in § 901 of Title 10.

(17) “Physical injury” as defined in § 222 of Title 11.

(18) “Report” shall mean the communication of an allegation of child abuse or neglect to the Division pursuant to § 903 or § 905 of this title;

(19) “Serious physical injury” as defined in § 222 of Title 11.

(20) “Sexual abuse” as defined in § 901 of Title 10.

(21) “Special Investigator” shall mean a Division employee, appointed by the Secretary, who performs abuse and neglect investigations and possesses additional qualifications and authority as defined by § 9016 of Title 29.

(22) “Substantiation” means a finding by a preponderance of the evidence that abuse or neglect has occurred.

(23) “Those responsible for the care, custody and control of the child” or “care, custody and control” as defined in § 901 of Title 10.

CREDIT(S)

60 Laws 1976, ch. 494, § 1; 64 Laws 1983, ch. 213, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 71 Laws 1997, ch. 199, § 3, eff. July 17, 1997; 72 Laws 1999, ch. 179, § 3, eff. July 16, 1999; 72 Laws 2000, ch. 469, § 4, eff. April 1, 2001; 73 Laws 2001, ch. 187, §§ 2, 8; 73 Laws 2002 (3rd Sp. Sess.), ch. 412, §§ 2 to 5, eff. Feb. 1, 2003; 75 Laws 2006, ch. 376, § 1, eff. July 6, 2006; 76 Laws 2007, ch. 136, §§ 14-16, eff. July 12, 2007; 78 Laws 2011, ch. 13, § 60, eff. Sept. 1, 2011; 78 Laws 2012, ch. 403, § 2, eff. Oct. 1, 2012; 79 Laws 2014, ch. 336, § 1, eff. July 21, 2014.

DEL. CODE ANN. TIT. 11, § 1102 (2015). Endangering the welfare of a child; class E or G felony

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:

a. Intentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family.

(5) The person commits the offense of driving under the influence as set forth in § 4177 of Title 21, or the offense of operating a vessel or boat under the influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(7) The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in §§ 4714, 4716, 4718, 4720, and 4722 of Title 16.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(g) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in subdivision (b)(1), (b)(2) or (b)(3) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child or sexual offense against the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.

CREDIT(S)

58 Laws 1972, ch. 497, § 1; 61 Laws 1978, ch. 334, § 6; 67 Laws 1989, ch. 130, § 8; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 70 Laws 1996, ch. 451, §§ 1, 2, eff. July 5, 1996; 71 Laws 1998, ch. 424, § 3, eff. July 13, 1998; 73 Laws 2001, ch. 208, §§ 1-3, eff. June 30, 2001; 77 Laws 2009, ch. 34, § 1, eff. May 22, 2009; 78 Laws 2012, ch. 242, § 1, eff. May 21, 2012; 78 Laws 2012, ch. 406, § 2, eff. Sept. 12, 2012. Revisions to 2014 Acts by the Delaware Code Revisions were unavailable at the time of publication

DISTRICT OF COLUMBIA

D.C. Code § § 4-1341.01 (2015). Child Abuse and Neglect. Definitions.

For the purposes of this subchapter, the term:

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

(2) “Child abuse” means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which occurs through the intentional infliction of physical or emotional injury or an act of sexual abuse, which includes a violation of any provision of subchapter of this chapter.

(3) “Child neglect” means harm to a child's health or welfare which occurs through the failure to provide adequate food, clothing, shelter, education, or medical care.

(4) “Prevention program” means a program designed to prevent child abuse or child neglect including a community-based program that:

(A) Focuses on child abuse or child neglect;

(B) Focuses on public awareness;

(C) Focuses on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs or coping with family stress;

(D) Provides aid to parents who potentially may abuse or neglect their children, child abuse or child neglect counseling, support groups for parents who potentially may abuse or neglect their children, and support groups for their children, or early identification of families in which there is a potential for child abuse or child neglect;

(E) Trains and places volunteers in programs that focus on child abuse or child neglect prevention; or

(F) Develops and makes available to the District of Columbia Board of Education curricula and educational material on basic child care and parenting skills, or trains educators.

CREDIT(S)

(Oct. 5, 1993, D.C. Law 10-56, § 2, 40 DCR 7222.) Copyright (c) 2012 By the District of Columbia. Content previously published in the District of Columbia Official Code, 2001 Edition is used with permission. 2014

D.C. Code § 4-1301.06 (2015). Child Abuse and Neglect. Investigation.

(a) The full investigation shall be completed no more than 30 days after the receipt of the first notice of the suspected abuse or neglect.

(b) The investigation shall determine:

(1) The nature, extent, and cause of the abuse or neglect, if any;

(2) If mental injury, as defined in § 16-2301(31), is suspected, an assessment of the suspected mental injury by a physician, a psychologist, or a licensed clinical social worker;

(3) If the suspected abuse or neglect is determined to be substantiated:

(A) The identity of the person responsible for the abuse or neglect;

(B) The name, age, sex, and condition of the abused or neglected child and all other children in the home;

(C) The conditions in the home at the time of the alleged abuse or neglect;

(D) Whether there is any child in the home whose health, safety, or welfare is at risk; and

(E) Whether any child who is at risk should be removed from the home or can be protected by the provision of resources, such as those listed in §§ 4-1303.03 and 4-1303.03a.

(c)(1) Within 5 business days after the completion of the investigation, the Agency shall complete a final report of its findings.

(2) The Agency shall provide a copy of a report regarding suspected abuse or neglect that addresses possible criminal activity to the Metropolitan Police Department, the Office of the Attorney General, and the United States Attorney for the District of Columbia.

(d) If the Agency determines that a report was made in bad faith, the Agency shall refer the report to the Office of the Attorney General, which shall determine whether prosecution of the person making the report in bad faith is warranted.

(e) Nothing in this section shall be read as abrogating the responsibility of the Metropolitan Police Department for criminal investigations.

CREDIT(S)

(Sept. 23, 1977, D.C. Law 2-22, title I, § 106, 24 DCR 3341; Apr. 4, 2001, D.C. Law 13-277, § 2(d), 48 DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(c), 52 DCR 2315.) Current through December 17, 2014.

D.C. Code § 16-2301 (2015). Proceedings Regarding Delinquency, Neglect, or Need of Supervision. Definitions

As used in this subchapter-

(1) The term “Division” means the Family Division of the Superior Court of the District of Columbia. Pursuant to section 16-2301.01, the term “Division” shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.

(1A) “Family Court” means the Family Court of the Superior Court of the District of Columbia.

(2) The term “judge” means a judge assigned to the Family Division of the Superior Court.

(3) The term “child” means an individual who is under 18 years of age, except that the term “child” does not include an individual who is sixteen years of age or older and-

(A) charged by the United States attorney with (i) murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term “child” also includes a person under the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term “minor” means an individual who is under the age of twenty-one years.

(5) The term “adult” means an individual who is twenty-one years of age or older.

(6) The term “delinquent child” means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term “delinquent act” means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term “child in need of supervision” means a child who-

(A)(i) subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9)(A) The term “neglected child” means a child:

(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to section 16-1003;

(ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;

(iii) whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(iv) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care;

(v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;

(vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;

(vii) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(viii) who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;

(ix) in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or

(x) who is regularly exposed to illegal drug-related activity in the home.

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

(C) Subparagraph (A)(viii), (ix), and (x) of this paragraph shall apply as of October 1, 2003.

(10) Repealed.

(11) Repealed.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian:

(A) to whom the legal custody of a child has been granted by the order of a court;

(B) who is acting in loco parentis; or

(C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.

(13) The term “detention” means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.

(14) The term “shelter care” means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.

(15) The term “detention or shelter care hearing” means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.

(16) The term “factfinding hearing” means a hearing to determine whether the allegations of a petition are true.

(17) The term “dispositional hearing” means a hearing, after a finding of fact, to determine-

(A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or

(B) what order of disposition should be made in a neglect case.

(18) The term “probation” means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.

(19) The term “protective supervision” means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.

(20) The term “guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to)-

(A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;

(B) the authority and duty of reasonable visitation (except as limited by Division order);

(C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term “legal custody” means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes-

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care. A Division order of “legal custody” is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term “residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support.

(23)(A) The term “abused”, when used with reference to a child, means:

(i) infliction of physical or mental injury upon a child;

(ii) sexual abuse or exploitation of a child; or

(iii) negligent treatment or maltreatment of a child.

(B)(i) The term “abused”, when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term “discipline” does not include:

(I) burning, biting, or cutting a child;

(II) striking a child with a closed fist;

(III) inflicting injury to a child by shaking, kicking, or throwing the child;

(IV) nonaccidental injury to a child under the age of 18 months;

(V) interfering with a child's breathing; and

(VI) threatening a child with a dangerous weapon or using such a weapon on a child. For purposes of this provision, the term “dangerous weapon” means a firearm, a knife, or any of the prohibited weapons described in section 22-4514.

(ii) The list in sub-subparagraph (i) of this subparagraph is illustrative of unacceptable discipline and is not intended to be exclusive or exhaustive.

(24) The term “negligent treatment” or “maltreatment” means failure to provide adequate food, clothing, shelter, or medical care, which includes medical neglect, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian.

(25) The term “sexual exploitation” means a parent, guardian, or other custodian allows a child to engage in prostitution as defined in section 2(1) of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; § 22-2701.01), or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; § 22-3101(5)).

(26) The term “parenting classes” means any program which enhances the parenting skills of individuals through providing role models, discussion, training in early childhood development and child psychology, or other instruction designed to strengthen the parent, guardian, or custodian's ability to nurture children.

(27) The term “family counseling” means any psychological or psychiatric or other social service offered by a provider to the parent and 1 or more members of the extended family or the child's guardian or other caretaker of a child who has been adjudicated neglected, delinquent, or in need of supervision. A caretaker is an adult person in whose care a minor has been entrusted by written authorization of the child's parent, guardian, or legal custodian.

(28) The term “entry into foster care” means the earlier of:

(A) The date of the first judicial finding that the child has been neglected; or

(B) The date that is 60 days after the date on which the child is removed from the home.

(29) The term “Agency” means the Child and Family Services Agency established by section 6-2121.01.

(30) The term “physical injury” means bodily harm greater than transient pain or minor temporary marks.

(31) The term “mental injury” means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

(32) The term “sexual abuse” means:

(A) engaging in, or attempting to engage in, a sexual act or sexual contact with a child;

(B) causing or attempting to cause a child to engage in sexually explicit conduct; or

(C) exposing a child to sexually explicit conduct.

(33) The term “sexually explicit conduct” means actual or simulated:

(A) sexual act;

(B) sexual contact;

(C) bestiality;

(D) masturbation; or

(E) lascivious exhibition of the genitals, anus, or pubic area.

(34) The term “sexual act” shall have the same meaning as provided in section 101(8) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(8)).

(35) The term “sexual contact” shall have the same meaning as provided in section 101(9) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(9)).

(36) The term “controlled substance” means a drug or chemical substance, or immediate precursor, as set forth in Schedules I through V of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-901.01 et seq.), which has not been prescribed by a physician.

(37) The term “drug-related activity” means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(38) The term “incompetent to proceed” means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(39) The term “psychiatrist” means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

(40) The term “qualified psychologist” means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(41)(A) The term “victim” means any person, organization, partnership, business, corporation, agency or governmental entity:

(i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

(B) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

(42) The term “immediate family member” means:

(A) the person’s parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

(B) any person who maintains or has maintained a romantic relationship, not necessarily including a sexual relationship, with the person; or

(C) any person who has a child in common with the person.

(43) The term “weapons offense” means any violation of any law, rule, or regulation which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device as these terms are defined in section 7-2501.01.

(44) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(45) The term “Superior Court” means the Superior Court of the District of Columbia.

CREDIT(S)

(Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 523, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a), 24 DCR 3341; Mar. 12, 1986, D.C. Law 6-90, § 2, 33 DCR 307; Mar. 15, 1990, D.C. Law 8-87, § 4(a), 37 DCR 50; June 8, 1990, D.C. Law 8-

134, § 2(a), 37 DCR 2613; Mar. 6, 1991, D.C. Law 8-200, § 2, 37 DCR 7334; Mar. 16, 1995, D.C. Law 10-227, § 3(a), 42 DCR 4; May 23, 1995, D.C. Law 10-257, § 401(e), 42 DCR 53; Apr. 18, 1996, D.C. Law 11-110, § 65, 43 DCR 530; Mar. 24, 1998, D.C. Law 12-81, § 10(u), 45 DCR 745; June 27, 2000, D.C. Law 13-136, § 301(a)(1), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(1), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 3(a), 49 DCR 7815; Mar. 13, 2004, D.C. Law 15-105, § 55, 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 202(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(a), 54 DCR 864; Sept. 12, 2008, D.C. Law 17-231, § 20(g), 55 DCR 6758; Mar. 8, 2011, D.C. Law 18-284, § 3(b), 57 DCR 10477; Sept. 26, 2012, D.C. Law 19-169, § 20(c)(2), 59 DCR 5567.) Current through December 17, 2014.

D.C. Code § 16-2320 (2015). Disposition of child who is neglected, delinquent, or in need of supervision.

(a) If a child is found to be neglected, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Permit the child to remain with his or her parent, guardian, or other custodian, subject to such conditions and limitations as the Division may prescribe, including, but not limited to, the following services for the child and his or her parent, guardian, or other custodian:

(A) medical, psychiatric, or other treatment at an appropriate facility under protective supervision;

(B) parenting classes; and

(C) family counseling.

(2) Place the child under protective supervision.

(3) Transfer legal custody to any of the following-

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Mayor of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement likely to be less damaging to the child than the child's own home.

It shall be presumed that it is generally preferable to leave a child in his or her own home.

(4) Commitment of the child for medical, psychiatric, or other treatment at an appropriate facility on an in-patient basis if, at the dispositional hearing provided for in section 16-2317, the Division finds that confinement is necessary to the treatment of the child. A child for whom medical, psychiatric, or other treatment is ordered may petition the Division for review of the order thirty days after treatment under the order has commenced, and, if, after a hearing for the purpose of such review, the original order is affirmed, the child may petition for review thereafter every six months.

(5) The Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child. The Division shall have the authority to (i) order any public agency of the District of Columbia to provide any service the Division determines is needed and which is within such agency's legal authority and (ii) order any private agency receiving public funds for services to families or children to provide any such services when the Division deems it is in the best interests of the child and within the scope of the legal obligations of the agency.

(6) Terminate the parent and child relationship for the purpose of seeking an adoptive placement for the child pursuant to subchapter III of this chapter.

(b) Unless a child found neglected is also found to be delinquent, he shall not be committed to, or confined in, an institution for delinquent children.

(c) If a child is found to be delinquent or in need of supervision, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Any disposition authorized by subsection (a) of this section (other than paragraphs (3)(A) and (5) thereof).

(2) Transfer of legal custody to a public agency for the care of delinquent children.

(3) Probation under such conditions and limitations as the Division may prescribe, including but not limited to the completion of parenting classes or family counseling in cases where either or both was ordered by the Division.

(c-1) The Division shall order any child between the ages of 14 and 18 years who is found to be delinquent or in need of supervision to perform a minimum of 90 hours of community service with an agency of the District government or a non-profit or community service organization in accordance with section 24-904(a).

(c-2) When determining what disposition shall be ordered under subsection (c) of this section, the Division shall consider any victim impact statement submitted to the Division and the victim, or the immediate family members of the victim when the victim is a child or when the victim is deceased or incapacitated, shall have the right to make a statement at the disposition hearing. The absence of the victim at disposition shall not preclude the court from holding the hearing.

(c-3) When determining what disposition shall be ordered under subsection (a) of this section, the Division may consider a child's failure to appear at a scheduled hearing.

(d) No child found in need of supervision, as defined by section 16-2301(8), unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children, but shall be released to the child's parent, guardian, or custodian, unless the return of the child will result in placement in, or return to, an abusive situation, or the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.

(e) No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders.

(f) In its dispositional order for a child adjudicated neglected, the Division shall:

(1) Address the matters set forth in section 16-2319(c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within 30 days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division and all parties if it is unable for whatever reasons to provide the services delineated in the plan;

(2) Include a determination of whether:

(A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and

(B) Continuation of the child in the child's home would be contrary to the welfare of the child.

(g) The department or agency to whom the legal custody of a child has been transferred pursuant to subsection (a) of this section shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent at least ten (10) days prior to the change in placement, except that in the case of an emergency notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice of a change in placement need not be given to the parent when the judge has determined that visitation would be detrimental to the child

or the judge has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child. Except in the case of an emergency, the hearing shall be held and a decision rendered prior to a change in the placement.

(h) Any child who is found to be delinquent for violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 may, in addition to any other disposition ordered by the court for his supervision, care, and rehabilitation, be ordered to attend classes conducted by the Mayor pursuant to section 48-905.04(c).

CREDIT(S)

(July 29, 1970, 84 Stat. 535, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 407, 24 DCR 3341; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(3), 28 DCR 3081; Apr. 30, 1988, D.C. Law 7-104, § 4(p), 35 DCR 147; May 10, 1989, D.C. Law 7-231, § 26, 36 DCR 492; Jan. 31, 1990, D.C. Law 8-61, § 3, 36 DCR 5798; May 15, 1993, D.C. Law 9-272, § 102, 40 DCR 7967; Mar. 16, 1995, D.C. Law 10-227, § 3(c), 42 DCR 4; Apr. 9 1997, D.C. Law 11-255, § 18(g), 44 DCR 1271; June 27, 2000, D.C. Law 13-136, § 301(e), 47 DCR 2850; Mar. 17, 2005, D.C. Law 15-261, §§ 602(f), 702, 52 DCR 1188; Apr. 24, 2007, D.C. Law 16-306, § 206(c), 53 DCR 8610.) Current through December 17, 2014.

FLORIDA

FLA. STAT. ANN. § 39.01 (2015). Proceedings Relating to Children. Definitions.

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

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

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

(3) “Addictions receiving facility” means a substance abuse service provider as defined in chapter 397.

(4) “Adjudicatory hearing” means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

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

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

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

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

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

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

1. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.
2. Knowledge of societal standards for what is being proposed.
3. Awareness of potential consequences and alternatives.
4. Assumption that agreement or disagreement will be accepted equally.
5. Voluntary decision.
6. Mental competence.

Juvenile sexual behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) “Arbitration” means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

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

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

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

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

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

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

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

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

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

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

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) “Diligent efforts by a parent” means a course of conduct which results in a meaningful change in the behavior of a parent that reduces risk to the child in the child's home to the extent that the child may be safely placed permanently back in the home as set forth in the case plan.

(23) “Diligent efforts of social service agency” means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

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

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

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

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

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

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

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

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

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

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

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

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

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

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

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

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

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

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or

another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

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

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

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

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

- 1. Solicit for or engage in prostitution; or
- 2. Engage in a sexual performance, as defined by chapter 827.

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

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

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

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

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

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

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

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

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

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(44) “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health

to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

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

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

Neglect of a child includes acts or omissions.

(45) "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

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

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

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

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

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

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

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

(66) “Reunification services” means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment; shall promote family autonomy; and shall strengthen family life, whenever possible.

(67) “Safety plan” means a plan created to control present or impending danger using the least intrusive means appropriate to protect a child when a parent, caregiver, or legal custodian is unavailable, unwilling, or unable to do so.

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

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

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

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

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

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

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

2. Any act intended for a valid medical purpose.

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

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

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

1. Solicit for or engage in prostitution;

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

3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

(70) "Shelter" means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

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

(72) "Sibling" means:

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

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

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

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

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

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

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

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

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

CREDIT(S)

Laws 1951, c. 26880, § 1; Laws 1967, c. 67-585, §§ 1, 2; Laws 1969, c. 69-106, §§ 19, 35; Laws 1969, c. 69-353, § 3; Laws 1969, c. 69-365, § 4; Laws 1971, c. 71-117, § 1; Laws 1971, c. 71-130, § 1; Laws 1971, c. 71-355, § 10; Laws 1972, c. 72-179, §§ 4, 5; Laws 1972, c. 72-404, §§ 19, 30; Laws 1973, c. 73-231, §§ 2, 23; Laws 1974, c. 74-368, § 1; Laws 1975, c. 75-48, §§ 15, 27, 28; Laws 1977, c. 77-147, § 4; Laws 1978, c. 78-414, § 2; Laws 1979, c. 79-164, § 9; Laws 1979, c. 79-203, § 2; Laws 1980, c. 80-290, § 1; Laws 1981, c. 81-218, §§ 1, 17; Laws 1984, c. 84-311, §§ 4, 15; Laws 1985, c. 85-80, § 4; Laws 1985, c. 85-206, § 2; Laws 1986, c. 86-220, §§ 73, 78; Laws 1987, c. 87-133, § 1; Laws 1987, c. 87-289, § 1; Laws 1987, c. 87-397, § 12; Laws 1988, c. 88-319, § 1; Laws 1988, c. 88-337, § 10; Laws 1990, c. 90-53, § 2; Laws 1990, c. 90-208, § 3; Laws 1990, c. 90-306, § 3; Laws 1990, c. 90-309, § 2; Laws 1991, c. 91-45, § 69; Laws 1991, c. 91-183, § 1; Laws 1992, c. 92-158, § 1; Laws 1992, c. 92-170, § 1; Laws 1992, c. 92-287, §§ 1, 4[1st], 14; Laws 1993, c. 93-39, § 13; Laws 1993, c. 93-230, § 6; Laws 1994, c. 94-164, § 1; Laws 1994, c. 94-209, § 11; Laws 1994, c. 94-232, § 50; Laws 1995, c. 95-147, § 1333; Laws 1995, c. 95-152, § 8; Laws 1995, c. 95-212, § 1; Laws 1995, c. 95-228, § 4; Laws 1995, c. 95-266, § 1; Laws 1995, c. 95-267, §§ 3, 43; Laws 1996, c. 96-369, § 3; Laws 1996, c. 96-398, § 2; Laws 1996, c. 96-402, § 20; Laws 1997, c. 97-96, § 23; Laws 1997, c. 97-101, § 158; Laws 1997, c. 97-190, § 44; Laws 1997, c. 97-234, § 4; Laws 1997, c. 97-238, § 111; Laws 1997, c. 97-276, § 1. Amended by Laws 1998, c. 98-49, § 1, eff. May 12, 1998; Laws 1998, c. 98-166, § 176, eff. July 1, 1998; Laws 1998, c. 98-280, § 7, eff. June 30, 1998; Laws 1998, c. 98-403, § 20, eff. Oct. 1, 1998; Laws 1999, c. 99-2, § 15, eff. June 29, 1999; Laws 1999, c. 99-168, § 3, eff. July 1, 1999; Laws 1999, c. 99-186, § 2, eff. July 1, 1999; Laws 1999, c. 99-193, § 4, eff. July 1, 1999; Laws 2000, c. 2000-139, § 15, eff. July 1, 2000; Laws

2000, c. 2000-188, § 2, eff. July 1, 2000; Laws 2000, c. 2000-318, § 82, eff. July 1, 2000; Laws 2000, c. 2000-320, § 9, eff. Oct. 1, 2000; Laws 2002, c. 2002-1, § 14, eff. May 21, 2002; Laws 2006, c. 2006-62, § 2, eff. July 1, 2006; Laws 2006, c. 2006-86, § 1, eff. July 1, 2006; Laws 2006, c. 2006-194, § 4, eff. July 1, 2006; Laws 2007, c. 2007-124, § 4, eff. July 1, 2007; Laws 2008, c. 2008-90, § 1, eff. July 1, 2008; Laws 2008, c. 2008-154, § 1, eff. July 1, 2008; Laws 2008, c. 2008-245, § 1, eff. July 1, 2008; Laws 2009, c. 2009-21, § 1, eff. July 7, 2009; Laws 2012, c. 2012-105, § 3, eff. Jan. 1, 2013; Laws 2012, c. 2012-178, § 1, eff. July 1, 2012; Laws 2014, c. 2014-19, § 11, eff. July 1, 2014; Laws 2014, c. 2014-160, § 14, eff. Oct. 1, 2014; Laws 2014, c. 2014-224, § 3, eff. July 1, 2014.

FLA. STAT. ANN. § 39.301 (2015). Proceedings Relating to Children. Initiation of protective investigations.

(1) Upon receiving a report of known or suspected child abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification, the central abuse hotline shall also provide information to district staff on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.

(b) As used in this subsection, the term “criminal conduct” means:

1. A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.

2. A child is known or suspected to have died as a result of abuse or neglect.

3. A child is known or suspected to be the victim of aggravated child abuse, as defined in s. 827.03.

4. A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.

5. A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).

6. A child is known or suspected to be a victim of human trafficking, as provided in s. 787.06.

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall coordinate its investigative activities with the department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in s. 39.306 shall describe the specific local protocols for implementing this section.

(3) The department shall maintain a single, standard electronic child welfare case file for each child whose report is accepted by the central abuse hotline for investigation. Such file must contain information concerning all reports received by the abuse hotline concerning that child and all services received by that child and family. The file must be made available to any department staff, agent of the department, or contract provider given responsibility for conducting a protective investigation.

(4) To the extent practical, all protective investigations involving a child shall be conducted or the work supervised by a single individual in order for there to be broad knowledge and understanding of the child's history. When a new investigator is assigned to investigate a second and subsequent report involving a child, a multidisciplinary staffing shall be conducted which includes new and prior investigators, their supervisors, and appropriate private providers in order to ensure that, to the extent possible, there is coordination among all parties. The department shall establish an internal operating procedure that ensures that all required investigatory activities, including a review of the child's complete investigative and protective services history, are completed by the investigator, reviewed by the supervisor in a timely manner, and signed and dated by both the investigator and the supervisor.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.
2. The purpose of the investigation.
3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.
4. The possible outcomes and services of the department's response.

5. The right of the parent or legal custodian to be engaged to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem and the remedy.

6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

(b) The investigator shall fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents or legal custodians or children.

(6) Upon commencing an investigation under this part, if a report was received from a reporter under s. 39.201(1)(b), the protective investigator must provide his or her contact information to the reporter within 24 hours after being assigned to the investigation. The investigator must also advise the reporter that he or she may provide a written summary of the report made to the central abuse hotline to the investigator which shall become a part of the electronic child welfare case file.

(7) An assessment of safety and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family. This assessment must include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.

(8) Protective investigations shall be performed by the department or its agent.

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6. Document the present and impending dangers to each child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may include tasks or responsibilities for a parent, caregiver, or legal custodian. However, a safety plan may not rely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal custodian lacks the capacity or ability to comply with the plan. If the department is not able to develop a plan that is specific, sufficient, feasible, and sustainable, the department shall file a shelter petition. A child protective investigator shall implement separate safety plans for the perpetrator of domestic violence and the parent who is a victim of domestic violence as defined in s. 741.28. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the child protective investigator shall

seek issuance of an injunction authorized by s. 39.504 to implement a safety plan for the perpetrator and impose any other conditions to protect the child. The safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. If any party to a safety plan fails to comply with the safety plan resulting in the child being unsafe, the department shall file a shelter petition.

b. The child protective investigator shall collaborate with the community-based care lead agency in the development of the safety plan as necessary to ensure that the safety plan is specific, sufficient, feasible, and sustainable. The child protective investigator shall identify services necessary for the successful implementation of the safety plan. The child protective investigator and the community-based care lead agency shall mobilize service resources to assist all parties in complying with the safety plan. The community-based care lead agency shall prioritize safety plan services to families who have multiple risk factors, including, but not limited to, two or more of the following:

(I) The parent or legal custodian is of young age;

(II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;

(III) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has been previously found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

(b) For each report received from the central abuse hotline, the department or the sheriff providing child protective investigative services under s. 39.3065, shall determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. Whenever a delay or disability of the child is suspected, the parent must be referred to a local child developmental screening program, such as the Child Find program of the Florida Diagnostic and Learning Resource System, for screening of the child. As applicable, child protective investigators must inform parents and caregivers how and when to use the injunction process under s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

1. If the department or the sheriff providing child protective investigative services determines that the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the parent or legal custodian and child may be referred for such care, case management, or other community resources.

2. If the department or the sheriff providing child protective investigative services determines that the child is in need of protection and supervision, the department may file a petition for dependency.

3. If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

4. At the close of an investigation, the department or the sheriff providing child protective services shall provide to the person who is alleged to have caused the abuse, neglect, or abandonment and the parent or legal custodian a summary of findings from the investigation and provide information about their right to access confidential reports in accordance with s. 39.202.

(10)(a) The department's training program for staff responsible for responding to reports accepted by the central abuse hotline must also ensure that child protective responders:

1. Know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of child protective responder interviews with parents or legal custodians or children.

2. Know how and when to use the injunction process under s. 39.504 or s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

3. Know how to explain to the parent, legal custodian, or person who is alleged to have caused the abuse, neglect, or abandonment the results of the investigation and to provide information about his or her right to access confidential reports in accordance with s. 39.202, prior to closing the case.

(b) To enhance the skills of individual staff members and to improve the region's and district's overall child protection system, the department's training program at the regional and district levels must include results of qualitative reviews of child protective investigation cases handled within the region or district in order to identify weaknesses as well as examples of effective interventions which occurred at each point in the case.

(c) For all reports received, detailed documentation is required for the investigative activities.

(11) The department shall incorporate into its quality assurance program the monitoring of reports that receive a child protective investigation to determine the quality and timeliness of safety assessments, engagements with families, teamwork with other experts and professionals,

and appropriate investigative activities that are uniquely tailored to the safety factors associated with each child and family.

(12) If the department or its agent is denied reasonable access to a child by the parents, legal custodians, or caregivers and the department deems that the best interests of the child so require, it shall seek an appropriate court order or other legal authority before examining and interviewing the child.

(13) Onsite visits and face-to-face interviews with the child or family shall be unannounced unless it is determined by the department or its agent or contract provider that such unannounced visit would threaten the safety of the child.

(14)(a) If the department or its agent determines that a child requires immediate or long-term protection through medical or other health care or homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive Crisis Counseling Program, such services shall first be offered for voluntary acceptance unless:

1. There are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse, mental illness, or domestic violence; or

2. There is a high likelihood of lack of compliance with voluntary services, and such noncompliance would result in the child being unsafe.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused, a collateral contact shall include a relative, if the protective investigator has knowledge of and the ability to contact a relative. If the services are refused and the department deems that the child's need for protection requires services, the department shall take the child into protective custody or petition the court as provided in this chapter. At any time after the commencement of a protective investigation, a relative may submit in writing to the protective investigator or case manager a request to receive notification of all proceedings and hearings in accordance with s. 39.502. The request shall include the relative's name, address, and phone number and the relative's relationship to the child. The protective investigator or case manager shall forward such request to the attorney for the department. The failure to provide notice to either a relative who requests it pursuant to this subsection or to a relative who is providing out-of-home care for a child may not result in any previous action of the court at any stage or proceeding in dependency or termination of parental rights under any part of this chapter being set aside, reversed, modified, or in any way changed absent a finding by the court that a change is required in the child's best interests.

(c) The department, in consultation with the judiciary, shall adopt by rule:

1. Criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. Such factors must include, but are not limited to, noncompliance with a safety plan or the case plan developed by the department, and the family under this chapter, and prior abuse reports with findings that involve the child, the child's sibling, or the child's caregiver.

2. Requirements that if after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's evaluation.

(15) When a child is taken into custody pursuant to this section, the authorized agent of the department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

(16) The department shall complete its protective investigation within 60 days after receiving the initial report, unless:

(a) There is also an active, concurrent criminal investigation that is continuing beyond the 60-day period and the closure of the protective investigation may compromise successful criminal prosecution of the child abuse or neglect case, in which case the closure date shall coincide with the closure date of the criminal investigation and any resulting legal action.

(b) In child death cases, the final report of the medical examiner is necessary for the department to close its investigation and the report has not been received within the 60-day period, in which case the report closure date shall be extended to accommodate the report.

(c) A child who is necessary to an investigation has been declared missing by the department, a law enforcement agency, or a court, in which case the 60-day period shall be extended until the child has been located or until sufficient information exists to close the investigation despite the unknown location of the child.

(17) Immediately upon learning during the course of an investigation that:

(a) The immediate safety or well-being of a child is endangered;

(b) The family is likely to flee;

(c) A child died as a result of abuse, abandonment, or neglect;

(d) A child is a victim of aggravated child abuse as defined in s. 827.03; or

(e) A child is a victim of sexual battery or of sexual abuse,

the department shall notify the jurisdictionally responsible state attorney, and county sheriff's office or local police department, and, within 3 working days, transmit a full written report to those agencies. The law enforcement agency shall review the report and determine whether a criminal investigation needs to be conducted and shall assume lead responsibility for all criminal fact-finding activities. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding an offense described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate.

(18) In a child protective investigation or a criminal investigation, when the initial interview with the child is conducted at school, the department or the law enforcement agency may allow, notwithstanding s. 39.0132(4), a school staff member who is known by the child to be present during the initial interview if:

(a) The department or law enforcement agency believes that the school staff member could enhance the success of the interview by his or her presence; and

(b) The child requests or consents to the presence of the school staff member at the interview.

School staff may be present only when authorized by this subsection. Information received during the interview or from any other source regarding the alleged abuse or neglect of the child is confidential and exempt from s. 119.07(1), except as otherwise provided by court order. A separate record of the investigation of the abuse, abandonment, or neglect may not be maintained by the school or school staff member. Violation of this subsection is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(19) When a law enforcement agency conducts a criminal investigation into allegations of child abuse, neglect, or abandonment, photographs documenting the abuse or neglect shall be taken when appropriate.

(20) Within 15 days after the case is reported to him or her pursuant to this chapter, the state attorney shall report his or her findings to the department and shall include in such report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(21) When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a

state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child protection proceeding.

(22) If, after having been notified of the requirement to report a change in residence or location of the child to the protective investigator, a parent or legal custodian causes the child to move, or allows the child to be moved, to a different residence or location, or if the child leaves the residence on his or her own accord and the parent or legal custodian does not notify the protective investigator of the move within 2 business days, the child may be considered to be a missing child for the purposes of filing a report with a law enforcement agency under s. 937.021.

CREDIT(S)

Added by Laws 1998, c. 98-403, § 38, eff. Oct. 1, 1998. Amended by Laws 1999, c. 99-168, § 7, eff. July 1, 1999; Laws 1999, c. 99-193, § 14, eff. July 1, 1999; Laws 2000, c. 2000-217, § 4, eff. June 5, 2000; Laws 2001, c. 2001-50, § 2, eff. July 1, 2001; Laws 2003, c. 2003-127, § 2, eff. June 10, 2003; Laws 2005, c. 2005-173, § 2, eff. June 10, 2005; Laws 2006, c. 2006-86, § 8, eff. July 1, 2006; Laws 2006, c. 2006-306, § 1, eff. July 1, 2006; Laws 2008, c. 2008-245, § 6, eff. July 1, 2008; Laws 2009, c. 2009-43, § 5, eff. July 1, 2009; Laws 2011, c. 2011-213, § 42, eff. July 1, 2011; Laws 2012, c. 2012-178, § 6, eff. July 1, 2012; Laws 2014, c. 2014-224, § 8, eff. July 1, 2014. Current through Ch. 255 (End) of the 2014 2nd Reg. Sess. and Sp. "A" Sess. of the Twenty-Third Legislature

FLA. STAT. ANN. § 827.03 (2015). Abuse, aggravated abuse, and neglect of a child; penalties

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

(a) "Aggravated child abuse" occurs when a person:

1. Commits aggravated battery on a child;
2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

(b) "Child abuse" means:

1. Intentional infliction of physical or mental injury upon a child;
2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

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

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

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

(e) “Neglect of a child” means:

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

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

(2) Offenses.--

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

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

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

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

(3) Expert testimony.--

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

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

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

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

CREDIT(S)

Laws 1899, c. 4721, § 1; Laws 1901, c. 4971, § 1; Gen.St.1906, §§ 3236, 3238; Rev.Gen.St.1920, §§ 5069, 5071; Laws 1923, c. 9331, § 1; Comp.Gen.Laws 1927, §§ 7171, 7173; Laws 1965, c. 65-113, § 1; Laws 1970, c. 70-8, § 1; Laws 1971, c. 71-136, § 940; Fla.St.1973, § 828.04; Laws 1974, c. 74-383, § 49; Laws 1975, c. 75-298, § 30; Laws 1984, c. 84-238, § 1. Amended by Laws 1996, c. 96-322, § 8, eff. Oct. 1, 1996; Laws 1999, c. 99-168, § 16, eff. July 1, 1999; Laws 2003, c. 2003-130, § 1, eff. June 10, 2003; Laws 2012, c. 2012-155, § 9, eff. Oct. 1, 2012. Current through Ch. 255 (End) of the 2014 2nd Reg. Sess. and Sp. "A" Sess. of the Twenty-Third Legislature

GEORGIA

GA. CODE ANN. § § 15-11-2 (2015). Juvenile Proceedings. Definitions

As used in this chapter, the term:

(1) "Abandonment" or "abandoned" means any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Intent to forgo parental duties or relinquish parental claims may be evidenced by:

(A) Failure, for a period of at least six months, to communicate meaningfully with a child;

(B) Failure, for a period of at least six months, to maintain regular visitation with a child;

(C) Leaving a child with another person without provision for his or her support for a period of at least six months;

(D) Failure, for a period of at least six months, to participate in any court ordered plan or program designed to reunite a child's parent, guardian, or legal custodian with his or her child;

(E) Leaving a child without affording means of identifying such child or his or her parent, guardian, or legal custodian and:

(i) The identity of such child's parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and

(ii) A parent, guardian, or legal custodian has not come forward to claim such child within three months following the finding of such child;

(F) Being absent from the home of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home;

(G) Failure to respond, for a period of at least six months, to notice of child protective proceedings; or

(H) Any other conduct indicating an intent to forgo parental duties or relinquish parental claims.

(2) "Abuse" means:

(A) Any nonaccidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child;

(B) Emotional abuse;

(C) Sexual abuse or sexual exploitation;

(D) Prenatal abuse; or

(E) The commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child. An act includes a single act, multiple acts, or a continuing course of conduct. As used in this subparagraph, the term "presence" means physically present or able to see or hear.

(3) "Adult" means any individual who is not a child as defined in paragraph (10) of this Code section.

(4) "Affiliate court appointed special advocate program" means a locally operated program operating with the approval of the local juvenile court which screens, trains, and supervises volunteers to advocate for the best interests of an abused or neglected child in dependency proceedings.

(5) “Aggravated circumstances” means the parent has:

(A) Abandoned a child;

(B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of such parent;

(C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation;

(D) Committed the murder or voluntary manslaughter of his or her child's other parent or has been convicted of aiding or abetting, attempting, conspiring, or soliciting the murder or voluntary manslaughter of his or her child's other parent;

(E) Committed the murder or voluntary manslaughter of another child of such parent; or

(F) Committed an assault that resulted in serious bodily injury to his or her child or another child of such parent.

(6) “Biological father” means the male who impregnated the biological mother resulting in the birth of a child.

(7) “Business day” means Mondays through Fridays and shall not include weekends or legal holidays.

(8) “Caregiver” means any person providing a residence for a child or any person legally obligated to provide or secure adequate care for a child, including his or her parent, guardian, or legal custodian.

(9) “Case plan” means a plan which is designed to ensure that a child receives protection, proper care, and case management and may include services for a child, his or her parent, guardian, or legal custodian, and other caregivers.

(10) “Child” means any individual who is:

(A) Under the age of 18 years;

(B) Under the age of 17 years when alleged to have committed a delinquent act;

(C) Under the age of 22 years and in the care of DFCS as a result of being adjudicated dependent before reaching 18 years of age;

(D) Under the age of 23 years and eligible for and receiving independent living services through DFCS as a result of being adjudicated dependent before reaching 18 years of age; or

(E) Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court.

(11) “Child in need of services” means:

(A) A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:

(i) Subject to compulsory school attendance and who is habitually and without good and sufficient cause truant, as such term is defined in Code Section 15-11-381, from school;

(ii) Habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances;

(iii) A runaway, as such term is defined in Code Section 15-11-381;

(iv) A child who has committed an offense applicable only to a child;

(v) A child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.;

(vi) A child who disobeys the terms of supervision contained in a court order which has been directed to such child who has been adjudicated a child in need of services; or

(vii) A child who patronizes any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages; or

(B) A child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

(12) “Class A designated felony act” means a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

(A) Aggravated assault in violation of paragraph (1), (3), or (4) of subsection (b) or subsection (d), (e), (f), (j), or (m) of Code Section 16-5-21 or assault with a deadly weapon or with any object, device, or instrument which, when used offensively against a person, actually does result in serious bodily injury;

(B) Aggravated battery;

(C) Armed robbery not involving a firearm;

(D) Arson in the first degree;

(E) Attempted murder;

(F) Escape in violation of Code Section 16-10-52, if such child has previously been adjudicated to have committed a class A designated felony act or class B designated felony act;

(G) Hijacking a motor vehicle;

(G.1) Home invasion in the first degree;

(H) Kidnapping;

(I) Participating in criminal gang activity, as defined in subparagraphs (A) through (G) and (J) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;

(J) Trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1;

(K) Any other act which, if committed by an adult, would be a felony in violation of Chapter 5 or 6 of Title 16, if such child has three times previously been adjudicated for delinquent acts all of which, if committed by an adult, would have been felonies in violation of any chapter of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location; or

(L) Any other act which, if committed by an adult, would be a felony, if such child has three times previously been adjudicated for delinquent acts all of which, if committed by an adult, would have been felonies in violation of any chapter of Title 16 and one of which, if committed by an adult, would have been a felony in violation of Chapter 5 or 6 of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location.

(13) "Class B designated felony act" means a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

(A) Aggravated assault in violation of subsection (g), (h), or (k) of Code Section 16-5-21 or assault with a deadly weapon or with any object, device, or instrument which, when used offensively against a person, would be likely to result in serious bodily injury but which did not result in serious bodily injury;

(B) Arson in the second degree;

(C) Attempted kidnapping;

(D) Battery in violation of Code Section 16-5-23.1, if the victim is a teacher or other school personnel;

(E) Racketeering in violation of Code Section 16-14-4;

(F) Robbery;

(F.1) Home invasion in the second degree;

(G) Participating in criminal gang activity, as defined in subparagraph (H) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;

(H) Smash and grab burglary;

(I) Possessing, manufacturing, transporting, distributing, possessing with the intent to distribute, or offering to distribute a destructive device in violation of Code Section 16-7-82;

(J) Distributing certain materials to persons under the age of 21 in violation of Code Section 16-7-84;

(K) Any subsequent violation of Code Sections 16-8-2 through 16-8-5 or 16-8-5.2 through 16-8-9, if the property which was the subject of the theft was a motor vehicle and such child has had one or more separate, prior adjudications of delinquency based upon a violation of Code Sections 16-8-2 through 16-8-5 or 16-8-5.2 through 16-8-9, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(L) Any subsequent violation of Code Section 16-7-85 or 16-7-87, if such child has had one or more separate, prior adjudications of delinquency based upon a violation of Code Section 16-7-85 or 16-7-87, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(M) Any subsequent violation of subsection (b) of Code Section 16-11-132, if such child has had one or more separate, prior adjudications of delinquency based upon a violation of subsection (b) of Code Section 16-11-132, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(N) An act which constitutes a violation of Code Section 16-11-127.1; or

(O) Any other act which, if committed by an adult, would be a felony in violation of any chapter of Title 16 other than Chapter 5 or 6 of Title 16, if such child has three times previously been adjudicated for delinquent acts, all of which, if committed by an adult, would have been felonies in violation of any chapter of Title 16 other than Chapter 5 or 6 of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location.

(14) “Complaint” is the initial document setting out the circumstances that resulted in a child being brought before the court.

(15) “Court” means the juvenile court or the court exercising jurisdiction over juvenile matters.

(16) “Court appointed special advocate” or “CASA” means a community volunteer who:

(A) Has been screened and trained regarding child abuse and neglect, child development, and juvenile court proceedings;

(B) Has met all the requirements of an affiliate court appointed special advocate program;

(C) Is being actively supervised by an affiliate court appointed special advocate program; and

(D) Has been sworn in by a judge of the juvenile court in the court or circuit in which he or she wishes to serve.

(17) “Criminal justice purposes” means the performance of any activity directly involving:

(A) The investigation, detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of children or adults who are accused of, convicted of, adjudicated of, or charged with crimes or delinquent acts; or

(B) The collection, storage, and dissemination of criminal history record information.

(18) “DBHDD” means the Department of Behavioral Health and Developmental Disabilities.

(19) “Delinquent act” means:

(A) An act committed by a child designated a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the act is not an offense applicable only to a child or a juvenile traffic offense;

(B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudicated to have committed a delinquent act; or

(C) Failing to appear as required by a citation issued for an act that would be a crime if committed by an adult.

(20) “Delinquent child” means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

(21) “Department” means the Department of Human Services.

(22) “Dependent child” means a child who:

(A) Has been abused or neglected and is in need of the protection of the court:

(B) Has been placed for care or adoption in violation of law; or

(C) Is without his or her parent, guardian, or legal custodian.

(23) "Detention assessment" shall have the same meaning as set forth in Code Section 49-4A-1.

(24) "Developmental disability" shall have the same meaning as set forth in Code Section 37-1-1.

(25) "Developmental level" is a child's ability to understand and communicate, taking into account such factors as age, maturity, mental capacity, level of education, cultural background, and degree of language acquisition.

(26) "DFCS" means the Division of Family and Children Services of the department.

(27) "Diligent search" means the efforts of DFCS to identify and locate a parent whose identity or location is unknown or a relative or other person who has demonstrated an ongoing commitment to a child.

(28) "DJJ" means the Department of Juvenile Justice.

(29) "Emancipation" means termination of the rights of a parent to the custody, control, services, and earnings of a child.

(30) "Emotional abuse" means acts or omissions by a person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment, if the impairment or substantial risk of impairment is diagnosed and confirmed by a licensed mental health professional or physician qualified to render such diagnosis.

(31) "Evaluation" means a comprehensive, individualized examination of a child by an examiner that may include the administration of one or more assessment instruments, diagnosing the type and extent of a child's behavioral health disorders and needs, if any, making specific recommendations, and assessing a child's legal competencies.

(32) "Examiner" means a licensed psychologist, psychiatrist, or clinical social worker who has expertise in child development specific to severe or chronic disability of children attributable to intellectual impairment or mental illness and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both.

(33) “Fictive kin” means a person who is known to a child as a relative, but is not, in fact, related by blood or marriage to such child and with whom such child has resided or had significant contact.

(34) “Foster care” means placement in foster family homes, child care institutions, or another substitute care setting approved by the department. Such term shall exclude secure residential facilities or other facilities operated primarily for the purpose of detention of a child adjudicated for delinquent acts.

(35) “Guardian ad litem” means an individual appointed to assist the court in determining the best interests of a child.

(36) “Guardianship order” means the court judgment that establishes a permanent guardianship and enumerates a permanent guardian's rights and responsibilities concerning the care, custody, and control of a child.

(37) “Identification data” means the fingerprints, name, race, sex, date of birth, and any other unique identifiers of a child.

(38) “Indigent person” means a person who, at the time of requesting an attorney, is unable without undue financial hardship to provide for full payment of an attorney and all other necessary expenses for representation or a child who is a party to a dependency proceeding. To determine indigence in a delinquency proceeding, the court shall follow the standards set forth in Chapter 12 of Title 17.

(39) “Informal adjustment” means the disposition of a case other than by formal adjudication and disposition.

(40) “Judge” means the judge of the court exercising jurisdiction over juvenile matters.

(41) “Juvenile court intake officer” means the juvenile court judge, associate juvenile court judge, court service worker, DJJ staff member serving as an intake officer, or person employed as a juvenile probation or intake officer designated by the juvenile court judge or, where there is none, the superior court judge, who is on duty for the purpose of determining whether any child taken into custody should be released or detained and, if detained, the appropriate place of detention.

(42) “Legal custodian” means:

(A) A person to whom legal custody of a child has been given by order of a court; or

(B) A public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.

(43) “Legal father” means a male who has not surrendered or had terminated his rights to a child and who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of a child at the time such child was conceived or was born, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(C) Married the legal mother of a child after such child was born and recognized such child as his own, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(D) Has been determined to be the father of a child by a final paternity order pursuant to Article 3 of Chapter 7 of Title 19;

(E) Has legitimated a child by a final order pursuant to Code Section 19-7-22; or

(F) Has legitimated a child pursuant to Code Section 19-7-21.1.

(44) “Legal mother” means the female who is the biological or adoptive mother of a child and who has not surrendered or had terminated her rights to such child.

(45) “Mediation” means the procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement.

(46) “Mediator” means a neutral third party who attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions and who lacks the authority to impose any particular agreement upon the parties or to recommend any particular disposition of the case to the court.

(47) “Mentally ill” means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(48) “Neglect” means:

(A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals;

(B) The failure to provide a child with adequate supervision necessary for such child's well-being; or

(C) The abandonment of a child by his or her parent, guardian, or legal custodian.

(49) “Nonsecure residential facility” means community residential locations operated by or on behalf of DJJ and may include group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.

(50) “Other persons who have demonstrated an ongoing commitment to a child” includes fictive kin and other individuals, including but not limited to neighbors, teachers, scout masters, caregivers, or parents of friends of such child and with whom such child has resided or had significant contact.

(51) “Parent” means either the legal father or the legal mother of a child.

(52) “Party” means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter; provided, however, that for purposes of Articles 5 and 6 of this chapter, only a child and the state shall be a party.

(53) “Permanency plan” means a specific written plan prepared by DFCS designed to ensure that a child is reunified with his or her family or ensure that such child quickly attains a substitute long-term home when return to such child's family is not possible or is not in such child's best interests.

(54) “Permanent placement” means:

(A) Return of the legal custody of a child to his or her parent;

(B) Placement of a child with an adoptive parent pursuant to a final order of adoption; or

(C) Placement of a child with a permanent guardian.

(55) “Person responsible for the care of a child” means:

(A) An adult member of a child's household;

(B) A person exercising supervision over a child for any part of the 24 hour day; or

(C) Any adult who, based on his or her relationship to the parent, guardian, or legal custodian or a member of a child's household, has access to such child.

(56) “Prenatal abuse” means exposure to chronic or severe use of alcohol or the unlawful use of any controlled substance, as such term is defined in Code Section 16-13-21, which results in:

(A) Symptoms of withdrawal in a newborn or the presence of a controlled substance or a metabolite thereof in a newborn's body, blood, urine, or meconium that is not the result of medical treatment; or

(B) Medically diagnosed and harmful effects in a newborn's physical appearance or functioning.

(57) "Probation and intake officer" means any probation officer and any personnel of a juvenile court to whom are delegated the duties of an intake officer under this chapter, other than a juvenile court judge, associate juvenile court judge, or court service worker.

(58) "Probation officer" means any personnel of a juvenile court or staff of DJJ to whom are delegated the duties of a probation officer under this chapter, other than a juvenile court judge or associate juvenile court judge.

(59) "Prosecuting attorney" means an attorney designated by the district attorney of the judicial circuit in which juvenile proceedings are instituted, unless otherwise provided in subsection (c) of Code Section 15-18-6.1.

(60) "Putative father registry" means the registry established and maintained pursuant to subsections (d) and (e) of Code Section 19-11-9.

(61) "Reasonable efforts" means due diligence and the provision of appropriate services.

(62) "Relative" means a person related to a child by blood, marriage, or adoption, including the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(63) "Restitution" means any property, lump sum, or periodic payment ordered to be made to any victim. Restitution may also be in the form of services ordered to be performed by a child.

(64) "Restrictive custody" means in the custody of DJJ for purposes of housing in a secure residential facility or nonsecure residential facility.

(65) "Risk assessment" shall have the same meaning as set forth in Code Section 49-4A-1.

(66) "Screening" means a relatively brief process to identify a child who potentially may have mental health or substance abuse needs, through administration of a formal screening instrument, to identify a child who may warrant immediate attention or intervention or a further, more comprehensive evaluation.

(67) "Secure residential facility" means a hardware secure residential institution operated by or on behalf of DJJ and shall include a youth development center or a regional youth detention center.

(68) "Services" means assistance including but not limited to care, guidance, education, counseling, supervision, treatment, and rehabilitation or any combination thereof.

(69) “Sexual abuse” means a caregiver or other person responsible for the care of a child employing, using, persuading, inducing, enticing, or coercing any child to engage in any act which involves:

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

(B) Bestiality;

(C) Masturbation;

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

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

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

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

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

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

(70) “Sexual exploitation” means conduct by a caregiver or other person responsible for the care of a child who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, in violation of Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, in violation of Code Section 16-12-100.

(71) “Sibling” means a person with whom a child shares a biological father or one or both parents in common by blood, adoption, or marriage, even if the marriage was terminated by death or dissolution.

(72) “Staffing” means a meeting held periodically to develop and review progress on plans for meeting the identified needs of a child.

(73) “Statutory overnight delivery” means delivery of notice as provided in Code Section 9-10-12.

(74) “Unsupervised probation” means a period of probation or community supervision prior to the termination of a child's disposition in which:

(A) All of the conditions and limitations imposed by the court in placing such child on probation remain intact;

(B) Such child may have reduced reporting requirements; and

(C) A probation officer shall not actively supervise such child.

(75) “Visitation” means a period of access to a child by a parent, guardian, legal custodian, sibling, other relative, or any other person who has demonstrated an ongoing commitment to a child in order to maintain parental and familial involvement in a child's life when he or she is not residing with such person.

(76) “Weekend” means Saturday or Sunday.

CREDIT(S)

Laws 2013, Act 127, § 1-1, eff. Jan. 1, 2014; Laws 2014, Act 574, §§ 1, 2, eff. July 1, 2014; Laws 2014, Act 575, § 2-1, eff. July 1, 2014; Laws 2014, Act 576, §§ 2, 3, eff. July 1, 2014; Laws 2014, Act 635, § 1-1, eff. April 28, 2014. Current through Acts 343 to 669 of the 2014 Regular Session.

GA. CODE ANN. § 15-11-310 (2015). Statutory grounds for termination; best interests of child

(a) In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met:

(1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered his or her child for adoption;

(2) The parent has subjected his or her child to aggravated circumstances;

(3) The parent has wantonly and willfully failed to comply for a period of 12 months or longer with a decree to support his or her child that has been entered by a court of competent jurisdiction of this or any other state;

(4) A child is abandoned by his or her parent; or

(5) A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied, and the continued dependency will cause or is likely to cause serious physical, mental, emotional, or moral harm to such child.

(b) If any of the statutory grounds for termination has been met, the court shall then consider whether termination is in a child's best interests after considering the following factors:

(1) Such child's sense of attachments, including his or her sense of security and familiarity, and the continuity of affection for such child;

(2) Such child's wishes and long-term goals;

(3) Such child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives; and

(4) Any other factors, including the factors set forth in Code Section 15-11-26, considered by the court to be relevant and proper to its determination.

(c) If the court determines that a parent has subjected his or her child to aggravated circumstances because such parent has committed the murder of the other parent of such child, the court shall presume that termination of parental rights is in the best interests of the child.

CREDIT(S)

Laws 2013, Act 127, § 1-1, eff. Jan. 1, 2014. Current through Acts 343 to 669 of the 2014 Regular Session. Current through Acts 343 to 669 of the 2014 Regular Session.

HAWAII

HAW. REV. STAT. ANN. § 350-1 (2015). Social Services. Child Abuse. Definitions

For the purposes of this chapter, unless the context specifically indicates otherwise:

“Child abuse or neglect” means the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

(1) When the child exhibits evidence of:

(A) Substantial or multiple skin bruising or any other internal bleeding;

(B) Any injury to skin causing substantial bleeding;

(C) Malnutrition;

- (D) Failure to thrive;
- (E) Burn or burns;
- (F) Poisoning;
- (G) Fracture of any bone;
- (H) Subdural hematoma;
- (I) Soft tissue swelling;
- (J) Extreme pain;
- (K) Extreme mental distress;
- (L) Gross degradation; or
- (M) Death; and

such injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(2) When the child has been the victim of sexual contact or conduct, including, but not limited to, sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b); or

(3) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; or

(4) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or

(5) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240; or

(6) When the child has been the victim of labor trafficking under chapter 707.

“Department” means the department of human services.

“Report” means the initial oral statement and, if required by section 350-1.1(c), the subsequent written account concerning the facts and circumstances which cause a person to have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future.

CREDIT(S)

Laws 1982, ch. 77, § 1; Laws 1983, ch. 171, § 5; Laws 1987, ch. 204, § 3; Laws 1987, ch. 339, § 4; Laws 1988, ch. 141, § 29; Laws 2013, ch. 246, § 3, eff. July 1, 2013. Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

HAW. REV. STAT. ANN. § 709-904 (2015). Offenses Against the Family and Against Incompetents . Endangering the welfare of a minor in the second degree

(1) Except as provided in section 709-903.5(2), a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person:

(a) Recklessly allows another person to inflict serious or substantial bodily injury on the minor; or

(b) Recklessly causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122. This subsection shall not apply to nursing mothers who may cause the ingestion or introduction of detectable amounts of any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 to their minor children through breastfeeding.

(2) A person commits the offense of endangering the welfare of a minor in the second degree if, being a parent, guardian, or other person whether or not charged with the care or custody of a minor, the person knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor.

(3) Endangering the welfare of a minor in the second degree is a misdemeanor.

CREDIT(S)

Laws 1972, ch. 9, § 1; Laws 1974, ch. 198, § 1; Laws 1986, ch. 314, § 71; Laws 2006, ch. 230, § 45; Laws 2006, ch. 249, § 2; Laws 2008, ch. 81, § 2, eff. July 1, 2008. Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

IDAHO

IDAHO CODE ANN. § 16-1602 (2015). Juvenile Proceedings. Child Protective Act. Definitions.

For purposes of this chapter:

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

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

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

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

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

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

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

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

(5) “Aggravated circumstances” includes, but is not limited to:

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

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate that

return of the child to the home would result in unacceptable risk to the health and welfare of the child.

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

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

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

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

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

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

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

(9) “Child advocacy center” or “CAC” means an organization that adheres to national best practice standards established by the national membership and accrediting body for children's advocacy centers and that promotes a comprehensive and coordinated multidisciplinary team response to allegations of child abuse by maintaining a child-friendly facility at which appropriate services are provided. These services may include forensic interviews, forensic medical examinations, mental health services and other related victim services.

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

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

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

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

(14) “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.

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

(16) “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.

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

(18) “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.

(19) “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.

(20) “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.

(21) “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.

(22) “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.

(23) “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.

(24) “Idaho network of children's advocacy centers” means an organization that provides education and technical assistance to child advocacy centers and to interagency multidisciplinary teams developed pursuant to section 16-1617, Idaho Code.

(25) “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.

(26) “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.

(27) “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.

(28) “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.

(29) “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.

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

(31) “Protective order” means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an order shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39, Idaho Code. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

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

(33) “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.

(34) “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.

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

(36) “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.

CREDIT(S)

Added by S.L. 1976, ch. 204, § 2. Amended by S.L. 1982, ch. 186, § 2; S.L. 1986, ch. 84, § 5; S.L. 1989, ch. 281, § 1; S.L. 1989, ch. 302, § 1; S.L. 1991, ch. 38, § 1; S.L. 1991, ch. 212, § 2; S.L. 1996, ch. 272, § 2; S.L. 2000, ch. 136, § 3; S.L. 2001, ch. 107, § 2; S.L. 2003, ch. 279, § 2; S.L. 2005, ch. 391, § 5; S.L. 2007, ch. 26, § 1, eff. July 1, 2007; S.L. 2009, ch. 103, § 1, eff. July 1, 2009; S.L. 2010, ch. 147, § 1, eff. July 1, 2010; S.L. 2013, ch. 287, § 1, eff. July 1, 2013; S.L. 2014, ch. 120, § 1, eff. July 1, 2014. Current through the 2014 Second Regular Session of the 62nd Idaho Legislature.

IDAHO CODE ANN. § 18-1501 (2015). Injury to children

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

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

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

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

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

CREDIT(S)

S.L. 1977, ch. 304, § 3; S.L. 1996, ch. 167, § 1; S.L. 1997, ch. 306, § 1; S.L. 2001, ch. 49, § 1; S.L. 2005, ch. 151, § 1. Current through the 2014 Second Regular Session of the 62nd Idaho Legislature.

ILLINOIS

325 ILL. COMP. STAT. 325 Ill. Comp. Stat. Ann. 5/3 (2015). Abused and Neglected Child Reporting Act. Definitions

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

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

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

“Department” means Department of Children and Family Services.

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

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

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

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

(c) commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 [FN1] or in the Wrongs to Children Act, and extending those definitions of sex offenses to include children under 18 years of age;

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

(e) inflicts excessive corporal punishment;

(f) commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, [FN2] against the child;

(g) causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act [FN3] in violation of Article IV of the Illinois Controlled Substances Act [FN4] or in violation of the Methamphetamine Control and Community Protection Act, except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act [FN5] and are dispensed to such child in a manner that substantially complies with the prescription; or

(h) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 2012 against the child.

A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. [FN6]

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

attending school in accordance with the requirements of Article 26 of The School Code, [FN7] as amended.

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

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

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

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

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

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

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

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

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

CREDIT(S)

P.A. 79-65, § 3, eff. July 1, 1975. Amended by P.A. 81-1077, § 1, eff. July 1, 1980; P.A. 81-1480, § 1, eff. Sept. 15, 1980; P.A. 82-453, § 1, eff. Jan. 1, 1982; P.A. 83-1248, § 4, eff. Aug. 7, 1984; P.A. 84-611, § 1, eff. Jan. 1, 1986; P.A. 84-1318, § 1, eff. Jan. 1, 1987; P.A. 85-205, § 1, eff. Aug. 21, 1987; P.A. 86-274, § 1, eff. Jan. 1, 1990; P.A. 86-601, § 1, eff. Jan. 1, 1990; P.A. 86-659, § 1, eff. Sept. 1, 1989; P.A. 86-1028, Art. II, § 2-11, eff. Feb. 5, 1990; P.A. 88-85, § 80, eff. July 14, 1993; P.A. 89-21, Art. 15, § 15-10, eff. July 1, 1995; P.A. 90-239, § 10, eff. July 28, 1997; P.A. 90-684, § 5, eff. July 31, 1998; P.A. 91-802, § 5, eff. Jan. 1, 2001; P.A. 92-408, § 92, eff. Aug. 17, 2001; P.A. 92-432, § 92, eff. Aug. 17, 2001; P.A. 92-801, § 5, eff. Aug. 16, 2002; P.A. 94-556, § 1025, eff. Sept. 11, 2005; P.A. 95-443, § 5, eff. Jan. 1, 2008; P.A. 96-1196, § 5, eff. Jan. 1, 2011; P.A. 96-1446, § 10, eff. Aug. 20, 2010; P.A. 96-1464, § 5, eff. Aug. 20, 2010; P.A. 97-333, § 465, eff. Aug. 12, 2011; P.A. 97-803, § 5, eff. July 13, 2012; P.A. 97-897, § 5, eff. Jan. 1, 2013; P.A. 97-1063, § 5, eff. Aug. 24, 2012; P.A. 97-1150, § 515, eff. Jan. 25, 2013. Current through P.A. 98-1150 of the 2014 Reg. Sess.

705 Ill. Comp. Stat. Ann. 405/2-3 (2015). Neglected or abused minor

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

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

(c) any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, as now or hereafter amended, [FN1] or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant; or

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

(e) any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act and whose parent, guardian, or custodian refuses to permit the minor to return home

unless the minor is an immediate physical danger to himself, herself, or others living in the home.

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

- (1) the age of the minor;
- (2) the number of minors left at the location;
- (3) special needs of the minor, including whether the minor is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;
- (4) the duration of time in which the minor was left without supervision;
- (5) the condition and location of the place where the minor was left without supervision;
- (6) the time of day or night when the minor was left without supervision;
- (7) the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;
- (8) the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;
- (9) whether the minor's movement was restricted, or the minor was otherwise locked within a room or other structure;
- (10) whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;
- (11) whether there was food and other provision left for the minor;
- (12) whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;
- (13) the age and physical and mental capabilities of the person or persons who provided supervision for the minor;
- (14) whether the minor was left under the supervision of another person;

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

A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. [FN2]

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

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

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

(iii) commits or allows to be committed any sex offense against such minor, as such sex offenses are defined in the Criminal Code of 1961 or the Criminal Code of 2012, [FN3] or in the Wrongs to Children Act, and extending those definitions of sex offenses to include minors under 18 years of age;

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

(v) inflicts excessive corporal punishment;

(vi) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 1961 or the Criminal Code of 2012, upon such minor; or

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

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

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

CREDIT(S)

P.A. 85-601, Art. II, § 2-3, eff. Jan. 1, 1988. Amended by P.A. 85-1209, Art. II, § 2-22, eff. Aug. 30, 1988; P.A. 86-275, § 1, eff. Jan. 1, 1990; P.A. 86-659, § 3, eff. Sept. 1, 1989; P.A. 88-85, § 90, eff.

July 14, 1993; P.A. 88-479, § 5, eff. Sept. 9, 1993; P.A. 88-670, Art. 2, § 2-63, eff. Dec. 2, 1994; P.A. 89-21, Art. 15, § 15-15, eff. July 1, 1995; P.A. 90-239, § 15, eff. July 28, 1997; P.A. 92-408, § 95, eff. Aug. 17, 2001; P.A. 92-432, § 95, eff. Aug. 17, 2001; P.A. 95-443, § 10, eff. Jan. 1, 2008; P.A. 96-168, § 5, eff. Aug. 10, 2009; P.A. 96-1464, § 10, eff. Aug. 20, 2010; P.A. 97-897, § 10, eff. Jan. 1, 2013; P.A. 97-1150, § 600, eff. Jan. 25, 2013. Current through P.A. 98-1150 of the 2014 Reg. Sess.

INDIANA

Ind. Code Ann. § 31-9-2-14 (2015). Family Law and Juvenile Law. Definitions. Child abuse or neglect

Sec. 14. (a) “Child abuse or neglect”, for purposes of IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4, refers to a child described in IC 31-34-1-1 through IC 31-34-1-5, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

(b) For purposes of subsection (a), the term under subsection (a) does not refer to a child who is alleged to be a victim of a sexual offense under IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3 involves the fondling or touching of the buttocks, genitals, or female breasts, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

(c) “Child abuse or neglect”, for purposes of IC 31-34-2.3, refers to acts or omissions by a person against a child as described in IC 31-34-1-1 through IC 31-34-1-9, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

CREDIT(S)

As added by P.L.1-1997, SEC.1. Amended by P.L.1-2006, SEC.496, eff. Mar. 24, 2006; P.L.52-2007, SEC.6; P.L.48-2012, SEC.11. The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly. The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

Ind. Code Ann. § 31-34-1-1 (2015). Children in Need of Services. Circumstances Under Which a Child is a Child in Need of Services. Impairment or serious endangerment of physical or mental condition.

Sec. 1. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

CREDIT(S)

As added by P.L.1-1997, SEC.17. Amended by P.L.2-2005, SEC.76, eff. April 25, 2005.

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

Ind. Code Ann. § 31-34-1-2 (2015). Endangerment of physical or mental health

Sec. 2. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

CREDIT(S)

As added by P.L.1-1997, SEC.17. Amended by P.L.17-2001, SEC.8; P.L.2-2005, SEC.77, eff. April 25, 2005 The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly

Ind. Code Ann. § 31-37-23-5 (2015). "Dependent child" or "neglected child" defined.

Sec. 5. As used in this chapter, "dependent child" or "neglected child" means a child in need of services under IC 31-34-1.

CREDIT(S)

As added by P.L.1-1997, SEC.20. The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly

IOWA

Iowa Code § 232.2 (2015). Juvenile Justice. Definitions

As used in this chapter unless the context otherwise requires:

1. "Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.
2. "Adjudicatory hearing" means a hearing to determine if the allegations of a petition are true.
3. "Adult" means a person other than a child.
4. "Case permanency plan" means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b) (10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:
 - a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.
 - b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. The most recent information available regarding the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider. If the child remains in foster care until the age of majority, the child is entitled to receive prior to discharge the most recent information available regarding the child's health and educational records.

f. (1) When a child is sixteen years of age or older, a written transition plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. The transition plan and needs assessment shall be developed with a focus on the services, other support, and actions necessary to facilitate the child's successful entry into adulthood. The transition plan shall be personalized at the direction of the child and shall be developed with the child present, honoring the goals and concerns of the child, and shall address the following areas of need when the child becomes an adult, including but not limited to all of the following:

(a) Education.

(b) Employment services and other workforce support.

(c) Health and health care coverage.

(d) Housing.

(e) Relationships, including local opportunities to have a mentor.

(f) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall provide for the child's application for adult services.

(2) The transition plan shall be considered a working document and shall be reviewed and updated for each permanency hearing by the court or other formal case permanency plan review. The transition plan shall also be reviewed and updated during the ninety calendar-day period preceding the child's eighteenth birthday and during the ninety calendar-day period immediately preceding the date the child is expected to exit foster care, if the child remains in foster care after the child's eighteenth birthday. The transition plan may be reviewed and updated more frequently.

(3) The transition plan shall be developed and reviewed by the department in collaboration with a child-centered transition team. The transition team shall be comprised of the child's caseworker and persons selected by the child, persons who have knowledge of services

available to the child, and any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time. If the child is reasonably likely to need or be eligible for adult services, the transition team membership shall include representatives from the adult services system. The adult services system representatives may include but are not limited to the administrator of county general relief under chapter 251 or 252 or of the central point of coordination process implemented under section 331.440. [FN1] The membership of the transition team and the meeting dates for the team shall be documented in the transition plan.

(4) The final transition plan shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

(6) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall be reviewed and approved by the transition committee for the area in which the child resides, in accordance with section 235.7, before the child reaches age seventeen and one-half. The transition committee's review and approval shall be indicated in the case permanency plan.

(7) Provision for the department or a designee of the department on or before the date the child reaches age eighteen to provide to the child a certified copy of the child's birth certificate and to facilitate securing a federal social security card. The fee for the certified copy that is otherwise chargeable under section 144.13A, 144.46, or 331.605 shall be waived by the state or county registrar.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out-of-state shall visit the child at least once every six months.

j. If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

k. If it is part of the child's records or it is otherwise known that the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, that information shall be addressed in the plan and shall be provided to the child's parent, guardian, or foster parent or other person with custody of the child. The information shall be provided whether the child's placement is voluntary or made pursuant to a court determination. The information shall be provided at the time it is learned by the department or agency developing the plan and, if possible, at the time of the child's placement. The information shall only be withheld if ordered by the court or it is determined by the department or agency developing the plan that providing the information would be detrimental to the child or to the family with whom the child is living. In determining whether providing the information would be detrimental, the court, department, or agency shall consider any history of abuse within the child's family or toward the child.

l. The provisions involving sibling visitation or interaction required under section 232.108.

m. Documentation of the educational stability of the child while in foster care. The documentation shall include but is not limited to all of the following:

(1) Evidence there was an evaluation of the appropriateness of the child's educational setting while in placement and of the setting's proximity to the educational setting in which the child was enrolled at the time of placement.

(2) An assurance either that the department coordinated with appropriate local educational agencies to identify how the child could remain in the educational setting in which the child was enrolled at the time of placement or, if it was determined it was not in the child's best interest to remain in that setting, that the affected educational agencies would immediately and appropriately enroll the child in another educational setting during the child's placement and ensure that the child's educational records were provided for use in the new educational setting. For the purposes of this subparagraph, "local educational agencies" means the same as defined in the federal Elementary and Secondary Education Act of 1965, § 9101, as codified in 20 U.S.C. § 7801(26).

5. "Child" means a person under eighteen years of age.

6. "Child in need of assistance" means an unmarried child:

a. Whose parent, guardian, or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

(3) The child's parent, guardian, or custodian, or person responsible for the care of the child, as defined in section 232.68, has knowingly disseminated or exhibited obscene material as defined in section 728.1 to the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian, or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing, or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political, or artistic value.

j. Who is without a parent, guardian, or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, "in the presence of a child" means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, "dangerous substance" means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. "Chronic runaway" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. "Complaint" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "Court" means the juvenile court established under section 602.7101.

9. "Court appointed special advocate" means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "Criminal or juvenile justice agency" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. a. "Custodian" means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child.

b. The rights and duties of a custodian with respect to a child are as follows:

(1) To maintain or transfer to another the physical possession of that child.

(2) To protect, train, and discipline that child.

(3) To provide food, clothing, housing, and medical care for that child.

(4) To consent to emergency medical care, including surgery.

(5) To sign a release of medical information to a health professional.

c. All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. "Delinquent act" means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

c. The violation of section 123.47 which is committed by a child.

13. "Department" means the department of human services and includes the local, county, and service area officers of the department.
14. "Desertion" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.
15. "Detention" means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the child's case.
16. "Detention hearing" means a hearing at which the court determines whether it is necessary to place or retain a child in detention.
17. "Director" means the director of the department of human services or that person's designee.
18. "Dismissal of complaint" means the termination of all proceedings against a child.
19. "Dispositional hearing" means a hearing held after an adjudication to determine what dispositional order should be made.
20. "Family in need of assistance" means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian, or custodian.
21. a. "Guardian" means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.
- b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:
- (1) To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.
- (2) To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.
- (3) To serve as custodian, unless another person has been appointed custodian.

(4) To make periodic visitations if the guardian does not have physical possession or custody of the child.

(5) To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

(6) To make other decisions involving protection, education, and care and control of the child.

22. a. "Guardian ad litem" means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsection 1, paragraphs "a" and "d", section 232.103, subsection 2, paragraph "c", and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

(1) Conducting in-person interviews with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

(7) If the child is required to have a transition plan developed in accordance with the child's case permanency plan and subject to review and approval of a transition committee under section 235.7, assisting the transition committee in development of the transition plan.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview

any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

d. If authorized by the court, a guardian ad litem may continue a relationship with and provide advice to a child for a period of time beyond the child's eighteenth birthday.

23. "Health practitioner" means a licensed physician or surgeon, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. "Informal adjustment" means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

25. "Informal adjustment agreement" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian, or custodian providing for the informal adjustment of the complaint.

26. "Intake" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. "Intake officer" means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. "Judge" means the judge of a juvenile court.

29. "Juvenile" means the same as "child". However, in the interstate compact for juveniles, section 232.173, "juvenile" means a person defined as a juvenile in the compact.

30. "Juvenile court officer" means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. "Juvenile court social records" or "social records" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. “Juvenile detention home” means a physically restricting facility used only for the detention of children.

33. “Juvenile parole officer” means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. “Juvenile shelter care home” means a physically unrestricting facility used only for the shelter care of children.

35. “Mental injury” means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

36. “Nonjudicial probation” means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

37. “Nonsecure facility” means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. “Official juvenile court records” or “official records” means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees, and orders of the court.

39. “Parent” means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. “Peace officer” means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. "Petition" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. "Physical abuse or neglect" or "abuse or neglect" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodian or other person legally responsible for the child.

42A. "Preadoptive care" means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a preadoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. "Predisposition investigation" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. "Predisposition report" is a report furnished to the court which contains the information collected during a predisposition investigation.

45. "Probation" means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. "Registry" means the central registry for child abuse information as established under chapter 235A.

46A. "Relative" for purposes of divisions III and IV of this chapter includes the parent of a sibling.

47. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. "Secure facility" means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. "Sexual abuse" means the commission of a sex offense as defined by the penal law.

50. "Shelter care" means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of the child's case.

51. "Shelter care hearing" means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.
52. "Sibling" means an individual who is related to another individual by blood, adoption, or affinity through a common legal or biological parent.
53. "Social investigation" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.
54. "Social report" means a report furnished to the court which contains the information collected during a social investigation.
55. "Taking into custody" means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.
56. "Termination hearing" means a hearing held to determine whether the court should terminate a parent-child relationship.
57. "Termination of the parent-child relationship" means the divestment by the court of the parent's and child's privileges, duties, and powers with respect to each other.
58. "Voluntary placement" means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.
59. "Waiver hearing" means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

CREDIT(S)

Acts 1978 (67 G.A.) ch. 1088, § 2, eff. July 1, 1979. Amended by Acts 1979 (68 G.A.) ch. 56, § 1; Acts 1982 (69 G.A.) ch. 1209, § 1; Acts 1983 (70 G.A.) ch. 96, § 157, eff. July 1, 1983; Acts 1983 (70 G.A.) ch. 186, §§ 10054, 10055, eff. July 1, 1983; Acts 1984 (70 G.A.) ch. 1279, §§ 1, 2; Acts 1987 (72 G.A.) ch. 121, §§ 1, 2, eff. May 23, 1987; Acts 1988 (72 G.A.) ch. 1134, §§ 46, 47; Acts 1989 (73 G.A.) ch. 169, § 1; Acts 1989 (73 G.A.) ch. 229, §§ 1 to 4; Acts 1989 (73 G.A.) ch. 230, §§ 1, 2; Acts 1990 (73 G.A.) ch. 1251, § 22; Acts 1991 (74 G.A.) ch. 232, § 1; Acts 1992 (74 G.A.) ch. 1231, § 10; Acts 1993 (75 G.A.) ch. 93, § 1; Acts 1994 (75 G.A.) ch. 1046, §§ 1, 2; Acts 1994 (75 G.A.) ch. 1172, § 12; Acts 1995 (76 G.A.) ch. 108, § 16; Acts 1995 (76 G.A.) ch. 147, § 3; Acts 1995 (76 G.A.) ch. 182, §§ 1, 2, 6; Acts 1995 (76 G.A.) ch. 191, § 7; Acts 1996 (76 G.A.) ch. 1092, § 1, eff. April 15, 1996; Acts 1997 (77 G.A.) ch. 90, § 1; Acts 1997 (77 G.A.) ch. 126, § 10; Acts 1997 (77 G.A.) ch. 164, § 1; Acts 1998 (77 G.A.) ch. 1019, § 1; Acts 1998 (77 G.A.) ch. 1047, § 21; Acts

1998 (77 G.A.) ch. 1190, §§ 1 to 3; Acts 1999 (78 G.A.) ch. 164, § 1; Acts 1999 (78 G.A.) ch. 208, §§ 33, 34; Acts 2000 (78 G.A.) ch. 1067, §§ 4, 5; Acts 2000 (78 G.A.) ch. 1232, § 56; Acts 2001 (79 G.A.) ch. 46, § 1; Acts 2001 (79 G.A.) ch. 67, § 7, eff. April 24, 2001; Acts 2002 (79 G.A.) ch. 1081, § 1; Acts 2002 (79 G.A.) ch. 1162, § 16; Acts 2003 (80 G.A.) ch. 117, §§ 1 to 3; Acts 2004 (80 G.A.) ch. 1090, § 33; Acts 2004 (80 G.A.) ch. 1116, § 3; Acts 2005 (81 G.A.) ch. 117, H.F. 538, § 2; Acts 2005 (81 G.A.) ch. 124, H.F. 753, § 1; Acts 2007 (82 G.A.) ch. 67, S.F. 480, §§ 1, 2; Acts 2007 (82 G.A.) ch. 172, S.F. 503, §§ 2, 3; Acts 2008 (82 G.A.) ch. 1088, S.F. 2338, § 141; Acts 2008 (82 G.A.) ch. 1112, S.F. 2340, § 1; Acts 2008 (82 G.A.) ch. 1187, S.F. 2425, § 131; Acts 2009 (83 G.A.) ch. 41, S.F. 446, §§ 231, 232; Acts 2009 (83 G.A.) ch. 120, S.F. 152, §§ 1, 2; Acts 2010 (83 G.A.) ch. 1151, S.F. 393, § 1; Acts 2010 (83 G.A.) ch. 1192, H.F. 2526, § 74; Acts 2013 (85 G.A.) ch. 50, S.F. 362, § 1. Current with legislation from the 2014 Reg.Sess

Iowa Code § 232.116 (2015). Grounds for termination

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.

(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.

CREDIT(S)

Transferred from § 232.114 by the Code Editor for Code 1981. Amended by Acts 1984 (70 G.A.) ch. 1279, §§ 19, 20; Acts 1986 (71 G.A.) ch. 1186, § 11; Acts 1987 (72 G.A.) ch. 159, § 6; Acts 1989 (73 G.A.) ch. 229, §§ 7 to 12; Acts 1990 (73 G.A.) ch. 1251, § 28; Acts 1992 (74 G.A.) ch. 1231, §§ 27 to 29; Acts 1993 (75 G.A.) ch. 76, § 2; Acts 1994 (75 G.A.) ch. 1174, § 3; Acts 1995 (76 G.A.) ch. 182, §§ 10, 11; Acts 1998 (77 G.A.) ch. 1190, § 23; Acts 2001 (79 G.A.) ch. 67, § 9, eff. April 24, 2001; Acts 2006 (81 G.A.) ch. 1182, H.F. 2792, § 59; Acts 2007 (82 G.A.) ch. 172, S.F. 503, § 14; Acts 2008 (82 G.A.) ch. 1098, S.F. 2212, § 2; Acts 2009 (83 G.A.) ch. 119, S.F. 340, § 38; Acts 2011 (84 G.A.) ch. 121, S.F. 525, § 58, eff. July 1, 2012. Current with legislation from the 2014 Reg.Sess

Iowa Code § 726. 6 (2015). Child endangerment

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

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

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

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

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

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

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

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

h. Knowingly allows a person custody or control of, or unsupervised access to a child or a minor after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a

parent or guardian of a child or a minor, who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

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

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

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

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

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

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

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

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

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

CREDIT(S)

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2606, eff. Jan. 1, 1978. Amended by Acts 1977 (67 G.A.) ch. 147, § 27, eff. Jan. 1, 1978; Acts 1985 (71 G.A.) ch. 180, § 3; Acts 1996 (76 G.A.) ch. 1129, § 109; Acts 2001 (79 G.A.) ch. 3, §§ 2 to 5; Acts 2001 (79 G.A.) ch. 67, § 12, eff. April 24, 2001; Acts 2002 (79 G.A.) ch. 1119, § 104; Acts 2004 (80 G.A.) ch. 1004, § 1; Acts 2004 (80 G.A.) ch. 1151, §§ 3, 4; Acts 2005 (81 G.A.) ch. 158, H.F. 619, § 31; Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 109; Acts 2009 (83 G.A.) ch. 119, S.F. 340, § 65; Acts 2013 (85 G.A.) ch. 30, H.F. 417, § 252. Current with legislation from the 2014 Reg.Sess

KANSAS

Kan. Stat. Ann. § 38-2202 (2015). Kansas Code for Care of Children.

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 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, article 11, of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, determination of parentage, article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators.

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

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

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

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

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

(l) "Harm" means physical or psychological injury or damage.

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

(n) “Jail” means:

(1) An adult jail or lockup; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bb) "Secretary" means the secretary of the department for children and families or the secretary's designee.

(cc) "Secure facility" means a facility, other than a staff secure facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings,

fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(dd) “Sexual abuse” means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in the sale of sexual relations or commercial sexual exploitation of a child, or to be photographed, filmed or depicted in pornographic material.

(ee) “Shelter facility” means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ff) “Staff secure facility” means a facility described in K.S.A. 65-535, and amendments thereto: (1) That does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. No staff secure facility shall be in a city or county jail.

(gg) “Transition plan” means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a disability is eligible including, but not limited to, funding for home and community based services waivers.

(hh) “Youth residential facility” means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

CREDIT(S)

Laws 2006, ch. 200, § 2; Laws 2008, ch. 169, § 1, eff. July 1, 2008; Laws 2009, ch. 99, § 1, eff. July 1, 2009; Laws 2010, ch. 75, § 5, eff. July 1, 2010; Laws 2011, ch. 30, § 155, eff. July 1, 2011; Laws 2012, ch. 162, § 60, eff. May 31, 2012; Laws 2013, ch. 120, § 31, eff. July 1, 2013. Current through 2014 regular session

Kan. Stat. Ann. 38-2269 (2015). Factors to be considered in termination of parental rights; appointment of permanent custodian

(a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

(b) In making a determination of unfitness the court shall consider, but is not limited to, the following, if applicable:

- (1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the child;
- (2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;
- (3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;
- (4) physical, mental or emotional abuse or neglect or sexual abuse of a child;
- (5) conviction of a felony and imprisonment;
- (6) unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at the time of injury or death;
- (7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
- (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; and
- (9) whether the child has been in extended out of home placement as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply.

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, shall consider, but is not limited to, the following:

- (1) Failure to assure care of the child in the parental home when able to do so;
- (2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;
- (3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home; and
- (4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

(d) A finding of unfitness may be made as provided in this section if the court finds that the parents have abandoned the child, the custody of the child was surrendered pursuant to K.S.A.

38-2282, and amendments thereto, or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

(e) If a person is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived, a finding of unfitness may be made.

(f) The existence of any one of the above factors standing alone may, but does not necessarily, establish grounds for termination of parental rights.

(g)(1) If the court makes a finding of unfitness, the court shall consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order. A termination of parental rights under the code shall not terminate the right of a child to inherit from or through a parent. Upon such termination all rights of the parent to such child, including, such parent's right to inherit from or through such child, shall cease.

(2) If the court terminates parental rights, the court may authorize adoption pursuant to K.S.A. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 38-2272, and amendments thereto, or continued permanency planning.

(3) If the court does not terminate parental rights, the court may authorize appointment of a permanent custodian pursuant to K.S.A. 38-2272, and amendments thereto, or continued permanency planning.

(h) If a parent is convicted of an offense as provided in subsection (a)(7) of K.S.A. 38-2271, and amendments thereto, or is adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in subsection (a)(7) of K.S.A. 38-2271, and amendments thereto, and if the victim was the other parent of a child, the court may disregard such convicted or adjudicated parent's opinions or wishes in regard to the placement of such child.

(i) A record shall be made of the proceedings.

(j) When adoption, proceedings to appoint a permanent custodian or continued permanency planning has been authorized, the person or agency awarded custody of the child shall within 30

days submit a written plan for permanent placement which shall include measurable objectives and time schedules.

CREDIT(S)

Laws 2006, ch. 200, § 64; Laws 2008, ch. 169, § 19, eff. July 1, 2008. Current through 2014 regular session

KENTUCKY

Ky. Rev. Stat. Ann. § 508.090 (2015). Penal Code. Assault and Related Offense. Definitions for KRS 508.100 to 508.120

The following definitions apply in KRS 508.100 to 508.120 unless the context otherwise requires:

(1) “Abuse” means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a person which are necessary to maintain the health and welfare of a person, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to maintain his health or welfare.

(2) “Physically helpless” and “mentally helpless” means a person who lacks substantial capacity to defend himself or solicit protection from law enforcement agencies.

CREDIT(S)

HISTORY: 1982 c 168, § 4, eff. 7-15-82 Current through the end of the 2014 legislation

Ky. Rev. Stat. Ann. § 600.020 (2015). Unified Juvenile Code. Definitions for KRS Chapters 600 to 645

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

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

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

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
 5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 7. Abandons or exploits the child;
 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or
- (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;
- (2) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:
- (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
- (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;

- (c) The parent has sexually abused the child and has refused available treatment;
- (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
- (e) The parent has caused the child serious physical injury;
- (3) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;
- (4) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;
- (5) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (6) "Cabinet" means the Cabinet for Health and Family Services;
- (7) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (8) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
- (9) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (10) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

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

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

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

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

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

(16) “Court-designated worker” means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

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

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

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

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

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

(22) “Diversion agreement” means a mechanism designed to hold a child accountable for his or her behavior and, if appropriate, securing services to serve the best interest of the child and to

provide redress for that behavior without court action and without the creation of a formal court record;

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

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

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

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

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

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

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

(27) “Firearm” shall have the same meaning as in KRS 237.060 and 527.010;

(28) “Foster family home” means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

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

(a) Electronic monitoring;

(b) Drug and alcohol screening, testing, or monitoring;

(c) Day or evening reporting centers;

(d) Reporting requirements;

(e) Community service; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(48) “Physically secure facility” means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(49) “Public offense action” means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(50) “Qualified mental health professional” means:

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

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

duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(61) “Staff secure facility for residential treatment” means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(62) (a) “Status offense action” is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;
2. Habitual Runaway;

3. Habitual truant;

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

5. Alcohol offenses as provided in KRS 244.085.

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

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

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

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

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

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

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

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

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

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and

(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States;

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

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

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

CREDIT(S)

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

LOUISIANA

La. Child. Code Ann. art. 502 (2015).Protection of Children in Abuse Investigations . Definitions

For the purposes of this Title, the following terms have the following meanings, unless the context clearly indicates otherwise:

(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 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, the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person, 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) “Child” means a person under the age of eighteen years who has not been judicially emancipated or emancipated by marriage as provided by law.

(3) “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.

(4) “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) Repealed by Acts 2014, No. 602, § 7, eff. June 12, 2014.
- (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.

(5) "Neglect" means the unreasonable refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired. Consistent with Children's Code Article 606(B), the inability of a parent or caretaker to provide for a child's basic support, supervision, treatment, or services 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.

(6) "Nonprofit corporation" means a corporation formed in accordance with the provisions of Chapter 2 of Title 12 of the Louisiana Revised Statutes of 1950.

CREDIT(S)

Acts 2003, No. 749, § 1. Current through the 2014 Regular Session.

La. Child. Code Ann. art. 603 (2015). Child in Need of Care. Definitions.

As used in this Title:

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

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

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

(b) The exploitation or overwork of a child by a parent or any other person, including but not limited to commercial sexual exploitation of the child.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent, caretaker, or any other person of the child's involvement in any of the following:

(i) Any sexual act with any other person.

(ii) Pornographic displays.

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

(d) A coerced abortion conducted upon a child.

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

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

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

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

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

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

(9) "Coerced abortion" means the use of force, intimidation, threat of force, threat of deprivation of food and shelter, or the deprivation of food and shelter by a parent or any other person in order to compel a female child to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed.

(9.1) "Commercial sexual exploitation" means involvement of the child activity prohibited by the following statutes: R.S. 14:46.2, 46.3, 81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.

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

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

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

(a) Homicide.

(b) Battery.

(c) Assault.

(d) Rape.

(e) Sexual battery.

(f) Kidnapping.

(g) Criminal neglect.

(h) Criminal abandonment.

(i) Repealed by Acts 2014, No. 602, § 7, eff. June 12, 2014.

(j) Carnal knowledge of a juvenile.

(k) Indecent behavior with juveniles.

(l) Pornography involving juveniles.

(m) Molestation of a juvenile.

(n) Crime against nature.

(o) Cruelty to juveniles.

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

(q) Sale of minor children.

(r) Human trafficking.

(s) Trafficking of children for sexual purposes.

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

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

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

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

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

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

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

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

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

(e) Police officers or law enforcement officials.

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

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

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

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

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

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

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

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

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

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

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

(22) "Permanent placement" means:

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992; Acts 1993, No. 634, § 1, eff. June 15, 1993; Acts 1995, No. 444, § 1, eff. June 17, 1995; Acts 1999, No. 449, § 1, eff. July 1, 1999; Acts 1999, No. 769, § 1, eff. July 2, 1999; Acts 1999, No. 894, § 1; Acts 2001, No. 567, § 1; Acts 2003, No. 567, § 1; Acts 2003, No. 1187, § 1; Acts 2004, No. 398, § 1, eff. June 23, 2004; Acts 2005, No. 148, § 1; Acts 2005, No. 338, § 1; Acts 2006, No. 157, § 1; Acts 2006, No. 278, § 1; Acts 2007, No. 119, § 1, eff. June 25, 2007; Acts 2007, No. 265, § 1; Acts 2007, No. 334, § 1; Acts 2007, No. 396, § 1; Acts 2008, No. 394, § 1, eff. June 21, 2008; Acts 2012, No. 268, § 2, eff. May 25, 2012; Acts 2012, No. 380, § 1; Acts 2012, No. 446, § 6; Acts 2012, No. 614, § 2, eff. June 7, 2012; Acts 2013, No. 260, § 1; Acts 2014, No. 486, § 1; Acts 2014, No. 564, § 7; Acts 2014, No. 569, § 1. Current through the 2014 Regular Session

La. Child. Code Ann. art. 606 (2015). Grounds; Child in Need of Care

A. Allegations that a child is in need of care must assert one or more of the following grounds:

(1) The child is the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

(2) The child is a victim of neglect.

(3) The child is without necessary food, clothing, shelter, medical care, or supervision because of the disappearance or prolonged absence of his parent or when, for any other reason, the child is placed at substantial risk of imminent harm because of the continuing absence of the parent.

(4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child's welfare is otherwise endangered if left within the parent's custody or control.

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child.

(6) The child is a victim of human trafficking or trafficking of children for sexual purposes.

<Subpar. (A)(7) effective when a child, who is a victim of commercial sexual exploitation, human trafficking, or trafficking of children for sexual purposes perpetrated by someone other than a parent or caretaker, becomes an eligible victim for which federal match funds are available through Title IV-E of 47 U.S.C. 672>

(7) The child is a victim of commercial sexual exploitation, human trafficking, or trafficking of children for sexual purposes perpetrated by any person regardless of their relationship to the child.

B. A child whose parent is unable to provide basic support, supervision, treatment, or services due to inadequate financial resources shall not, for that reason alone, be determined to be a child in need of care.

CREDIT(S)

Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992; Acts 1995, No. 1095, § 2; Acts 1999, No. 1178, § 1, eff. July 9, 1999; Acts 2012, No. 446, § 6; Acts 2012, No. 730, § 1; Acts 2014, No. 564, § 8. Current through the 2014 Regular Session.

MAINE

ME. REV. STAT. ANN. TIT. 22, § 4002 (2015). Child and Family Services and Child Protection Act. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Abuse or neglect. "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or section 5051-A, subsection 1, paragraph C, by a person responsible for the child.

1-A. Abandonment. "Abandonment" means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:

- A. Failure, for a period of at least 6 months, to communicate meaningfully with the child;
- B. Failure, for a period of at least 6 months, to maintain regular visitation with the child;
- C. Failure to participate in any plan or program designed to reunite the parent with the child;
- D. Deserting the child without affording means of identifying the child and his parent or custodian;
- E. Failure to respond to notice of child protective proceedings; or
- F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims.

1-B. Aggravating factor. "Aggravating factor" means any of the following circumstances with regard to the parent.

A. The parent has subjected any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society.

(2) Deleted. Laws 2001, c. 696, § 10.

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.

B. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding, conspiring or soliciting murder or manslaughter;

(5) Felony assault that results in serious bodily injury; or

(6) Any comparable crime in another jurisdiction.

C. The parental rights of the parent to a sibling have been terminated involuntarily.

D. The parent has abandoned the child.

2. Child. "Child" means any person who is less than 18 years of age.

3. Child protection proceeding. "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, [FN1] a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, [FN2] or a proceeding on a medical treatment petition under subchapter VIII. [FN3]

3-A. Repealed. Laws 2001, c. 439, § X-1.

4. Custodial parent. "Custodial parent" means a parent with custody.

5. Custodian. "Custodian" means the person who has legal custody and power over the person of a child.

5-A. Foster parent. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom the child lives pursuant to a court order or agreement with the department.

5-B. Fetal alcohol spectrum disorders. "Fetal alcohol spectrum disorders" means conditions whose effects include having facial characteristics, growth restriction, central nervous system abnormalities or other characteristics consistent with prenatal alcohol exposure identified in a child from birth to 12 months of age.

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.

CREDIT(S)

1979, c. 733, § 18; 1983, c. 184, §§ 1, 2; 1985, c. 495, § 16; 1985, c. 739, §§ 1 to 3, eff. April 18, 1986; 1987, c. 511, § A, 2, eff. July 1, 1987; 1987, c. 769, § A, 77, eff. April 26, 1988; 1995, c. 481, § 1; 1997, c. 715, §§ B-1 to B-3; 2001, c. 439, § X-1; 2001, c. 696, §§ 10, 11; 2005, c. 372, § 2; 2005, c. 373, §§ 4, 5; 2007, c. 304, §§ 10, 11; 2007, c. 371, § 1; 2007, c. 586, § 1; 2011, c. 402, § 1; 2013, c. 192, § 1, eff. Oct. 9, 2013. Current with legislation through the 2013 Second Regular Session of the 126th Legislature. The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

MARYLAND

MD. CODE ANN., CTS. & JUD. PROC. § 3-801 (2015). Juvenile Causes-- Children in Need of Assistance. Definitions

In general

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

Abuse

(b) "Abuse" means:

(1) Sexual abuse of a child, whether a physical injury is sustained or not; or

(2) Physical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed by:

(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or

(ii) A household or family member.

Adjudicatory hearing

(c) “Adjudicatory hearing” means a hearing under this subtitle to determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true.

Adult

(d) “Adult” means an individual who is at least 18 years old.

Child

(e) “Child” means an individual under the age of 18 years.

Child in need of assistance

(f) “Child in need of assistance” means a child who requires court intervention because:

(1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and

(2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

CINA

(g) “CINA” means a child in need of assistance.

Commit

(h) “Commit” means to transfer custody.

Court

(i) “Court” means the circuit court for a county sitting as the juvenile court.

Custodian

(j) “Custodian” means a person or governmental agency to whom custody of a child has been given by order of court, including a court other than the juvenile court.

Custody

(k) “Custody” means the right and obligation, unless otherwise determined by the court, to provide ordinary care for a child and determine placement.

Developmental disability

(l) “Developmental disability” means a severe chronic disability of an individual that:

(1) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(2) Is likely to continue indefinitely;

(3) Results in an inability to live independently without external support or continuing and regular assistance; and

(4) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

Disposition hearing

(m) “Disposition hearing” means a hearing under this subtitle to determine:

(1) Whether a child is in need of assistance; and

(2) If so, the nature of the court's intervention to protect the child's health, safety, and well-being.

Guardian

(n) “Guardian” means a person to whom guardianship of a child has been given by order of court, including a court other than the juvenile court.

Guardianship

(o) “Guardianship” means an award by a court, including a court other than the juvenile court, of the authority to make ordinary and emergency decisions as to the child's care, welfare, education, physical and mental health, and the right to pursue support.

Local department

(p) “Local department” means:

(1) The local department of social services for the county in which the court is located; or

(2) In Montgomery County, the county department of health and human services.

Mental disorder

(q)(1) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.

(2) “Mental disorder” includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another.

(3) “Mental disorder” does not include mental retardation.

Mental injury

(r) “Mental injury” means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

Neglect

(s) “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

(1) That the child's health or welfare is harmed or placed at substantial risk of harm; or

(2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

Parent

(t) “Parent” means a natural or adoptive parent whose parental rights have not been terminated.

Party

(u)(1) “Party” means:

(i) A child who is the subject of a petition;

(ii) The child's parent, guardian, or custodian;

(iii) The petitioner; or

(iv) An adult who is charged under § 3-828 of this subtitle.

(2) "Party" does not include a foster parent.

Reasonable efforts

(v) "Reasonable efforts" means efforts that are reasonably likely to achieve the objectives set forth in § 3-816.1(b)(1) and (2) of this subtitle.

Relative

(w) "Relative" means an individual who is:

(1) Related to the child by blood or marriage within five degrees of consanguinity or affinity under the civil law; and

(2)(i) At least 21 years old; or

(ii) 1. At least 18 years old; and

2. Lives with a spouse who is at least 21 years old.

Sexual abuse

(x)(1) "Sexual abuse" means an act that involves sexual molestation or sexual exploitation of a child by:

(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or

(ii) A household or family member.

(2) "Sexual abuse" includes:

(i) Allowing or encouraging a child to engage in:

1. Obscene photography, films, poses, or similar activity;

2. Pornographic photography, films, poses, or similar activity; or

3. Prostitution;

(ii) Human trafficking;

(iii) Incest;

(iv) Rape;

(v) Sexual offense in any degree;

(vi) Sodomy; and

(vii) Unnatural or perverted sexual practices.

Shelter care

(y) “Shelter care” means a temporary placement of a child outside of the home at any time before disposition.

Shelter care hearing

(z) “Shelter care hearing” means a hearing held before disposition to determine whether the temporary placement of the child outside of the home is warranted.

TPR proceeding

(aa) “TPR proceeding” means a proceeding to terminate parental rights.

Voluntary placement

(bb) “Voluntary placement” means a placement in accordance with § 5-525(b)(1)(i) or (iii) or (3) of the Family Law Article.

Voluntary placement hearing

(cc) “Voluntary placement hearing” means a hearing to obtain a judicial determination as to whether continuing a voluntary placement is in the best interests of the child.

CREDIT(S)

Added by Acts 2001, c. 415, § 3, eff. Oct. 1, 2001. Amended by Acts 2001, c. 29, § 5, eff. April 10, 2001; Acts 2002, c. 19, § 1, eff. April 9, 2002; Acts 2002, c. 151, § 2, eff. Oct. 1, 2002; Acts 2003, c. 250, § 1, eff. Oct. 1, 2003; Acts 2005, c. 404, § 1, eff. Oct. 1, 2005; Acts 2005, c. 464, § 3, eff. Jan. 1, 2006; Acts 2005, c. 504, §§ 1, 2, eff. Oct. 1, 2005; Acts 2009, c. 60, § 5, eff. April 14, 2009; Acts 2009, c. 567, § 1, eff. Oct. 1, 2009; Acts 2009, c. 568, § 1, eff. Oct. 1, 2009; Acts 2012, c. 342, § 1, eff. Oct. 1, 2012; Acts 2012, c. 343, § 1, eff. Oct. 1, 2012; Acts 2013, c. 22, § 2, eff. Oct. 1, 2013. Current through the 2014 Regular Session of the General Assembly.

**MD. CODE ANN., FAM. LAW § 5-701 (2015). Child Abuse and Neglect.
Definitions.**

In general

(a) Except as otherwise provided in § 5-705.1 of this subtitle, in this subtitle the following words have the meanings indicated.

Abuse

(b) “Abuse” means:

(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or

(2) sexual abuse of a child, whether physical injuries are sustained or not.

Administration

(c) “Administration” means the Social Services Administration of the Department.

Central registry

(d)(1) Except as provided in paragraph (2) of this subsection, “central registry” means any component of the Department's confidential computerized database that contains information regarding child abuse and neglect investigations.

(2) “Central registry” does not include a local department case file.

Child

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

Repealed

(f) Repealed by Acts 2005, c. 464, § 2, eff. Jan. 1, 2006.

Educator or human service worker

(g)(1) “Educator or human service worker” means any professional employee of any correctional, public, parochial or private educational, health, juvenile service, social or social service agency, institution, or licensed facility.

(2) “Educator or human service worker” includes:

(i) any teacher;

(ii) any counselor;

(iii) any social worker;

(iv) any caseworker; and

(v) any probation or parole officer.

Family member

(h) “Family member” means a relative by blood, adoption, or marriage of a child.

Health practitioner

(i)(1) “Health practitioner” includes any person who is authorized to practice healing under the Health Occupations Article or § 13-516 of the Education Article.

(2) “Health practitioner” does not include an emergency medical dispatcher.

Household

(j) “Household” means the location:

(1) in which the child resides;

(2) where the abuse or neglect is alleged to have taken place; or

(3) where the person suspected of abuse or neglect resides.

Household member

(k) “Household member” means a person who lives with, or is a regular presence in, a home of a child at the time of the alleged abuse or neglect.

Identifying information

(l) “Identifying information” means the name of:

- (1) the child who is alleged to have been abused or neglected;
- (2) a member of the household of the child;
- (3) a parent or legal guardian of the child; or
- (4) an individual suspected of being responsible for abuse or neglect of the child.

Indicated

(m) "Indicated" means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.

Law enforcement agency

(n)(1) "Law enforcement agency" means a State, county, or municipal police department, bureau, or agency.

(2) "Law enforcement agency" includes:

- (i) a State, county, or municipal police department or agency;
- (ii) a sheriff's office;
- (iii) a State's Attorney's office; and
- (iv) the Attorney General's office.

Local department

(o) Except as provided in §§ 5-705.1 and 5-714 of this subtitle, "local department" means the local department that has jurisdiction in the county:

- (1) where the allegedly abused or neglected child lives; or
- (2) if different, where the abuse or neglect is alleged to have taken place.

Local department case file

(p) "Local department case file" means that component of the Department's confidential computerized database that contains information regarding child abuse and neglect investigations to which access is limited to the local department staff responsible for the investigation.

Local State's Attorney

(q) "Local State's Attorney" means the State's Attorney for the county:

- (1) where the allegedly abused or neglected child lives; or
- (2) if different, where the abuse or neglect is alleged to have taken place.

Mental injury

(r) "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

Neglect

(s) "Neglect" means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
- (2) mental injury to the child or a substantial risk of mental injury.

Police officer

(t) "Police officer" means any State or local officer who is authorized to make arrests as part of the officer's official duty.

Record

(u) "Record" means the original or any copy of any documentary material, in any form, including a report of suspected child abuse or neglect, that is made by, received by, or received from the State, a county, or a municipal corporation in the State, or any subdivision or agency concerning a case of alleged child abuse or neglect.

Report

(v) "Report" means an allegation of abuse or neglect, made or received under this subtitle.

Ruled out

(w) "Ruled out" means a finding that abuse, neglect, or sexual abuse did not occur.

Sexual abuse

(x)(1) “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.

(2) “Sexual abuse” includes:

(i) allowing or encouraging a child to engage in:

1. obscene photography, films, poses, or similar activity;
2. pornographic photography, films, poses, or similar activity; or
3. prostitution;

(ii) human trafficking;

(iii) incest;

(iv) rape;

(v) sexual offense in any degree;

(vi) sodomy; and

(vii) unnatural or perverted sexual practices.

Unsubstantiated

(y) “Unsubstantiated” means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.

CREDIT(S)

Added by Acts 1987, c. 635, § 2, eff. July 1, 1988. Amended by Acts 1989, c. 395, § 1, eff. July 1, 1989; Acts 1989, c. 730, §§ 1, 2, eff. July 1, 1989; Acts 1993, c. 318, § 1, eff. Oct. 1, 1993; Acts 1994, c. 728, § 1, eff. Oct. 1, 1994; Acts 1998, c. 46, § 1, eff. Dec. 31, 1998; Acts 1999, c. 214, § 1, eff. June 1, 1999; Acts 2001, c. 414, § 1, eff. March 1, 2002; Acts 2002, c. 279, § 1, eff. Oct. 1, 2002; Acts 2003, c. 308, § 1, eff. Oct. 1, 2003; Acts 2005, c. 464, § 2, eff. Jan. 1, 2006; Acts 2005, c. 464, § 3, eff. Jan. 1, 2006; Acts 2006, c. 44, § 6, eff. April 8, 2006; Acts 2012, c. 342, § 1, eff. Oct. 1, 2012; Acts 2012, c. 343, § 1, eff. Oct. 1, 2012. Current through the 2014 Regular Session of the General Assembly.

MASSACHUSETTS

MASS. ANN. LAWS CH. 119, § 51A (2015). Reporting of suspected abuse or neglect; mandated reporters; collection of physical evidence; penalties; content of reports; liability; privileged communication

(a) A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (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.

If a mandated reporter is a member of the staff of a medical or other public or private institution, school or facility, the mandated reporter may instead notify the person or designated agent in charge of such institution, school or facility who shall become responsible for notifying the department in the manner required by this section.

A mandated reporter may, in addition to filing a report under this section, contact local law enforcement authorities or the child advocate about the suspected abuse or neglect.

(b) For the purpose of reporting under this section, hospital personnel may have photographs taken of the areas of trauma visible on the child without the consent of the child's parents or guardians. These photographs or copies thereof shall be sent to the department with the report.

If hospital personnel collect physical evidence of abuse or neglect of the child, the local district attorney, local law enforcement authorities, and the department shall be immediately notified. The physical evidence shall be processed immediately so that the department may make an informed determination within the time limits in section 51B. If there is a delay in processing, the department shall seek a waiver under subsection (d) of section 51B.

(c) Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 1/2 years and a fine of not more than \$2,000 for the third and subsequent offenses.

Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of up to \$5,000 or imprisonment in the house of correction for not more than

2 1/2 years or by both such fine and imprisonment; and, upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter's violation of this paragraph.

(d) A report filed under this section shall contain: (i) the names and addresses of the child and the child's parents or other person responsible for the child's care, if known; (ii) the child's age; (iii) the child's sex; (iv) the nature and extent of the child's injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.

(e) A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this subsection shall be punished by a fine of not more than \$1,000.

(f) Any person may file a report under this section if that person has reasonable cause to believe that a child is suffering from or has died as a result of abuse or neglect.

(g) No mandated reporter shall be liable in any civil or criminal action for filing a report under this section or for contacting local law enforcement authorities or the child advocate, if the report or contact was made in good faith, was not frivolous, and the reporter did not cause the abuse or neglect. No other person filing a report under this section shall be liable in any civil or criminal action by reason of the report if it was made in good faith and if that person did not perpetrate or inflict the reported abuse or cause the reported neglect. Any person filing a report under this section may be liable in a civil or criminal action if the department or a district attorney determines that the person filing the report may have perpetrated or inflicted the abuse or caused the neglect.

(h) No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, files a report under this section, testifies or is about to testify in any proceeding involving child abuse or neglect. Any employer who discharges, discriminates or retaliates against that mandated reporter shall be liable to the mandated reporter for treble damages, costs and attorney's fees.

(i) Within 30 days of receiving a report from a mandated reporter, the department shall notify the mandated reporter, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child and the services that the department intends to provide to the child or the child's family.

(j) Any privilege relating to confidential communications, established by sections 135 to 135B, inclusive, of chapter 112 or by sections 20A and 20B of chapter 233, shall not prohibit the filing of a report under this section or a care and protection petition under section 24, except that a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner need not report information solely gained in a confession or similarly confidential communication in other religious faiths. Nothing in the general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner to report suspected child abuse or neglect under this section when the priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner is acting in some other capacity that would otherwise make him a mandated reporter.

(k) A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect.

CREDIT(S)

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 276, § 4; St.1977, c. 501; St.1977, c. 942; St.1978, c. 215, § 1; St.1979, c. 312, § 1; St.1980, c. 434; St.1981, c. 91, § 2; St.1982, c. 102; St.1983, c. 222; St.1984, c. 83, §§ 1, 2; St.1985, c. 209; St.1986, c. 230, §§ 1, 2; St.1989, c. 219; St.1989, c. 535, § 5; St.1990, c. 474, § 1; St.1991, c. 280; St.1992, c. 115, § 1; St.1993, c. 50, § 23; St.1997, c. 197; St.2002, c. 107, §§ 1 to 4; St.2008, c. 176, § 95, eff. July 8, 2008; St.2008, c. 176, § 96, eff. July 1, 2010; St.2008, c. 176, § 97, eff. Jan. 1, 2010; St.2011, c. 178, § 10, eff. Feb. 19, 2012. Current through Chapters 1 to 454, 466, 475 and 476 of the 2014 2nd Annual Session

MASS. ANN. LAWS CH. 18C, § 11 (2015). Comprehensive plan for response to child abuse and neglect; advice of experts; contents

(a) The child advocate, in consultation with the advisory board and the interagency child welfare task force established by section 215 of chapter 6, shall formulate a comprehensive plan, with periodic benchmarks and cost estimates, to recommend a coordinated, system-wide response to child abuse and neglect, including related mental health, substance abuse and domestic violence issues. The comprehensive plan shall look forward 5 years or more, shall be updated annually to plan for the ensuing 5-year period, shall assess previous efforts and, if appropriate, shall include legislative and regulatory recommendations, such as changes to the issues itemized in the comprehensive plan.

(b) The child advocate may seek advice broadly from individuals with expertise in child welfare in formulating the plan and consult with, social workers of the department, pediatricians, child psychiatrists, early childhood education and adolescent behavior specialists, parents of children

who have received services from the commonwealth, and persons who, as children, were clients of the department.

(c) The comprehensive plan shall be filed annually with the governor, the clerks of the senate and the house, the senate and house committees on ways and means, and the joint committee on children, families and persons with disabilities.

(d) The comprehensive plan shall examine the status of and address the following issues:--

(1) racial disproportionality and disparity of the department's client population, including the effectiveness of reforms designed to address overrepresentation of children of color within that population;

(2) the needs of families whose children are truant, runaways, or whose conduct interferes with their parent's ability to adequately care for and protect them. The plan shall propose a system of community-based programs to assist these children and families by providing services on a continuum of increasing intensity with the goal of keeping children out of the juvenile justice and child protection systems. The plan shall examine: (i) the existing complex system of services available from multiple public and private agencies; (ii) the differences in service delivery throughout the state; (iii) the need for immediate response to stabilize a family in crisis and to connect the family to services in their own community; and (iv) the collection and analysis of information needed to evaluate and identify gaps in service to such children and families throughout the commonwealth;

(3) mandated reporting, including: (i) the quality and quantity of training provided to mandated reporters; (ii) standards for training based on best practices for recognizing and reporting suspected child abuse and neglect; and (iii) the use of the following as forums for training mandated reporters: online programs, training offered by state agencies, and existing programs of professional training such as those required for initial licensure or certification and relicensure or recertification, continuing education programs or in-service training;

(4) screening of child abuse and neglect reports, including: (i) centralizing the reporting and screening processes; (ii) a single, 24-hour, toll-free telephone number for all oral reports, a single fax number or mailing address for all written reports and internet-based filing of reports; (iii) multiple reports filed about a particular child or family; (iv) a determination of when and under what conditions reports may have been inappropriately screened out and the impact of those decisions; and (v) direct, electronic access to the National Crime Information Center for criminal history records and warrants;

(5) child protection teams, which are multidisciplinary teams that provide specialized medical examinations of children who present signs of abuse or neglect and that include pediatricians or pediatric nurses and psychologists or social workers who have been trained to recognize child abuse and neglect, including statewide expansion to regional hospitals, all hospitals with emergency rooms and all pediatric care hospitals;

(6) the shortage of experts in the commonwealth who specialize in the prevention, diagnosis and treatment of abused or neglected children, with recommendations to train pediatricians and pediatric nurse practitioners to become clinical experts who are knowledgeable and competent in all areas of child abuse and neglect, including: the identification, assessment, and treatment of physical abuse, sexual abuse, neglect, emotional abuse and neglect and factitious illness by proxy; multi-disciplinary training with law enforcement, state and local agencies and child advocacy centers; collection of forensic evidence; court testimony; research; and child advocacy;

(7) family engagement model or other nationally recognized models to strengthen child welfare practice, including: (i) the evaluation of the model and its use of differential response and risk assessment tools to determine how effectively findings of abuse or neglect are made; (ii) the cost to implement the model state-wide; (iii) the combination of departmental functions such that an individual social worker investigates, assesses and provides ongoing case management, particularly as that combination impacts incidents requiring specialized investigatory skills; (iv) delays in the fair hearing process; and (v) time limits allowed for screenings, investigations and assessments;

(8) social worker caseloads and teaming, including: (i) the effects of teaming on caseloads and of caseloads on teaming; (ii) the cost of state-wide adoption of various standard caseload ratios; (iii) a potential multi-year plan to reduce caseloads; and (iv) duties handled by social workers that may be more affordably and efficiently handled by other staff;

(9) law enforcement involvement, including: (i) how effectively the department and law enforcement collaborate and whether there is room for improvement or coordination of resources; (ii) protocols for mandatory reporting of certain abuse or neglect to local law enforcement and district attorneys and (iii) potential alignment with efforts to prevent or prosecute domestic violence and with the procedures used in the investigation of sexual abuse, such as the sexual abuse intervention network and the sexual assault nurse examiners program;

(10) schools of social work, including: (i) how effectively social work and related degree programs teach child welfare practice; (ii) greater cooperation between the department and higher education to study child welfare issues; (iii) the capacity of public and private schools to meet increased demand for social work and related degrees, including concentrations in child welfare; and (iv) a timeline for inclusion of child welfare concentrations in bachelor's and master's degree programs at public institutions of higher education;

(11) social worker qualifications, including the infrastructure needed to support a more qualified workforce, such as full implementation of proposed programs at the child welfare institute and the transferability of certificate coursework to degree-granting programs;

(12) confidentiality, including research of legal and ethical considerations to be addressed if information relative to cases of child abuse and neglect is shared between the office and other executive agencies;

(13) health service needs of the department's client population and health consultation needs of the department, including: (i) the need for physical and behavioral health services and consultation, including those related to mental health and substance abuse treatment; (ii) coordination and consultation among executive agencies; (iii) proposed best-practice models for more effective client behavioral health services; and (iv) oversight and peer review of the safety and effectiveness of the use of psychotropic drugs by children involved with executive agencies;

(14) critiques of the department, including: (i) potential alignment of a internal or external audit unit with the department's continuous quality improvement and quality service review initiatives; and (ii) dissemination of the findings of these critiques to policy makers within and outside of the department;

(15) criminal offender record information reviews, including: (i) the use of these reviews in out-of-home, kinship and foster placements and (ii) areas for improved efficiency and equality;

(16) permanency planning for those who, due to their age, are transitioning out of the child welfare system to assist with health care, housing, higher education, long-term interpersonal connections and other needs for independent living;

(17) examine the frequency of transitions in the treatment plans and living placements of foster children;

(18) provide an analysis of the administrative and cost requirements and recommendations to create a personal needs and individual development account for each child in foster care over the age of 14;

(19) review the process of adopting children in foster care and recommend streamlined procedures to reduce the time required to complete the adoption process;

(20) the impact on child welfare efforts of the early and periodic screening, diagnostic and treatment services provision and reasonable promptness provision of the federal Medicaid law, 42 U.S.C. 1396a(a)(10)(A), -(a)(43), 1396d(r)(5), -(a)(4)(B), and 1396a(a)(8)(2005), respectively;

(21) oversight provided by MassHealth and its contractors of medical and behavioral health expenditures made on behalf of the department's client population;

(22) federal funding available for child welfare purposes and factors affecting that funding, including: (i) the Title IV-E saturation rate for foster children, (ii) the determination of AFDC status for the non-TANF population, and (iii) expedited judicial determinations made within the required time frames;

(23) an estimate of the expenditure necessary to implement an annual adjustment to the daily rate for maintenance payments to foster care, adoptive and guardianship families, to provide care so as to meet the rate recommended periodically by the United States Department of Agriculture; and

(24) the effectiveness of the state's child abuse laws as they relate to defining, prohibiting, preventing and reporting cases of emotional abuse of children, including recommendations to increase public and professional education and awareness of the symptoms and impact of emotional abuse.

CREDIT(S)

Added by St.2008, c. 176, § 46, eff. July 8, 2008. Current through Chapters 1 to 454, 466, 475 and 476 of the 2014 2nd Annual Session

MICHIGAN

MICH. COMP. LAWS SERV. § 400.1501 (2015). Domestic Violence. Definitions.

Sec. 1. As used in this act:

(a) “Board” means the domestic violence prevention and treatment board created in section 2. [FN1]

(b) “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

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

(d) “Domestic violence” means the occurrence of any of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) “Family or household member” includes any of the following:

(i) A spouse or former spouse.

- (ii) An individual with whom the person resides or has resided.
 - (iii) An individual with whom the person has or has had a dating relationship.
 - (iv) An individual with whom the person is or has engaged in a sexual relationship.
 - (v) An individual to whom the person is related or was formerly related by marriage.
 - (vi) An individual with whom the person has a child in common.
 - (vii) The minor child of an individual described in subparagraphs (i) to (vi).
- (f) “Fund” means the domestic violence prevention and treatment fund created in section 5.
[FN2]
- (g) “Prime sponsor” means a county, city, village, or township of this state, or a combination thereof, or a private, nonprofit association or organization.

CREDIT(S)

Amended by P.A.2000, No. 84, Eff. July 1, 2000. The statutes are current through P.A.2014, No. 479, 481-492, 494-507, 522, 524, 527, 530-531, 533, 548, 550, 552, 565, 567, 572, of the 2014 Regular Session, 97th Legislature.

Mich. Comp. Laws Serv. § 722.602 (2015).Child Abuse and Neglect Prevention Act. Definitions.

Sec. 2. (1) [FN1] As used in this act:

- (a) “Child” means a person under 18 years of age.
- (b) “Child abuse” means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which harm occurs or is threatened through nonaccidental physical or mental injury; sexual abuse, which includes a violation of section 145c of the Michigan penal code, Act. No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.
- (c) “Local council” means an organization which meets the criteria described in section 10(a).
[FN2]
- (d) “Neglect” means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(e) "State board" means the state child abuse and neglect prevention board created in section 3. [FN3]

(f) "Prevention program" means a system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian, and may include research programs related to prevention of child abuse and neglect.

(g) "Trust fund" means the children's trust fund established in the department of treasury.

CREDIT(S)

P.A.1982, No. 250, § 2, Imd. Eff. Sept. 29, 1982. The statutes are current through P.A.2014, No. 479, 481-492, 494-507, 522, 524, 527, 530-531, 533, 548, 550, 552, 565, 567, 572, of the 2014 Regular Session, 97th Legislature.

Mich. Comp. Laws Serv. § 722.622 (2015). Child Protection Law. Definitions

<Section effective until the 91st day after final adjournment of the 2014 Regular Session. See, also, section effective the 91st day after final adjournment of the 2014 Regular Session.>

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, [FN1] 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 [FN2] 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. [FN3]

(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), [FN4] 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.

CREDIT(S)

Amended by P.A.1980, No. 511, § 1, Imd. Eff. Jan. 26, 1981; P.A.1984, No. 418, § 1, Eff. March 29, 1985; P.A.1988, No. 372, § 1, Eff. March 30, 1989; P.A.1990, No. 212, § 1, Imd. Eff. Sept. 27, 1990; P.A.1993, No. 251, § 1, Imd. Eff. Nov. 24, 1993; P.A.1996, No. 581, § 1, Eff. March 31, 1997; P.A.1998, No. 428, Eff. April 1, 1999; P.A.1998, No. 483, Eff. March 1, 1999; P.A.1998, No. 484, Eff. July 1, 1999; P.A.1998, No. 531, Eff. July 1, 1999; P.A.2000, No. 45, Imd. Eff. March 27, 2000; P.A.2002, No. 661, Imd. Eff. Dec. 23, 2002; P.A.2002, No. 693, Eff. March 1, 2003; P.A.2004, No. 563, Imd. Eff. Jan. 3, 2005. The statutes are current through P.A.2014, No. 479, 481-492, 494-507, 522, 524, 527, 530-531, 533, 548, 550, 552, 565, 567, 572, of the 2014 Regular Session, 97th Legislature.

MINNESOTA

Minn. Stat. § 260C.007 (2015). Juvenile Safety and Placement. 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 and chapter 260D, 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.227;

(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) is a sexually exploited youth;

(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; or

(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.503, subdivision 2, is not in the best interests of the child.

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.503, subdivision 2.

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 609.2114, 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 17 years who is absent from attendance at school without lawful excuse for seven school days per school year if the child is in elementary school or for one or more class periods on seven school days per school year if the child is in middle school, junior high school, or high school or a child who is 17 years of age who is absent from attendance at school without lawful excuse for one or more class periods on seven school days per school year 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. 26a. Putative father. "Putative father" has the meaning given in section 259.21, subdivision 12.

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. 27a. Responsible social services agency. "Responsible social services agency" means the county social services agency that has responsibility for public child welfare and child protection services and includes the provision of adoption services as an agent of the commissioner of human services.

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, 609.344, 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.

Subd. 32. Sibling. “Sibling” means one of two or more individuals who have one or both parents in common through blood, marriage, or adoption, including siblings as defined by the child's tribal code or custom.

CREDIT(S)

Laws 1999, c. 139, art. 3, § 2. Amended by Laws 1999, c. 139, art. 4, § 2; Laws 2000, c. 260, § 34; Laws 2001, c. 73, § 1; Laws 2001, c. 178, art. 1, §§ 5 to 10, 44; Laws 2003, c. 2, art. 1, § 26; Laws 2003, 1st Sp., c. 14, art. 11, § 11; Laws 2004, c. 288, art. 3, § 28; Laws 2005, c. 159, art. 2, § 13; Laws 2006, c. 212, art. 1, § 13; Laws 2008, c. 277, art. 1, § 53, eff. July 1, 2008; Laws 2008, c. 361, art. 6, §§ 25 to 27, eff. Aug. 1, 2008; Laws 2008, c. 370, § 1, eff. July 1, 2008; Laws 2009, c. 163, art. 2, §§ 17, 18, eff. Aug. 1, 2009; Laws 2010, c. 269, art. 3, § 1, eff. Aug. 1, 2010; Laws 2010, c. 269, art. 4, § 1, eff. Aug. 1, 2010; Laws 2010, c. 281, § 1, eff. Aug. 1, 2010; Laws 2010, c. 301, art. 3, § 5, eff. Aug. 1, 2010; Laws 2011, 1st Sp., c. 1, art. 4, §§ 3 to 5, eff. Aug. 1, 2011; Laws 2012, c. 216, art. 4, §§ 3 to 6, eff. Aug. 1, 2012; Laws 2012, c. 216, art. 6, § 13, par. (b), eff. Aug. 1, 2012; Laws 2013, c. 108, art. 3, § 39, eff. Aug. 1, 2014; Laws 2013, c. 108, art. 3, § 40, eff. May 24, 2013; Laws 2013, c. 116, art. 3, § 31; Laws 2013, c. 125, art. 1, §§ 55, 56, eff. July 1, 2013; Laws 2014, c. 180, § 9, eff. Aug. 1, 2014. Current with legislation through the end of the 2014 Regular Session.

Minn. Stat. § 609.378 (2015). Crimes Against the Family. Neglect or endangerment of child

Subdivision 1. Persons guilty of neglect or endangerment. (a)(1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) A parent, legal guardian, or caretaker who endangers the child's person or health by:

(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or

(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

(c) A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a

result of the child's access to a loaded firearm is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 2. Defenses. It is a defense to a prosecution under subdivision 1, paragraph (a), clause (2), or paragraph (b), that at the time of the neglect or endangerment there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation.

CREDIT(S)

Laws 1983, c. 217, § 5, eff. Aug. 1, 1983. Amended by Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1989, c. 282, art. 2, § 199; Laws 1992, c. 571, art. 4, § 11; Laws 1993, c. 326, art. 4, § 22; Laws 2002, c. 314, § 6; Laws 2005, c. 136, art. 7, § 21. Current with legislation through the end of the 2014 Regular Session.

MISSISSIPPI

Miss. Code Ann. § 43-21-105 (2015). Youth Court. Definitions

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) “Youth court” means the Youth Court Division.

(b) “Judge” means the judge of the Youth Court Division.

(c) “Designee” means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.

(d) “Child” and “youth” are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a “child” or “youth” for the purposes of this chapter.

(e) “Parent” means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) “Guardian” means a court-appointed guardian of the person of a child.

(g) “Custodian” means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) “Legal custodian” means a court-appointed custodian of the child.

(i) “Delinquent child” means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) “Delinquent act” is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) “Child in need of supervision” means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(l) “Neglected child” means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

(p) A "dependent child" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) “Any person responsible for care or support” means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) “Out-of-home” setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) “Durable legal custody” means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) “Status offense” means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

(aa) “Financially able” means a parent or child who is ineligible for a court-appointed attorney.

CREDIT(S)

Laws 1979, Ch. 506, § 3; Laws 1980, Ch. 550, § 2; Laws 1985, Ch. 486, § 2; Laws 1986, Ch. 416, § 1; Laws 1991, Ch. 537, § 1; Laws 1991, Ch. 539, § 7; Laws 1993, Ch. 560, § 1; Laws 1994, Ch. 591, § 5; Laws 1994, Ch. 607, § 17; Laws 1996, Ch. 323, § 1; Laws 1998, Ch. 516, § 6, eff. July 1, 1998 by Laws 2001, Ch. 358, § 1, eff. July 1, 2001; Laws 2005, Ch. 471, § 4, eff. July 1, 2005. Amended by Laws 2010, Ch. 476, § 73, eff. from and after passage (approved April 1, 2010); Laws 2013, Ch. 426 (H.B. 1441), § 1, eff. July 1, 2013. Current through 2014 Regular and First and Second Extraordinary Sessions.

Miss. Code Ann. § 97-5-39 (2015). Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child

(1)(a) Except as otherwise provided in this section, any parent, guardian or other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been committed by the youth court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.

(b) For the purpose of this section, a child is a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services, or who is married, is not considered a child for the purposes of this statute.

(c) If a child commits one (1) of the proscribed acts in subsection (2)(a), (b) or (c) of this section upon another child, then original jurisdiction of all such offenses shall be in youth court.

(d) If the child's deprivation of necessary clothing, shelter, health care or supervision appropriate to the child's age results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment in custody of the Department of Corrections for not more than five (5) years or to payment of a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(e) A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment in the custody of the Department of Corrections for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) Any person shall be guilty of felonious child abuse in the following circumstances:

(a) Whether bodily harm results or not, if the person shall intentionally, knowingly or recklessly:

(i) Burn any child;

(ii) Physically torture any child;

- (iii) Strangle, choke, smother or in any way interfere with any child's breathing;
 - (iv) Poison a child;
 - (v) Starve a child of nourishments needed to sustain life or growth;
 - (vi) Use any type of deadly weapon upon any child;
- (b) If some bodily harm to any child actually occurs, and if the person shall intentionally, knowingly, or recklessly:
- (i) Throw, kick, bite, or cut any child;
 - (ii) Strike a child under the age of fourteen (14) about the face or head with a closed fist;
 - (iii) Strike a child under the age of five (5) in the face or head;
 - (iv) Kick, bite, cut or strike a child's genitals; circumcision of a male child is not a violation under this subparagraph (iv);
- (c) If serious bodily harm to any child actually occurs, and if the person shall intentionally, knowingly or recklessly:
- (i) Strike any child on the face or head;
 - (ii) Disfigure or scar any child;
 - (iii) Whip, strike, or otherwise abuse any child;
- (d) Any person, upon conviction under paragraph (a) or (c) of this subsection, shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than five (5) years and up to life, as determined by the court. Any person, upon conviction under paragraph (b) of this subsection shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than two (2) years nor more than ten (10) years, as determined by the court. For any second or subsequent conviction under this subsection (2), the person shall be sentenced to imprisonment for life.
- (e) For the purposes of this subsection (2), "bodily harm" means any bodily injury to a child and includes, but is not limited to, bruising, bleeding, lacerations, soft tissue swelling, and external or internal swelling of any body organ.
- (f) For the purposes of this subsection (2), "serious bodily harm" means any serious bodily injury to a child and includes, but is not limited to, the fracture of a bone, permanent disfigurement, permanent scarring, or any internal bleeding or internal trauma to any organ, any brain damage,

any injury to the eye or ear of a child or other vital organ, and impairment of any bodily function.

(g) Nothing contained in paragraph (c) of this subsection shall preclude a parent or guardian from disciplining a child of that parent or guardian, or shall preclude a person in loco parentis to a child from disciplining that child, if done in a reasonable manner, and reasonable corporal punishment or reasonable discipline as to that parent or guardian's child or child to whom a person stands in loco parentis shall be a defense to any violation charged under paragraph (c) of this subsection.

(h) Reasonable discipline and reasonable corporal punishment shall not be a defense to acts described in paragraphs (a) and (b) of this subsection or if a child suffers serious bodily harm as a result of any act prohibited under paragraph (c) of this subsection.

(3) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(4)(a) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(b) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(5) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(6) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.

(7) In any proceeding resulting from a report made pursuant to Section 43-21-353 of the Youth Court Law, the testimony of the physician making the report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that the physician's testimony

violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

(8) Any criminal prosecution arising from a violation of this section shall be tried in the circuit, county, justice or municipal court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

CREDIT(S)

Laws 1979, Ch. 506, § 75; Laws 1980, Ch. 550, § 28; Laws 1986, Ch. 383, § 1; Laws 1989, Ch. 566, § 3, eff. from and after passage (approved April 21, 1989); Laws 2005, Ch. 467, § 3, eff. July 1, 2005; Laws 2005, Ch. 491, § 3, eff. July 1, 2005. Amended by Laws 2013, Ch. 483 (H.B. 1259), § 1, eff. July 1, 2013. Current through 2014 Regular and First and Second Extraordinary Sessions.

MISSOURI

Mo. Rev. Stat. § 210.110 (2012). Child Abuse. Definitions

As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the following terms mean:

(1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse;

(2) "Assessment and treatment services for children under ten years old", an approach to be developed by the children's division which will recognize and treat the specific needs of at-risk and abused or neglected children under the age of ten. The developmental and medical assessment may be a broad physical, developmental, and mental health screening to be completed within thirty days of a child's entry into custody and every six months thereafter as long as the child remains in care. Screenings may be offered at a centralized location and include, at a minimum, the following:

(a) Complete physical to be performed by a pediatrician familiar with the effects of abuse and neglect on young children;

(b) Developmental, behavioral, and emotional screening in addition to early periodic screening, diagnosis, and treatment services, including a core set of standardized and recognized instruments as well as interviews with the child and appropriate caregivers. The screening battery may be performed by a licensed mental health professional familiar with the effects of

abuse and neglect on young children, who will then serve as the liaison between all service providers in ensuring that needed services are provided. Such treatment services may include in-home services, out-of-home placement, intensive twenty-four-hour treatment services, family counseling, parenting training and other best practices.

Children whose screenings indicate an area of concern may complete a comprehensive, in-depth health, psychodiagnostic, or developmental assessment within sixty days of entry into custody;

(3) "Central registry", a registry of persons where the division has found probable cause to believe prior to August 28, 2004, or by a preponderance of the evidence after August 28, 2004, or a court has substantiated through court adjudication that the individual has committed child abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to section 565.020, 565.021, 565.023, 565.024 or 565.050 if the victim is a child less than eighteen years of age, section 566.030 or 566.060 if the victim is a child less than eighteen years of age, or other crime pursuant to chapter 566 if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050 if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, section 573.025 or 573.035, or an attempt to commit any such crimes. Any persons placed on the registry prior to August 28, 2004, shall remain on the registry for the duration of time required by section 210.152;

(4) "Child", any person, regardless of physical or mental condition, under eighteen years of age;

(5) "Children's services providers and agencies", any public, quasi- public, or private entity with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services;

(6) "Director", the director of the Missouri children's division within the department of social services;

(7) "Division", the Missouri children's division within the department of social services;

(8) "Family assessment and services", an approach to be developed by the children's division which will provide for a prompt assessment of a child who has been reported to the division as a victim of abuse or neglect by a person responsible for that child's care, custody or control and of that child's family, including risk of abuse and neglect and, if necessary, the provision of community-based services to reduce the risk and support the family;

(9) "Family support team meeting" or "team meeting", a meeting convened by the division or children's services provider in behalf of the family and/or child for the purpose of determining service and treatment needs, determining the need for placement and developing a plan for reunification or other permanency options, determining the appropriate placement of the child, evaluating case progress, and establishing and revising the case plan;

(10) “Investigation”, the collection of physical and verbal evidence to determine if a child has been abused or neglected;

(11) “Jail or detention center personnel” , employees and volunteers working in any premises or institution where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are being held under custody of the law;

(12) “Neglect”, failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being;

(13) “Preponderance of the evidence”, that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not;

(14) “Probable cause”, available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected;

(15) “Report”, the communication of an allegation of child abuse or neglect to the division pursuant to section 210.115;

(16) “Those responsible for the care, custody, and control of the child”, those included but not limited to the parents or guardian of a child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day. Those responsible for the care, custody and control shall also include any adult who, based on relationship to the parents of the child, members of the child's household or the family, has access to the child.

CREDIT(S)

(L.1975, H.B. No. 578, p. 250, § 1, eff. June 6, 1975. Amended by L.1982, H.B. Nos. 1171, 1173, 1306 & 1643, § 1; L.1985, H.B. Nos. 366, 248, 372 & 393, § A; L.1994, S.B. No. 595, § A; L.2000, S.B. Nos. 757 & 602, § A; L.2004, H.B. No. 1453, § A; L.2005, H.B. No. 568, § A.)

Mo. Rev. Stat. § 210.165 (2012). Child Abuse. Penalty for violation

<Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.>

1. Any person violating any provision of sections 210.110 to 210.165 is guilty of a class A misdemeanor.

2. Any person who intentionally files a false report of child abuse or neglect shall be guilty of a class A misdemeanor.

3. Every person who has been previously convicted of making a false report to the children's division or its predecessor agency, the division of family services, and who is subsequently convicted of making a false report under subsection 2 of this section is guilty of a class D felony and shall be punished as provided by law.

4. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

CREDIT(S)

(L.1975, H.B. No. 578, p. 254, § 12, eff. June 6, 1975. Amended by L.1982, H.B. Nos. 1171, 1173, 1306 & 1643, § 1; L.1986, S.B. No. 470, § A; L.2014, H.R.B. No. 1299, § A, eff. Aug. 28, 2014.)

Mo. Rev. Stat. § 211.447 (2015). Petition to terminate parental rights filed, when--juvenile court may terminate parental rights, when--investigation to be made--grounds for termination

211.447. Petition to terminate parental rights filed, when--juvenile court may terminate parental rights, when--investigation to be made--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

(c) The parent has voluntarily relinquished a child under section 210.950; 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 or rape in the first degree. When the biological father has pled guilty to, or is convicted of, the forcible rape or rape in the first degree 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) (a) 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, specific conditions directly relating to the parent and child relationship 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.

(b) It is presumed that a parent is unfit to be a party to the parent and child relationship upon a showing that:

a. 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 this subsection or similar laws of other states;

b. If the parent is the birth mother and within eight hours after the child's birth, the child's birth mother tested positive and over .08 blood alcohol content pursuant to testing under section 577.020 for alcohol, or tested positive for cocaine, heroin, methamphetamine, a controlled

substance as defined in section 195.010, or a prescription drug as defined in section 196.973, excepting those controlled substances or prescription drugs present in the mother's body as a result of medical treatment administered to the mother, and the birth mother is the biological mother of at least one other child who was adjudicated an abused or neglected minor by the mother or the mother has previously failed to complete recommended treatment services by the children's division through a family-centered services case;

c. If the parent is the birth mother and at the time of the child's birth or within eight hours after a child's birth the child tested positive for alcohol, cocaine, heroin, methamphetamine, a controlled substance as defined in section 195.010, or a prescription drug as defined in section 196.973, excepting those controlled substances or prescription drugs present in the mother's body as a result of medical treatment administered to the mother, and the birth mother is the biological mother of at least one other child who was adjudicated an abused or neglected minor by the mother or the mother has previously failed to complete recommended treatment services by the children's division through a family-centered services case; or

d. Within a three-year period immediately prior to the termination adjudication, the parent has pled guilty to or has been convicted of a felony involving the possession, distribution, or manufacture of cocaine, heroin, or methamphetamine, and the parent is the biological parent of at least one other child who was adjudicated an abused or neglected minor by such parent or such parent has previously failed to complete recommended treatment services by the children's division through a family-centered services case.

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.

CREDIT(S)

(L.1978, H.B. No. 972, p. 552, § 2. Amended by L.1982, H.B. Nos. 1171, 1173, 1306 & 1643, § 1; L.1985, H.B. Nos. 366, 248, 372 & 393, § A; L.1990, H.B. Nos. 1370, 1037 & 1084, § A; L.1997, H.B. No. 343, § A; L.1998, S.B. No. 674, § B; L.1998, H.B. No. 1822, § A, eff. July 1, 1998; L.2007, S.B. No. 84, § A; L.2011, H.B. No. 555, § A; L.2011, H.B. No. 604, § A; L.2011, H.B. No. 648, § A; L.2013, H.B. No. 215, § A, eff. Aug. 28, 2013; L.2013, S.B. No. 256, § A, eff. Aug. 28, 2013; L.2014, S.B. No. 530, § A, eff. Aug. 28, 2014.) Statutes are current through the end of the 2014 Second Regular Session of the 97th General Assembly. Constitution is current through the November 4, 2014 General Election.

MONTANA

Mont. Code Ann. § 41-3-102 (2012). Child Abuse and Neglect. Definitions

As used in this chapter, the following definitions apply:

(1)(a) “Abandon”, “abandoned”, and “abandonment” mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) “A person responsible for a child's welfare” means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect.

(4)(a) “Adequate health care” means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the

prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) “Best interests of the child” means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) “Child” or “youth” means any person under 18 years of age.

(7)(a) “Child abuse or neglect” means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b)(i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), “dangerous drugs” means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as “serious emotional or physical damage to the child” as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) “Concurrent planning” means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) "Parent" means a biological or adoptive parent or stepparent.

(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21)(a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22)(a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23)(a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27)(a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) “Sexual exploitation” means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29)(a) “Social worker” means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) “Treatment plan” means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) “Unfounded” means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) “Unsubstantiated” means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33)(a) “Withholding of medically indicated treatment” means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), “infant” means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) “Youth in need of care” means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

CREDIT(S)

Enacted 10-1301 by Laws 1974, ch. 328, § 2. Amended by Laws 1977, ch. 100, § 18; Revised Code of Montana 1947, 10-1301; amended by Laws 1979, ch. 543, § 2; amended by Laws 1981, ch. 511, § 2; amended by Laws 1983, ch. 465, § 31; amended by Laws 1983, ch. 564, § 1; amended by Laws 1985, ch. 626, § 1; amended by Laws 1987, ch. 463, § 1; amended by Laws 1987, ch. 609, § 36; amended by Laws 1989, ch. 474, § 1; amended by Laws 1993, ch. 439, § 1; amended by Laws 1995, ch. 458, § 6; amended by Laws 1995, ch. 528, § 2; amended by Laws 1995, ch. 546, § 159; amended by Laws 1995, ch. 564, § 2; amended by Laws 1997, ch. 514, § 3; amended by Laws 1997, ch. 516, §§ 2, 19(1); amended by Laws 1999, ch. 566, § 2; amended by Laws 2001, ch. 194, § 1; amended by Laws 2001, ch. 277, § 16; amended by Laws 2001, ch. 311, § 2; amended by Laws 2003, ch. 398, § 1; amended by Laws 2003, ch. 406, § 1; amended by Laws 2003, ch. 458, § 1; amended by Laws 2003, ch. 504, § 2; amended by Laws 2003, ch. 555, § 1; amended by Laws 2005, ch. 349, § 1; amended by Laws 2009, ch. 179, § 5, eff. Oct. 1, 2009; amended by Laws 2013, ch. 225, § 2, eff. Oct. 1, 2013. Current through the 2013 Session, and the 2014 general election. Court Rules in the Code are current with amendments received through August 1, 2014.

NEBRASKA

Neb. Rev. Stat. Ann. § 28-707 (2015). Child abuse; privileges not available; penalties

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

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

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class III felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

CREDIT(S)

Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB 507, § 3, eff. July 15, 2010; Laws 2012, LB 799, § 2, eff. July 19, 2012; Laws 2013, LB 255, § 1, eff. Oct. 1, 2013. Current through End of 2014 Regular Session.

Neb. Rev. Stat. Ann. § 28-710 (2015). Act, how cited; terms, defined

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Sexually abused; or

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(c) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect. Comprehensive assessment does not include a determination as to whether the child abuse or neglect occurred but does determine the need for services and support to address the safety of children and the risk of future abuse or neglect;

(d) Department means the Department of Health and Human Services;

(e) Investigation means fact gathering related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(f) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(g) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, and other child care facilities or institutions;

(h) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(i) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(j) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

CREDIT(S)

Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB 265, § 29, eff. May 26, 2013; Laws 2014, LB 853, § 1, eff. July 18, 2014.

NEVADA

Nev. Rev. Stat. Ann. § 128.0137 (2015). "Mental injury" defined

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within his or her normal range of performance and behavior.

CREDIT(S)

Added by Laws 1981, p. 1751. Current through End of 28th Special Session (2014)

Nev. Rev. Stat. Ann. § 128.014 (2015). "Neglected child" defined

"Neglected child" includes a child:

1. Who lacks the proper parental care by reason of the fault or habits of his or her parent, guardian or custodian;
2. Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child's health, morals or well-being;
3. Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the child's physical or mental condition;
4. Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or
5. Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of the child or others,

and the parent's neglect need not be willful.

CREDIT(S)

Added by Laws 1975, p. 964. Amended by Laws 1981, p. 1753. Current through End of 28th Special Session (2014)

Nev. Rev. Stat. Ann. § 200.508 (2015). Abuse, neglect or endangerment of child: Penalties; definitions

1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years,

unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

2. A person who is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130,

unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that the person delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.

4. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

(1) Permanent or temporary disfigurement; or

(2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.

CREDIT(S)

Added by Laws 1971, p. 772. Amended by Laws 1975, p. 1141; Laws 1977, pp. 738, 1629; Laws 1985, p. 1399; Laws 1989, pp. 866, 1510, 1512; Laws 1995, p. 1193; Laws 1997, c. 240, § 3; Laws 1997, c. 455, § 2; Laws 1999, c. 105, § 49, eff. May 11, 1999; Laws 2001, c. 258, § 1; Laws 2001, c. 276, § 14, eff. May 31, 2001; Laws 2003, c. 2, § 23, eff. March 5, 2003. Current through End of 28th Special Session (2014)

Nev. Rev. Stat. Ann. § 432B.020 (2015). “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.

CREDIT(S)

Added by Laws 1985, p. 1368. Amended by Laws 2001, c. 276, § 2, eff. May 31, 2001; Laws 2003, c. 206, § 357, eff. Jan. 1, 2004. Current through End of 28th Special Session (2014)

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 169-C:3 (2012). Child Protection Act. 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 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.

HISTORY

Source. 1979, 361:2. 1983, 291:1. 1986, 223:2, 3, 5, 6. 1987, 402:12. 1989, 146:1. 1990, 240:1; 257:5, 6. 1994, 212:2; 411:1, 2, 17, 19, 1. 1995, 310:124, 175. 2000, 294:9. 2007, 236:6-8, eff. Jan. 1, 2008. 2014, 271:3, eff. July 28, 2014. Updated with laws current through Chapter 330 (End) of the 2014 Reg. Sess.

NEW JERSEY

N.J. Stat. Ann. § 9:6-1 (2015). 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.

CREDIT(S)

Amended by L.1987, c. 341, § 1, eff. Dec. 24, 1987. Current with laws effective through L.2014, c. 87 and J.R. No. 4.

N.J. Stat. Ann. § 9:6-3 (2015). Cruelty and neglect of children; crime of fourth degree; remedies

Any parent, guardian or person having the care, custody or control of any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a crime of the fourth degree. If a fine be imposed, the court may direct the same to be paid in whole or in part to the parent, or to the guardian, custodian or trustee of such minor child or children; provided, however, that whenever in the judgment of the court it shall appear to the best interest of the child to place it in the temporary care or custody of a society or corporation, organized or incorporated under the laws of this State, having as one of its objects the prevention of cruelty to children, and the society or corporation is willing to assume such custody and control, the court may postpone sentence and place the child in the custody of such society or corporation, and may place defendant on probation, either with the county probation officers or an officer of the society or corporation to which the child is ordered, and may order the parent, guardian or person having the custody and control of such child to pay to such society or corporation a certain stated sum for the maintenance of such child. When, however, a child is so placed in the custody of such society or corporation, and defendant fails to make the payments as ordered by the court, the court shall cause the arrest and arraignment before it of such defendant, and shall impose upon the defendant the penalty provided in this section.

CREDIT(S)

Amended by L.1944, c. 196, p. 711, § 1; L.1990, c. 26, § 5, eff. Aug. 19, 1990. Current with laws effective through L.2014, c. 87 and J.R. No. 4.

N.J. Stat. Ann. § 9:6-8.9 (2015). "Abused child" defined

For purposes of this act:

"Abused child" means a child under the age of 18 years whose parent, guardian, or other person having his custody and control:

a. 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;

b. Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or

c. Commits or allows to be committed an act of sexual abuse against the child;

d. Or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, or such other person having his custody and control, to exercise a minimum degree of care (1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (2) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment or using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or by any other act of a similarly serious nature requiring the aid of the court;

e. Or a child who has been willfully abandoned by his parent or guardian, or such other person having his custody and control;

f. Or a child who is in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21) and (1) has been so placed inappropriately for a continued period of time with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being or (2) has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

A child shall not be considered abused pursuant to subsection f. of this section if the acts or omissions described therein occur in a day school as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21).

CREDIT(S)

L.1971, c. 437, § 2, eff. Feb. 10, 1972. Amended by L.1974, c. 119, § 53, eff. Oct. 10, 1974; L.1987, c. 341, § 3, eff. Dec. 24, 1987. Current with laws effective through L.2014, c. 87 and J.R. No. 4. Current with laws effective through L.2014, c. 87 and J.R. No. 4.

N.J. Stat. Ann. § 9:6-8.21 (2012). Adjudication of Alleged Child Abuse or Neglect.

As used in P.L.1974, c. 119 (C.9-8.21 et seq.), unless the specific context indicates otherwise:

a. "Parent or guardian" means any natural parent, adoptive parent, resource family parent, stepparent, paramour of a parent, or any person, who has assumed responsibility for the care, custody, or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee, or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L.1974, c. 119 (C.9:6-8.21).

b. "Child" means any child alleged to have been abused or neglected.

c. "Abused or neglected child" means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who

has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section.

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

d. "Law guardian" means an attorney admitted to the practice of law in this State, regularly employed by the Office of the Public Defender or appointed by the court, and designated under P.L.1974, c. 119 to represent minors in alleged cases of child abuse or neglect and in termination of parental rights proceedings.

e. "Attorney" means an attorney admitted to the practice of law in this State who shall be privately retained; or, in the instance of an indigent parent or guardian, an attorney from the Office of the Public Defender or an attorney appointed by the court who shall be appointed in order to avoid conflict between the interests of the child and the parent or guardian in regard to representation.

f. "Division" means the Division of Child Protection and Permanency in the Department of Children and Families unless otherwise specified.

g. "Institution" means a public or private facility in the State which provides children with out of home care, supervision, or maintenance. Institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, day care center, residential school, shelter, and hospital.

h. "Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

CREDIT(S)

L.1974, c. 119, § 1, eff. Oct. 10, 1974. Amended by L.1977, c. 209, § 1, eff. Sept. 7, 1977; L.1987, c. 341, § 6, eff. Dec. 24, 1987; L.1994, c. 58, § 39, eff. July 1, 1994; L.1999, c. 53, § 55, eff. March 31, 1999; L.2004, c. 130, § 27, eff. Aug. 27, 2004; L.2005, c. 169, § 1, eff. Aug. 5, 2005; L.2006, c. 47, § 47, eff. July 1, 2006; L.2012, c. 16, § 31, eff. June 29, 2012. Current with laws effective through L.2014, c. 87 and J.R. No. 4.

NEW MEXICO

N.M. Stat. Ann. § 32A-4-2 (2012). Child Abuse and Neglect. Definitions

As used in the Abuse and Neglect Act:

A. “abandonment” includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. “abused child” means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. “aggravated circumstances” includes those circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

(4) had parental rights over a sibling of the child terminated involuntarily;

D. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

E. "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. “sexual abuse” includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

H. “sexual exploitation” includes but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; and

I. “transition plan” means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation.

CREDIT(S)

L. 1993, Ch. 77, § 96; L. 1997, Ch. 34, § 1, eff. July 1, 1997; L. 1999, Ch. 77, § 3, eff. July 1, 1999; L. 2009, Ch. 239, § 33, eff. July 1, 2009. Current through the end of the Second Regular Session of the 51st Legislature (2014).

NEW YORK

N.Y. Penal Law § 260.10 (2015). Endangering the welfare of a child

A person is guilty of endangering the welfare of a child when:

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he or she fails or refuses to exercise reasonable diligence in the control of such child to prevent him or her from becoming an “abused child,” a “neglected child,” a “juvenile delinquent” or a “person in need of supervision,” as those terms are defined in articles ten, three and seven of the family court act.

3. A person is not guilty of the provisions of this section when he or she engages in the conduct described in subdivision one of section 260.00 of this article: (a) with the intent to wholly abandon the child by relinquishing responsibility for and right to the care and custody of such child; (b) with the intent that the

child be safe from physical injury and cared for in an appropriate manner; (c) the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and (d) the child is not more than thirty days old.

Endangering the welfare of a child is a class A misdemeanor.

CREDIT(S)

(L.1965, c. 1030. Amended L.1967, c. 791, § 44; L.1970, c. 389, § 1; L.1970, c. 962, § 14; L.1982, c. 920, § 81; L.1990, c. 476, § 1; L.2010, c. 447, § 2, eff. Aug. 30, 2010.) Current through L.2014, chapters 1 to 550.

N.Y. Soc. Serv. Law § 371 (2015). Definitions

Unless the context or the subject matter manifestly requires a different interpretation, when used in this article or in any special act relating to children,

1. "Child" means a person actually or apparently under the age of eighteen years;
2. "Abandoned child" means a child under the age of eighteen years who is abandoned by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b;
3. "Destitute child" means:
 - (a) a child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care; and
 - (i) does not fit within the definition of an "abused child" or a "neglected child" as such terms are defined in section one thousand twelve of the family court act; and
 - (ii) is without any parent or caretaker as such term is defined in section one thousand ninety-two of the family court act, available to sufficiently care for him or her, due to:
 - (A) the death of a parent or caretaker; or
 - (B) the incapacity or debilitation of a parent or caretaker, where such incapacity or debilitation would prevent such parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child pursuant to section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law; or
 - (C) the inability of the local social services district to locate any parent or caretaker, after making reasonable efforts to do so; or
 - (D) the parent or caretaker being physically located outside of the state of New York and the local social services district is or has been unable to return said child to such parent or caretaker

while or after making reasonable efforts to do so, unless the lack of such efforts is or was appropriate under the circumstances;

(b) a child who is under the age of eighteen years and absent from his or her legal residence without the consent of his or her parent, legal guardian or custodian; or

(c) a child under the age of eighteen who is without a place of shelter where supervision and care are available who is not otherwise covered under paragraph (a) of this subdivision; or

(d) a person who is a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to continuation in placement, who has returned to foster care pursuant to section one thousand ninety-one of the family court act.

4. Repealed.

4-a. "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, education, medical 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 by his parents or other person legally responsible for his care.

4-b. "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 act of sexual abuse against such child as defined in the penal law.

5. "Juvenile delinquent" means a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime.

6. "Person in need of supervision" means a person less than eighteen years of age who is habitually truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority.

7. "Dependent child" means a child who is in the custody of, or wholly or partly maintained by an authorized agency or an institution, society or other organization of charitable, eleemosynary, correctional, or reformatory character;

8. "Mentally disabled child" means a child who has a mental disability as defined in section 1.03 of the mental hygiene law;

9. "Physically handicapped child" means a child who, by reason of a physical disability or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or is or may be expected to be handicapped, as provided in the public health law;

10. "Authorized agency" means

(a) Any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the office of children and family services or which shall submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children performed or to be performed under this title; provided, however, that on and after June first, two thousand seven, such term shall not include any for-profit corporation or other for-profit entity or organization for the purposes of the operation, management, supervision or ownership of agency boarding homes, group homes, homes including family boarding homes of family free homes, or institutions which are located within this state;

(b) Any court or any social services official of this state authorized by law to place out or to board out children or any Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter;

(c) Any agency, association, corporation, institution, society or other organization which is not incorporated or organized under the laws of this state, placing out a child for adoption whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act [FN1] is sought for the purpose of adoption in the State of New York or who has been brought into the United States with such status and for such purpose, provided, however, that such agency, association, corporation, institution, society or other organization is licensed or otherwise authorized by another state to place out children for adoption, that such agency, association, corporation, institution, society or other organization is approved by the department to place out such children with non-quota immigrant status for adoption in the State of New York, and provided further, that such agency, association, corporation, institution, society or other organization complies with the regulations of the department pertaining to such placements. Notwithstanding any other provision of law to the contrary, such agency shall be limited in its functioning as an authorized agency to the placing out and adoption of such children. This paragraph shall not require the department to approve any such agency, association, corporation, institution, society or other organization which is located in a state which is a party to the interstate compact on the placement of children.

11. "Custody" means custody in pursuance of or in compliance with expressed provisions of law;

12. "Place out" means to arrange for the free care of a child in a family other than that of the child's parent, step-parent, grandparent, brother, sister, uncle, or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care;

13. "Place" or "commit" includes replace and recommit;

14. "Board out" means to arrange for the care of a child in a family, other than that of the child's parent, step-parent or legal guardian, to whom payment is made or agreed to be made for care and maintenance.

15. "Home" includes a family boarding home or a family free home.

16. agency [FN2] boarding home shall mean a family-type home for children and/or for minors operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, for the purpose of providing care and maintenance therein for children or minors under the care of such agency.

17. "Group home" shall mean a facility for the care and maintenance of not less than seven, nor more than twelve children, who are at least five years of age, operated by an authorized agency except that such minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.

18. “Public institution for children” shall mean an institution which is established and maintained by a public welfare district for the purpose of providing care and maintenance therein for children and minors for whose care such district is responsible and who require care away from their own homes.

19. “Foster parent” shall mean any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and “foster child” shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care.

20. “Therapeutic foster parent” means a foster parent who is certified or licensed pursuant to section three hundred seventy-five or section three hundred seventy-six of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by section four hundred nine-e of this article.

21. “Supervised independent living program” shall mean one or more of a type of agency boarding home operated and certified by an authorized agency in accordance with the regulations of the office of children and family services to provide a transitional experience for older youth who, based upon their circumstances, are appropriate for transition to the level of care and supervision provided in the program. Each supervised independent living unit shall be located in the community separate from any of the agency's other congregate dwellings.

22. Repealed.

CREDIT(S)

(Added L.1962, c. 690, § 21. Amended L.1962, c. 584, § 1; L.1962, c. 947, § 1; L.1965, c. 347, § 1; L.1965, c. 406, § 1; L.1967, c. 276, § 1; L.1967, c. 479, § 1; L.1969, c. 640, § 1; L.1970, c. 570, § 14; L.1970, c. 745, § 1; L.1971, c. 782, § 1; L.1973, c. 315, § 1; L.1973, c. 1037, §§ 1, 2; L.1975, c. 281, § 1; L.1975, c. 427, § 1; L.1976, c. 666, § 7; L.1976, c. 880, § 1; L.1977, c. 450, § 2; L.1977, c. 518, § 2; L.1978, c. 550, § 51; L.1978, c. 555, § 7; L.1978, c. 722, § 2; L.1979, c. 368, § 1; L.1981, c. 984, § 3; L.1982, c. 920, § 71; L.1983, c. 268, § 1; L.1985, c. 491, § 3; L.1986, c. 127, § 3; L.1987, c. 419, § 27; L.1987, c. 462, § 7; L.1987, c. 838, § 5; L.1989, c. 731, § 2; L.1993, c. 87, § 3; L.2000, c. 596, § 1; L.2004, c. 160, § 3, eff. Nov. 17, 2004; L.2007, c. 107, § 1, eff. July 3, 2007, deemed eff. June 1, 2007; L.2010, c. 342, § 9, eff. Nov. 11, 2010; L.2012, c. 3, § 21.) Current through L.2014, chapters 1 to 550.

N.Y. Fam. Ct. Act § 1012 (2015). Definitions

1012. Definitions

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

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

(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, [FN1] 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.

CREDIT(S)

(Added L.1970, c. 962, § 9. Amended L.1971, c. 469, § 1; L.1972, c. 1015, §§ 1, 2; L.1973, c. 276, § 32; L.1973, c. 1039, § 5; L.1976, c. 666, § 27; L.1977, c. 518, § 1; L.1981, c. 984, § 1; L.1984, c. 191, § 1; L.1985, c. 676, § 19; L.1996, c. 309, § 276; L.1999, c. 7, §§ 39, 40, eff. Feb. 11, 1999; L.2005, c. 3, pt. A, § 8, eff. Dec. 21, 2005; L.2005, c. 3, pt. B, § 3, eff. Nov. 21, 2005; L.2006, c. 320, § 28, eff. Nov. 1, 2006; L.2009, c. 329, § 1, eff. Aug. 11, 2009.) Current through L.2014, chapters 1 to 550.

NORTH CAROLINA

N.C. Gen. Stat. § 7B-101 (2015). Juvenile Code. 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; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); 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;
- f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or
- g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

(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) Repealed by S.L. 2013-129, § 1, eff. Oct. 1, 2013.

(6) Court.--The district court division of the General Court of Justice.

(7) Court of competent jurisdiction.--A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. -- A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian.--The person or agency that has been awarded legal custody of a juvenile by a court.

(9) Dependent juvenile.--A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director.--The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District.--Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. -- A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. -- A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge.--Any district court judge.

(13) Judicial district.--Any district court district as established by G.S. 7A-133.

(14) Juvenile.--A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.

(15) Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner.--The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor.--The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts.--The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(18a) Responsible individual.--A parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile.

(18b) Return home or reunification.--Placement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order.

(19) Safe home.--A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(19a) Serious neglect.--Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

(20) Repealed by S.L. 2013-129, § 1, eff. Oct. 1, 2013.

(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.

CREDIT(S)

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998-229, §§ 1, 18, eff. July 1, 1999; S.L. 1999-190, § 1, eff. June 18, 1999; S.L. 1999-318, § 1, eff. Oct. 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2005-55, § 1, eff. Oct. 1, 2005; S.L. 2005-399, § 1, eff. Oct. 1, 2005; S.L. 2009-38, § 1, eff. May 27, 2009; S.L. 2010-90, §§ 1, 2, eff. July 11, 2010; S.L. 2011-183, § 2, eff. June 20, 2011; S.L. 2012-153, § 2, eff. Dec. 1, 2012; S.L. 2013-129, § 1, eff. Oct. 1, 2013; S.L. 2013-368, § 16, eff. Oct. 1, 2013. The statutes and Constitution are current through the end of the 2014 Regular Session of the General Assembly.

N.C. Gen. Stat. § 7B-1111 (2015). 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, done any of the following:

- a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services; provided, the petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
- b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
- c. Legitimated the juvenile by marriage to the mother of the juvenile.
- d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
- e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

(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.

(11) The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.

(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.

CREDIT(S)

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 1998-229, §§ 11, 28, eff. July 1, 1999; S.L. 1999-456, § 60, eff. Aug. 13, 1999; S.L. 2000-183, § 11, eff. Oct. 1, 2000; S.L. 2001-208, § 6, eff. Jan. 1, 2002; S.L. 2001-291, § 3, eff. July 19, 2001; S.L. 2003-140, § 3, eff. June 4, 2003; S.L. 2005-146, § 1, eff. June 30, 2005; S.L. 2007-151, § 1, eff. Oct. 1, 2007; S.L. 2007-484, § 26(a), eff. Oct. 1, 2007; S.L. 2012-40, § 1, eff. Oct. 1, 2012; S.L. 2013-129, § 35, eff. Oct. 1, 2013. The statutes and Constitution are current through the end of the 2014 Regular Session of the General Assembly.

NORTH DAKOTA

N.D. Cent. Code § 14-09-22 (2015). Abuse or neglect of child – Penalty

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:

a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12. 1-01-04 or mental injury.

b. Fails to provide 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.

c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.

d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.

2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.

3. A person who commits an offense under subdivision a of subsection 1 is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.

CREDIT(S)

S.L. 1947, ch. 137, §§ 1, 2; S.L. 1973, ch. 120, § 10; S.L. 1975, ch. 106, § 113; S.L. 1991, ch. 511, § 1; S.L. 1999, ch. 123, § 4; S.L. 2001, ch. 155, § 1; S.L. 2011, ch. 113, § 1, eff. Aug. 1, 2011. Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly.

N.D. Cent. Code § 27-20-02 (2015). Uniform Juvenile Court Act. 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.

CREDIT(S)

S.L. 1969, ch. 289, § 1; S.L. 1971, ch. 306, § 1; S.L. 1971, ch. 307, § 1; S.L. 1973, ch. 120, § 26; S.L. 1975, ch. 280, § 1; S.L. 1977, ch. 270, §§ 1, 2; S.L. 1981, ch. 326, § 1; S.L. 1983, ch. 82, § 59; S.L. 1985, ch. 343, § 1; S.L. 1987, ch. 380, § 1; S.L. 1987, ch. 381, § 1; S.L. 1989, ch. 384, § 1; S.L. 1995, ch. 124, § 8; S.L. 1995, ch. 299, § 1; S.L. 1999, ch. 282, § 3; S.L. 2001, ch. 55, § 9; S.L. 2001, ch. 136, § 2; S.L. 2001, ch. 288, § 1; S.L. 2003, ch. 106, § 3; S.L. 2007, ch. 274, § 3, eff. Aug. 1, 2007; S.L. 2009, ch. 267, § 1, eff. Aug. 1, 2009.

N.D. Cent. Code § 50-25.1-02 (2012). Definitions

OHIO

OHIO REV. CODE ANN. § 2151.011 (2015). Juvenile Courts. Definitions.

(A) As used in the Revised Code:

(1) "Juvenile court" means whichever of the following is applicable that has jurisdiction under this chapter and Chapter 2152. of the Revised Code:

(a) The division of the court of common pleas specified in section 2101.022 or 2301.03 of the Revised Code as having jurisdiction under this chapter and Chapter 2152. of the Revised Code or as being the juvenile division or the juvenile division combined with one or more other divisions;

(b) The juvenile court of Cuyahoga county or Hamilton county that is separately and independently created by section 2151.08 or Chapter 2153. of the Revised Code and that has jurisdiction under this chapter and Chapter 2152. of the Revised Code;

(c) If division (A)(1)(a) or (b) of this section does not apply, the probate division of the court of common pleas.

(2) “Juvenile judge” means a judge of a court having jurisdiction under this chapter.

(3) “Private child placing agency” means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(4) “Private noncustodial agency” means any person, organization, association, or society certified by the department of job and family services that does not accept temporary or permanent legal custody of children, that is privately operated in this state, and that does one or more of the following:

(a) Receives and cares for children for two or more consecutive weeks;

(b) Participates in the placement of children in certified foster homes;

(c) Provides adoption services in conjunction with a public children services agency or private child placing agency.

(B) As used in this chapter:

(1) “Adequate parental care” means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

(2) “Adult” means an individual who is eighteen years of age or older.

(3) “Agreement for temporary custody” means a voluntary agreement authorized by section 5103.15 of the Revised Code that transfers the temporary custody of a child to a public children services agency or a private child placing agency.

(4) “Alternative response” means the public children services agency's response to a report of child abuse or neglect that engages the family in a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs and that does not include a determination as to whether child abuse or neglect occurred.

(5) “Certified foster home” means a foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code.

(6) “Child” means a person who is under eighteen years of age, except that the juvenile court has jurisdiction over any person who is adjudicated an unruly child prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated an unruly child shall be deemed a “child” until the person attains twenty-one years of age.

(7) “Child day camp,” “child care,” “child day-care center,” “part-time child day-care center,” “type A family day-care home,” “licensed type B family day-care home,” “type B family day-care home,” “administrator of a child day-care center,” “administrator of a type A family day-care home,” and “in-home aide” have the same meanings as in section 5104.01 of the Revised Code.

(8) “Child care provider” means an individual who is a child-care staff member or administrator of a child day-care center, a type A family day-care home, or a type B family day-care home, or an in-home aide or an individual who is licensed, is regulated, is approved, operates under the direction of, or otherwise is certified by the department of job and family services, department of developmental disabilities, or the early childhood programs of the department of education.

(9) “Chronic truant” has the same meaning as in section 2152.02 of the Revised Code.

(10) “Commit” means to vest custody as ordered by the court.

(11) “Counseling” includes both of the following:

(a) General counseling services performed by a public children services agency or shelter for victims of domestic violence to assist a child, a child's parents, and a child's siblings in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or a person licensed under Chapter 4757. of the Revised Code to engage in social work or professional counseling.

(12) “Custodian” means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.

(13) “Delinquent child” has the same meaning as in section 2152.02 of the Revised Code.

(14) “Detention” means the temporary care of children pending court adjudication or disposition, or execution of a court order, in a public or private facility designed to physically restrict the movement and activities of children.

(15) “Developmental disability” has the same meaning as in section 5123.01 of the Revised Code.

(16) “Differential response approach” means an approach that a public children services agency may use to respond to accepted reports of child abuse or neglect with either an alternative response or a traditional response.

(17) “Foster caregiver” has the same meaning as in section 5103.02 of the Revised Code.

(18) “Guardian” means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111. of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(19) “Habitual truant” means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year.

(20) “Juvenile traffic offender” has the same meaning as in section 2152.02 of the Revised Code.

(21) “Legal custody” means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(22) A “legitimate excuse for absence from the public school the child is supposed to attend” includes, but is not limited to, any of the following:

(a) The fact that the child in question has enrolled in and is attending another public or nonpublic school in this or another state;

(b) The fact that the child in question is excused from attendance at school for any of the reasons specified in section 3321.04 of the Revised Code;

(c) The fact that the child in question has received an age and schooling certificate in accordance with section 3331.01 of the Revised Code.

(23) “Mental illness” and “mentally ill person subject to court order” have the same meanings as in section 5122.01 of the Revised Code.

(24) “Mental injury” means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

(25) “Mentally retarded person” has the same meaning as in section 5123.01 of the Revised Code.

(26) “Nonsecure care, supervision, or training” means care, supervision, or training of a child in a facility that does not confine or prevent movement of the child within the facility or from the facility.

(27) “Of compulsory school age” has the same meaning as in section 3321.01 of the Revised Code.

(28) “Organization” means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in certified foster homes or elsewhere.

(29) “Out-of-home care” means detention facilities, shelter facilities, certified children's crisis care facilities, certified foster homes, placement in a prospective adoptive home prior to the issuance of a final decree of adoption, organizations, certified organizations, child day-care centers, type A family day-care homes, type B family day-care homes, child care provided by in-home aides, group home providers, group homes, institutions, state institutions, residential facilities, residential care facilities, residential camps, day camps, public schools, chartered nonpublic schools, educational service centers, hospitals, and medical clinics that are responsible for the care, physical custody, or control of children.

(30) “Out-of-home care child abuse” means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Engaging in sexual activity with a child in the person's care;
- (b) Denial to a child, as a means of punishment, of proper or necessary subsistence, education, medical care, or other care necessary for a child's health;
- (c) Use of restraint procedures on a child that cause injury or pain;
- (d) Administration of prescription drugs or psychotropic medication to the child without the written approval and ongoing supervision of a licensed physician;
- (e) Commission of any act, other than by accidental means, that results in any injury to or death of the child in out-of-home care or commission of any act by accidental means that results in an injury to or death of a child in out-of-home care and that is at variance with the history given of the injury or death.

(31) “Out-of-home care child neglect” means any of the following when committed by a person responsible for the care of a child in out-of-home care:

- (a) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child;

(b) Failure to provide reasonable supervision according to the standards of care appropriate to the age, mental and physical condition, or other special needs of the child, that results in sexual or physical abuse of the child by any person;

(c) Failure to develop a process for all of the following:

(i) Administration of prescription drugs or psychotropic drugs for the child;

(ii) Assuring that the instructions of the licensed physician who prescribed a drug for the child are followed;

(iii) Reporting to the licensed physician who prescribed the drug all unfavorable or dangerous side effects from the use of the drug.

(d) Failure to provide proper or necessary subsistence, education, medical care, or other individualized care necessary for the health or well-being of the child;

(e) Confinement of the child to a locked room without monitoring by staff;

(f) Failure to provide ongoing security for all prescription and nonprescription medication;

(g) Isolation of a child for a period of time when there is substantial risk that the isolation, if continued, will impair or retard the mental health or physical well-being of the child.

(32) "Permanent custody" means a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations.

(33) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children services agency or a private child placing agency.

(34) "Person" means an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(35) "Person responsible for a child's care in out-of-home care" means any of the following:

(a) Any foster caregiver, in-home aide, or provider;

(b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; licensed type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp;

day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic;

(c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school;

(d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.

(36) “Physically impaired” means having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction:

(a) A substantial impairment of vision, speech, or hearing;

(b) A congenital orthopedic impairment;

(c) An orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause.

(37) “Placement for adoption” means the arrangement by a public children services agency or a private child placing agency with a person for the care and adoption by that person of a child of whom the agency has permanent custody.

(38) “Placement in foster care” means the arrangement by a public children services agency or a private child placing agency for the out-of-home care of a child of whom the agency has temporary custody or permanent custody.

(39) “Planned permanent living arrangement” means an order of a juvenile court pursuant to which both of the following apply:

(a) The court gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights.

(b) The order permits the agency to make an appropriate placement of the child and to enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed.

(40) “Practice of social work” and “practice of professional counseling” have the same meanings as in section 4757.01 of the Revised Code.

(41) “Sanction, service, or condition” means a sanction, service, or condition created by court order following an adjudication that a child is an unruly child that is described in division (A)(4) of section 2152.19 of the Revised Code.

(42) “Protective supervision” means an order of disposition pursuant to which the court permits an abused, neglected, dependent, or unruly child to remain in the custody of the child's parents, guardian, or custodian and stay in the child's home, subject to any conditions and limitations upon the child, the child's parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

(43) “Psychiatrist” has the same meaning as in section 5122.01 of the Revised Code.

(44) “Psychologist” has the same meaning as in section 4732.01 of the Revised Code.

(45) “Residential camp” means a program in which the care, physical custody, or control of children is accepted overnight for recreational or recreational and educational purposes.

(46) “Residential care facility” means an institution, residence, or facility that is licensed by the department of mental health and addiction services under section 5119.34 of the Revised Code and that provides care for a child.

(47) “Residential facility” means a home or facility that is licensed by the department of developmental disabilities under section 5123.19 of the Revised Code and in which a child with a developmental disability resides.

(48) “Residual parental rights, privileges, and responsibilities” means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(49) “School day” means the school day established by the board of education of the applicable school district pursuant to section 3313.481 of the Revised Code.

(50) “School year” has the same meaning as in section 3313.62 of the Revised Code.

(51) “Secure correctional facility” means a facility under the direction of the department of youth services that is designed to physically restrict the movement and activities of children and used for the placement of children after adjudication and disposition.

(52) “Sexual activity” has the same meaning as in section 2907.01 of the Revised Code.

(53) “Shelter” means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition.

(54) “Shelter for victims of domestic violence” has the same meaning as in section 3113.33 of the Revised Code.

(55) “Temporary custody” means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.

(56) “Traditional response” means a public children services agency's response to a report of child abuse or neglect that encourages engagement of the family in a comprehensive evaluation of the child's current and future safety needs and a fact-finding process to determine whether child abuse or neglect occurred and the circumstances surrounding the alleged harm or risk of harm.

(C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

CREDIT(S)

(2014 S 43, eff. 9-17-14; 2013 H 59, § 110.20, eff. 1-1-14 (Provisions subject to different effective dates); 2012 S 316, § 120.01, eff. 1-1-14; 2013 H 59, § 101.01, eff. 9-29-13; 2011 H 153, eff. 9-29-11; 2009 S 79, eff. 10-6-09; 2006 S 238, eff. 9-21-06; 2004 H 11, eff. 5-18-05; 2004 H 106, eff. 9-16-04; 2002 H 400, eff. 4-3-03; 2000 S 179, § 3, eff. 1-1-02; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 2000 S 181, eff. 9-4-00; 1999 H 470, eff. 7-1-00; 1998 H 484, eff. 3-18-99; 1998 S 212, eff. 9-30-98; 1997 H 408, eff. 10-1-97; 1996 S 223, eff. 3-18-97; 1996 H 124, eff. 3-31-97; 1996 H 265, eff. 3-3-97; 1996 H 274, § 4, eff. 8-8-96; 1996 H 274, § 1, eff. 8-8-96; 1995 S 2, eff. 7-1-96; 1995 H 1, eff. 1-1-96; 1994 H 715, eff. 7-22-94; 1993 S 21, eff. 10-29-93; 1993 H 152, eff. 7-1-93; 1992 H 356; 1991 H 155; 1990 H 38; 1989 H 257; 1988 H 403) Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

OHIO REV. CODE ANN. § 2151.03 (2015). Juvenile Courts. “Neglected child” defined

(A) As used in this chapter, “neglected child” includes any child:

(1) Who is abandoned by the child's parents, guardian, or custodian;

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

CREDIT(S)

(2006 S 17, eff. 8-3-06; 1996 H 274, eff. 8-8-96; 1989 H 257, eff. 8-3-89; 1969 H 320; 1953 H 1; GC 1639-3) Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

OHIO REV. CODE ANN. § 2151.031 (2015). “Abused child” defined

As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

CREDIT(S)

(1989 H 257, eff. 8-3-89; 1988 S 89; 1975 H 85)

Current through Files 1 to 146, 148 to 157, 159 to 161, 164 to 178, 181 to 185, 187 to 190, 192 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

OHIO REV. CODE ANN. § 2919.22 (2015). ENDANGERING CHILDREN

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 to 4511.197 of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

(a) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(b) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(D)(1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

(a) “Material,” “performance,” “obscene,” and “sexual activity” have the same meanings as in section 2907.01 of the Revised Code.

(b) “Nudity-oriented matter” means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) “Sexually oriented matter” means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E)(1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following, and, in the circumstances described in division (E)(2)(e) of this section, that division applies:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(e) If the violation is a felony violation of division (B)(1) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree. If the offender violates division (B)(2), (3), or (4) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code. If the offender violates division (B)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(a) If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(b) If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(4) If the offender violates division (B)(5) of this section, endangering children is a felony of the second degree. If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as otherwise provided in division (E)(5)(b) or (c) of this section, endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(5)(c) of this section, endangering children in violation of division (C) of this section is a felony of the fifth degree.

(c) If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of division (C) of this section, section 2903.06 or 2903.08 of the Revised Code, section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony of the fourth degree.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(5)(a), (b), or (c) of this section or pursuant to any other provision of law and in addition to any suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(e) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to division (E)(5)(a), (b), (c), or (d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with section 4511.19 of the Revised Code for that violation of division (A) of section 4511.19 of the Revised Code.

(F)(1)(a) A court may require an offender to perform not more than two hundred hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender's community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the

court requires the offender to perform supervised community service work as part of the offender's community control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

(i) The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of division (C) of this section, if applicable.

(ii) The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of section 2951.02 of the Revised Code.

(iii) The community service work shall be supervised in the manner described in division (B)(4) of section 2951.02 of the Revised Code by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.

(iv) The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

(b) If a court, pursuant to division (F)(1)(a) of this section, orders an offender to perform community service work as part of the offender's community control sanction or sentence and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under that sentence or term and by the total amount of

time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code.

(2) Division (F)(1) of this section does not limit or affect the authority of the court to suspend the sentence imposed upon a misdemeanor offender and place the offender under a community control sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of section 2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G)(1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under division (E)(5)(d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the violation of division (C) of this section that is the basis of the suspension under division (E)(5)(d) of this section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under division (E)(5)(d) of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 of the Revised Code.

(H)(1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2)(a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A) of section 4511.19 of the Revised Code;

(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(l) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code;

(2) "Limited driving privileges" has the same meaning as in section 4501.01 of the Revised Code;

(3) "Methamphetamine" has the same meaning as in section 2925.01 of the Revised Code.

CREDIT(S)

(2011 H 86, eff. 9-30-11; 2008 H 280, eff. 4-7-09; 2006 S 8, eff. 8-17-06; 2006 S 53, eff. 5-17-06; 2004 S 58, eff. 8-11-04; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 S 180, eff. 3-22-01; 1999 S 107, eff. 3-23-00; 1999 H 162, eff. 8-25-99; 1997 S 60, eff. 10-21-97; 1996 S 269, § 8, eff. 5-15-97; 1996 S 269, § 1, eff. 7-1-96; 1996 H 353, § 4, eff. 5-15-97; 1996 H 353, § 1, eff. 9-17-96; 1995 H 167, eff. 5-15-97; 1995 S 2, eff. 7-1-96; 1994 H 236, eff. 9-29-94; 1988 H 51, eff. 3-17-89; 1985 H 349; 1984 S 321, H 44; 1977 S 243; 1972 H 511)

OKLAHOMA

OKLA. STAT. ANN. TIT. 10A, § 1-1-105 (2015). Children and Juvenile Code. Definitions

When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. "Abandonment" means:

a. the willful intent by words, actions, or omissions not to return for a child, or

b. the failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant, or

c. the failure to respond to notice of deprived proceedings;

2. "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

a. "Harm or threatened harm to the health or safety of a child" means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including but not limited to sexual abuse, sexual exploitation, neglect, or dependency.

b. "Sexual abuse" includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child.

c. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the health, safety, or welfare of a child, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child;

3. "Adjudication" means a finding by the court that the allegations in a petition alleging that a child is deprived are supported by a preponderance of the evidence;

4. "Adjudicatory hearing" means a hearing by the court as provided by Section 1-4-601 of this title;

5. "Assessment" means a comprehensive review of child safety and evaluation of family functioning and protective capacities that is conducted in response to a child abuse or neglect referral that does not allege a serious and immediate safety threat to a child;

6. "Behavioral health" means mental health, substance abuse, or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment;

7. "Child" means any unmarried person under eighteen (18) years of age;

8. "Child advocacy center" means a center and the multidisciplinary child abuse team of which it is a member that is accredited by the National Children's Alliance or that is completing a sixth year of reaccreditation. Child advocacy centers shall be classified, based on the child population of a district attorney's district, as follows:

a. nonurban centers in districts with child populations that are less than sixty thousand (60,000), and

b. midlevel nonurban centers in districts with child populations equal to or greater than sixty thousand (60,000), but not including Oklahoma and Tulsa counties;

9. "Child with a disability" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child, or who is regarded as having such an impairment by a competent medical professional;

10. "Child-placing agency" means an agency that arranges for or places a child in a foster family home, group home, adoptive home, or independent living program;

11. "Commission" means the Commission for Human Services;

12. "Community-based services" or "community-based programs" means services or programs which maintain community participation or supervision in their planning, operation, and evaluation. Community-based services and programs may include, but are not limited to, emergency shelter, crisis intervention, group work, case supervision, job placement, recruitment and training of volunteers, consultation, medical, educational, home-based services, vocational, social, preventive and psychological guidance, training, counseling, early intervention and diversionary substance abuse treatment, sexual abuse treatment, transitional living, independent living, and other related services and programs;

13. "Concurrent permanency planning" means, when indicated, the implementation of two plans for a child entering foster care. One plan focuses on reuniting the parent and child; the other seeks to find a permanent out-of-home placement for the child with both plans being pursued simultaneously;

14. "Court-appointed special advocate" or "CASA" means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and when appointed by the court, serves as an officer of the court in the capacity as a guardian ad litem;

15. "Court-appointed special advocate program" means an organized program, administered by either an independent, not-for-profit corporation, a dependent project of an independent, not-for-profit corporation or a unit of local government, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the court as guardians ad litem;

16. "Custodian" means an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. As used in this title, the term "custodian" shall not mean the Department of Human Services;

17. "Day treatment" means a nonresidential program which provides intensive services to a child who resides in the child's own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include, but are not limited to, educational services;

18. "Department" means the Department of Human Services;

19. "Dependency" means a child who is homeless or without proper care or guardianship through no fault of his or her parent, legal guardian, or custodian;

20. "Deprived child" means a child:

- a. who is for any reason destitute, homeless, or abandoned,
- b. who does not have the proper parental care or guardianship,
- c. who has been abused, neglected, or is dependent,
- d. whose home is an unfit place for the child by reason of depravity on the part of the parent or legal guardian of the child, or other person responsible for the health or welfare of the child,
- e. who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child,
- f. who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of the child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities; provided that no medical treatment shall be necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,
- g. who, due to improper parental care and guardianship, is absent from school as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the child is subject to compulsory school attendance,
- h. whose parent, legal guardian or custodian for good cause desires to be relieved of custody,

i. who has been born to a parent whose parental rights to another child have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the parent to the other child, have not been corrected, or

j. whose parent, legal guardian, or custodian has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

Nothing in the Oklahoma Children's Code shall be construed to mean a child is deprived for the sole reason the parent, legal guardian, or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

21. "Dispositional hearing" means a hearing by the court as provided by Section 1-4-706 of this title;

22. "Drug-endangered child" means a child who is at risk of suffering physical, psychological or sexual harm as a result of the use, possession, distribution, manufacture or cultivation of controlled substances, or the attempt of any of these acts, by a person responsible for the health, safety or welfare of the child, as defined in paragraph 51 of this section. This term includes circumstances wherein the substance abuse of the person responsible for the health, safety or welfare of the child interferes with that person's ability to parent and provide a safe and nurturing environment for the child. The term also includes newborns who test positive for a controlled dangerous substance, with the exception of those substances administered under the care of a physician;

23. "Emergency custody" means the custody of a child prior to adjudication of the child following issuance of an order of the district court pursuant to Section 1-4-201 of this title or following issuance of an order of the district court pursuant to an emergency custody hearing, as specified by Section 1-4-203 of this title;

24. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings used for the lawful custody and treatment of children;

25. "Foster care" or "foster care services" means continuous twenty-four-hour care and supportive services provided for a child in foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent;

26. “Foster family home” means the private residence of a foster parent who provides foster care services to a child. Such term shall include a nonkinship foster family home, a therapeutic foster family home, or the home of a relative or other kinship care home;

27. “Foster parent eligibility assessment” includes a criminal background investigation including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Office of Juvenile Affairs, or any child-placing agency pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

28. “Guardian ad litem” means a person appointed by the court pursuant to the provisions of Section 1-4-306 of this title having those duties and responsibilities as set forth in that section. The term “guardian ad litem” shall refer to a court-appointed special advocate as well as to any other person appointed pursuant to the provisions of Section 1-4-306 of this title to serve as a guardian ad litem;

29. “Guardian ad litem of the estate of the child” means a person appointed by the court to protect the property interests of a child pursuant to Section 1-8-109 of this title;

30. “Group home” means a residential facility licensed by the Department to provide full-time care and community-based services for more than five but fewer than thirteen children;

31. “Harm or threatened harm to the health or safety of a child” means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency;

32. “Heinous and shocking abuse” includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. “Serious bodily injury” means injury that involves:

- a. a substantial risk of death,
- b. extreme physical pain,
- c. protracted disfigurement,
- d. a loss or impairment of the function of a body member, organ, or mental faculty,
- e. an injury to an internal or external organ or the body,
- f. a bone fracture,
- g. sexual abuse or sexual exploitation,

h. chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation which is repeated or continuing,

i. torture that includes, but is not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person, or

j. any other similar aggravated circumstance;

33. "Heinous and shocking neglect" includes, but is not limited to:

a. chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child which results in harm to the child,

b. neglect that has resulted in a diagnosis of the child as a failure to thrive,

c. an act or failure to act by a parent that results in the death or near death of a child or sibling, serious physical or emotional harm, sexual abuse, sexual exploitation, or presents an imminent risk of serious harm to a child, or

d. any other similar aggravating circumstance;

34. "Independent living program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. An independent living program may include, but shall not be limited to, such features as minimal direct staff supervision, and the provision of supportive services to assist children with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

35. "Individualized service plan" means a document written pursuant to Section 1-4-704 of this title that has the same meaning as "service plan" or "treatment plan" where those terms are used in the Oklahoma Children's Code;

36. "Infant" means a child who is twelve (12) months of age or younger;

37. "Institution" means a residential facility offering care and treatment for more than twenty residents;

38. a. "Investigation" means a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of the child, making it necessary to determine:

(1) the current safety of a child and the risk of subsequent abuse or neglect, and

(2) whether child abuse or neglect occurred and whether the family needs prevention- and intervention-related services.

b. "Investigation" results in a written response stating one of the following findings:

(1) "Substantiated " means the Department has determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect has occurred. When child abuse or neglect is substantiated, the Department may recommend:

(a) court intervention if the Department finds the health safety, or welfare of the child is threatened, or

(b) child abuse and neglect prevention and intervention-related services for the child, parents or persons responsible for the care of the child if court intervention is not determined to be necessary,

(2) "Unsubstantiated -- Services recommended" means the Department has determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine whether child abuse or neglect has occurred. If child abuse or neglect is unsubstantiated, the Department may recommend, when determined to be necessary, that the parents or persons responsible for the care of the child obtain child abuse and neglect prevention- and intervention-related services, or

(3) "Ruled out" means a report in which a child protective services specialist has determined, after an investigation of a report of child abuse or neglect, that no child abuse or neglect has occurred;

39. "Kinship care" means full-time care of a child by a kinship relation;

40. "Kinship guardianship" means a permanent guardianship as defined in this section;

41. "Kinship relation" or "kinship relationship" means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child; provided, however, in cases where the Indian Child Welfare Act applies, the definitions contained in 25 U.S.C., Section 1903 shall control;

42. "Mental health facility" means a mental health or substance abuse treatment facility as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

43. "Minor" means the same as the term "child" as defined in this section;

44. "Minor in need of treatment" means a child in need of mental health or substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

45. "Multidisciplinary child abuse team" means any team established pursuant to Section 1-9-102 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse. For purposes of this definition, "freestanding" means a team not used by a child advocacy center for its accreditation;

46. "Near death" means a child is in serious or critical condition, as certified by a physician, as a result of abuse or neglect;

47. "Neglect" means:

a. the failure or omission to provide any of the following:

(1) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,

(2) medical, dental, or behavioral health care,

(3) supervision or appropriate caretakers, or

(4) special care made necessary by the physical or mental condition of the child,

b. the failure or omission to protect a child from exposure to any of the following:

(1) the use, possession, sale, or manufacture of illegal drugs,

(2) illegal activities, or

(3) sexual acts or materials that are not age-appropriate, or

c. abandonment.

Nothing in this paragraph shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child. Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare;

48. "Permanency hearing" means a hearing by the court pursuant to Section 1-4-811 of this title;

49. “Permanent custody” means the court-ordered custody of an adjudicated deprived child when a parent-child relationship no longer exists due to termination of parental rights or due to the death of a parent or parents;

50. “Permanent guardianship” means a judicially created relationship between a child, a kinship relation of the child, or other adult established pursuant to the provisions of Section 1-4-709 of this title;

51. “Person responsible for a child's health, safety, or welfare” includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

52. “Protective custody” means custody of a child taken by a law enforcement officer or designated employee of the court without a court order;

53. “Putative father” means an alleged father as that term is defined in Section 7700-102 of Title 10 of the Oklahoma Statutes;

54. “Relative” means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or any other person related to the child;

55. “Residential child care facility” means a twenty-four-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives;

56. “Review hearing” means a hearing by the court pursuant to Section 1-4-807 of this title;

57. “Risk” means the likelihood that an incident of child abuse or neglect will occur in the future;

58. “Safety threat” means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death;

59. “Safety analysis” means action taken by the Department in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to priority guidelines and other criteria adopted by the Department;

60. “Safety evaluation” means evaluation of a child's situation by the Department using a structured, evidence-based tool to determine if the child is subject to a safety threat;

61. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents;

62. "Sibling" means a biologically or legally related brother or sister of a child;

63. "Specialized foster care" means foster care provided to a child in a foster home or agency-contracted home which:

a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,

b. is monitored by the Division, and

c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

64. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

65. "Therapeutic foster family home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

66. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. The program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

67. "Voluntary foster care placement" means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child's parent, legal guardian or custodian.

CREDIT(S)

Laws 1968, c. 282, § 101, eff. Jan. 13, 1969; Laws 1970, c. 86, § 1, emerg. eff. March 27, 1970; Laws 1972, c. 122, § 1, emerg. eff. April 4, 1972; Laws 1977, c. 79, § 1; Laws 1979, c. 257, § 1, eff. Oct. 1, 1979; Laws 1980, c. 242, § 1, eff. Oct. 1, 1980; Laws 1982, c. 312, § 13, operative Oct. 1, 1982; Laws 1984, c. 120, § 1, emerg. eff. April 10, 1984; Laws 1987, c. 88, § 1, operative July 1, 1987; Laws 1988, c. 76, § 1, emerg. eff. March 25, 1988; Laws 1988, c. 238, § 1, emerg. eff. June 24, 1988; Laws 1990, c. 238, § 1, emerg. eff. May 21, 1990; Laws 1990, c. 337, § 1; Laws 1991, c.

335, § 1, emerg. eff. June 15, 1991; Laws 1992, c. 298, § 14, eff. July 1, 1993; Laws 1993, c. 342, § 1, eff. July 1, 1993; Laws 1994, c. 2, § 1, emerg. eff. March 2, 1994; Laws 1994, c. 290, § 3, eff. July 1, 1994. Renumbered from Title 10, § 1101 and amended by Laws 1995, c. 352, §§ 3, 199, eff. July 1, 1995. Laws 1996, c. 47, § 1, emerg. eff. April 8, 1996; Laws 1996, c. 200, § 3, eff. Nov. 1, 1996; Laws 1996, c. 353, § 15, eff. Nov. 1, 1996; Laws 1997, c. 386, § 19, emerg. eff. June 10, 1997; Laws 1998, c. 5, § 2, emerg. eff. March 4, 1998; Laws 1998, c. 421, § 2, emerg. eff. June 11, 1998; Laws 2000, c. 374, § 5, eff. July 1, 2000; Laws 2001, c. 434, § 4, emerg. eff. June 8, 2001; Laws 2002, c. 327, § 15, eff. July 1, 2002; Laws 2004, c. 422, § 3, eff. July 1, 2004; Laws 2006, c. 258, § 1, emerg. eff. June 7, 2006. Renumbered from Title 10, § 7001-1.3 and amended by Laws 2009, c. 233, §§ 11, 211, emerg. eff. May 21, 2009. Laws 2009, c. 338, § 3, eff. July 1, 2009; Laws 2012, c. 91, § 1, eff. Nov. 1, 2012; Laws 2012, c. 353, § 3, emerg. eff. June 8, 2012. Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

OREGON

OR. REV. STAT. § 12.117 (2015). Child Abuse

(1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that constitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse that occurs while the person is under 18 years of age must be commenced before the person attains 40 years of age, or if the person has not discovered the causal connection between the injury and the child abuse, nor in the exercise of reasonable care should have discovered the causal connection between the injury and the child abuse, not more than five years from the date the person discovers or in the exercise of reasonable care should have discovered the causal connection between the child abuse and the injury, whichever period is longer.

(2) As used in subsection (1) of this section, “child abuse” means any of the following:

(a) Intentional conduct by an adult that results in:

(A) Any physical injury to a child; or

(B) Any mental injury to a child which results in observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child;

(b) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163;

(c) Sexual abuse, as defined in ORS chapter 163, when the victim is a child; or

(d) Sexual exploitation of a child, including but not limited to:

(A) Conduct constituting violation of ORS 163.435 and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact; and

(B) Allowing, permitting, encouraging or hiring a child to engage in prostitution or to patronize a prostitute, as defined in ORS chapter 167.

(3) Nothing in this section creates a new cause of action or enlarges any existing cause of action.

CREDIT(S)

Laws 1989, c. 643, §§ 2, 3; Laws 1991, c. 386, § 4; Laws 1991, c. 932, § 1; Laws 1993, c. 18, § 5; Laws 1993, c. 296, § 1; Laws 1993, c. 622, § 2; Laws 2009, c. 879, § 1, eff. Jan. 1, 2010; Laws 2011, c. 151, § 4, eff. Jan. 1, 2012. Current through End of the 2014 Reg. Sess. and ballot measures approved at the Nov. 4, 2014 General Election. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

OR. REV. STAT. § 419B.005 (2015). Juvenile Code. Definitions

As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) “Abuse” means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or

other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to patronize a prostitute as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

(d) A private institution of higher education located in Oregon.

(4) "Law enforcement agency" means:

(a) A city or municipal police department.

(b) A county sheriff's office.

- (c) The Oregon State Police.
- (d) A police department established by a university under ORS 352.383 or 353.125.
- (e) A county juvenile department.
- (5) "Public or private official" means:
 - (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.
 - (b) Dentist.
 - (c) School employee, including an employee of a higher education institution.
 - (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.
 - (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.
 - (f) Peace officer.
 - (g) Psychologist.
 - (h) Member of the clergy.
 - (i) Regulated social worker.
 - (j) Optometrist.
 - (k) Chiropractor.
 - (L) Certified provider of foster care, or an employee thereof.
 - (m) Attorney.
 - (n) Licensed professional counselor.
 - (o) Licensed marriage and family therapist.
 - (p) Firefighter or emergency medical services provider.

- (q) A court appointed special advocate, as defined in ORS 419A.004.
- (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- (s) Member of the Legislative Assembly.
- (t) Physical, speech or occupational therapist.
- (u) Audiologist.
- (v) Speech-language pathologist.
- (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
- (x) Pharmacist.
- (y) An operator of a preschool recorded program under ORS 329A.255.
- (z) An operator of a school-age recorded program under ORS 329A.257.
- (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
- (bb) Employee of a public or private organization providing child-related services or activities:
 - (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and
 - (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
- (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

CREDIT(S)

Added by Laws 1993, c. 546, § 12. Amended by Laws 1993, c. 622, § 1a; Laws 1995, c. 278, § 50; Laws 1995, c. 766, § 1; Laws 1997, c. 127, § 1; Laws 1997, c. 561, § 3; Laws 1997, c. 703, § 3; Laws 1997, c. 873, § 30; Laws 1999, c. 743, § 22; Laws 1999, c. 954, § 4; Laws 2001, c. 104, § 148;

Laws 2003, c. 191, § 1; Laws 2005, c. 562, § 26, eff. July 1, 2005; Laws 2005, c. 708, § 4, eff. Aug. 16, 2005; Laws 2009, c. 199, § 1, eff. June 2, 2009; Laws 2009, c. 595, § 364, eff. June 26, 2009; Laws 2009, c. 442, § 36, eff. Jan. 1, 2010; Laws 2009, c. 518, § 1, eff. Jan. 1, 2010; Laws 2009, c. 708, § 3, eff. Jan. 1, 2010; Laws 2009, c. 570, § 6, eff. July 1, 2010; Laws 2009, c. 633, § 10, eff. July 1, 2010; Laws 2010, c. 60 (1st Sp. Sess.), §§ 4, 5, eff. June 8, 2010; Laws 2011, c. 506, § 38, eff. June 23, 2011, operative Jan. 1, 2012; Laws 2011, c. 151, § 12, eff. Jan. 1, 2012; Laws 2011, c. 703, § 34, eff. Jan. 1, 2012; Laws 2012, c. 37, § 60, eff. March 6, 2012; Laws 2012, c. 92, § 1, eff. Jan. 1, 2013; Laws 2013, c. 623, § 17, eff. July 19, 2013; Laws 2013, c. 624, § 82, eff. July 19, 2013; Laws 2013, c. 720, § 11, eff. Aug. 1, 2013; Laws 2013, c. 180, § 40, eff. May 16, 2013, operative Jan. 1, 2014; Laws 2013, c. 129, § 26, eff. Jan. 1, 2014. Current through End of the 2014 Reg. Sess. and ballot measures approved at the Nov. 4, 2014 General Election. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

PENNSYLVANIA

23 Pa. Cons. Stat. Ann. § 6303 (2015). Child Protective Services. Definitions

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accept for service.” Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

“Adult.” An individual 18 years of age or older.

“Bodily injury.” Impairment of physical condition or substantial pain.

“Child.” An individual under 18 years of age.

“Child-care services.” Includes any of the following:

- (1) Child day-care centers.
- (2) Group day-care homes.
- (3) Family day-care homes.
- (4) Foster homes.
- (5) Adoptive parents.

(6) Boarding homes for children.

(7) Juvenile detention center services or programs for delinquent or dependent children.

(8) Mental health services for children.

(9) Services for children with intellectual disabilities.

(10) Early intervention services for children.

(11) Drug and alcohol services for children.

(12) Day-care services or programs that are offered by a school.

(13) Other child-care services that are provided by or subject to approval, licensure, registration or certification by the department or a county social services agency or that are provided pursuant to a contract with the department or a county social services agency.

“Child protective services.” Those services and activities provided by the department and each county agency for child abuse cases.

“Children's advocacy center.” A local public agency in this Commonwealth or a not-for-profit entity incorporated in this Commonwealth which:

(1) is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)); and

(2) operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse that, at a minimum, either onsite or through a partnership with another entity or entities, assists county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.

“Cooperation with an investigation or assessment.” Includes, but is not limited to, a school or school district which permits authorized personnel from the department or county agency to interview a student while the student is in attendance at school.

“County agency.” The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L. 2017, No. 396), [FN1] known as the County Institution District Law, or its successor, and supervised by the department under Article IX of the act of June 13, 1967 (P.L. 31, No. 21), [FN2] known as the Public Welfare Code.

“Department.” The Department of Human Services of the Commonwealth.

“Direct contact with children.” The care, supervision, guidance or control of children or routine interaction with children.

“Electronic technologies.” The transfer of information in whole or in part by technology having electrical, digital, magnetic, wireless, optical, electromagnetic, photo-electronic or photo-optical systems, or similar capabilities. The term includes, but is not limited to, e-mail, Internet communication or other means of electronic transmission.

“Expunge.” To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

“Family members.” Spouses, parents and children or other persons related by consanguinity or affinity.

“Founded report.” A child abuse report involving a perpetrator that is made pursuant to this chapter, if any of the following applies:

(1) There has been a judicial adjudication based on a finding that a child who is a subject of the report has been abused and the adjudication involves the same factual circumstances involved in the allegation of child abuse. The judicial adjudication may include any of the following:

(i) The entry of a plea of guilty or nolo contendere.

(ii) A finding of guilt to a criminal charge.

(iii) A finding of dependency under 42 Pa.C.S. § 6341 (relating to adjudication) if the court has entered a finding that a child who is the subject of the report has been abused.

(iv) A finding of delinquency under 42 Pa.C.S. § 6341 if the court has entered a finding that the child who is the subject of the report has been abused by the child who was found to be delinquent.

(2) There has been an acceptance into an accelerated rehabilitative disposition program and the reason for the acceptance involves the same factual circumstances involved in the allegation of child abuse.

(3) There has been a consent decree entered in a juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the decree involves the same factual circumstances involved in the allegation of child abuse and the terms and conditions of the consent decree include an acknowledgment, admission or finding that a child who is the subject of the report has been abused by the child who is alleged to be delinquent.

(4) A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is one of the individuals protected under the protection from abuse order and:

(i) only one individual is charged with the abuse in the protection from abuse action;

(ii) only that individual defends against the charge;

(iii) the adjudication involves the same factual circumstances involved in the allegation of child abuse; and

(iv) the protection from abuse adjudication finds that the child abuse occurred.

“General protective services.” Those services and activities provided by each county agency for cases requiring protective services, as defined by the department in regulations.

“Health care facility.” As defined in section 802.1 of the act of July 19, 1979 (P.L. 130, No. 48), [FN3] known as the Health Care Facilities Act.

“Health care provider.” A licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including a physician, podiatrist, optometrist, psychologist, physical therapist, certified nurse practitioner, registered nurse, nurse midwife, physician's assistant, chiropractor, dentist, pharmacist or an individual accredited or certified to provide behavioral health services.

“Independent contractor.” An individual who provides a program, activity or service to an agency, institution, organization or other entity, including a school or regularly established religious organization, that is responsible for the care, supervision, guidance or control of children. The term does not include an individual who has no direct contact with children.

“Indicated report.”

(1) Subject to paragraphs (2) and (3), a report of child abuse made pursuant to this chapter if an investigation by the department or county agency determines that substantial evidence of the alleged abuse by a perpetrator exists based on any of the following:

(i) Available medical evidence.

(ii) The child protective service investigation.

(iii) An admission of the acts of abuse by the perpetrator.

(2) A report may be indicated under paragraph (1)(i) or (ii) for any child who is the victim of child abuse, regardless of the number of alleged perpetrators.

(3) A report may be indicated under paragraph (1)(i) or (ii) listing the perpetrator as “unknown” if substantial evidence of abuse by a perpetrator exists, but the department or county agency is unable to identify the specific perpetrator.

“Intentionally.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Knowingly.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Law enforcement official.” The term includes the following:

- (1) The Attorney General.
- (2) A Pennsylvania district attorney.
- (3) A Pennsylvania State Police officer.
- (4) A municipal police officer.

“Mandated reporter.” A person who is required by this chapter to make a report of suspected child abuse.

“Near fatality.” A child's serious or critical condition, as certified by a physician, where that child is a subject of the report of child abuse.

“Newborn.” As defined in section 6502 (relating to definitions).

“Parent.” A biological parent, adoptive parent or legal guardian.

“Perpetrator.” A person who has committed child abuse as defined in this section. The following shall apply:

- (1) The term includes only the following:
 - (i) A parent of the child.
 - (ii) A spouse or former spouse of the child's parent.
 - (iii) A paramour or former paramour of the child's parent.
 - (iv) A person 14 years of age or older and responsible for the child's welfare.
 - (v) An individual 14 years of age or older who resides in the same home as the child.

(vi) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(2) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(i) A parent of the child.

(ii) A spouse or former spouse of the child's parent.

(iii) A paramour or former paramour of the child's parent.

(iv) A person 18 years of age or older and responsible for the child's welfare.

(v) A person 18 years of age or older who resides in the same home as the child.

“Person affiliated with.” A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

“Person responsible for the child's welfare.” A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term includes any such person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization.

“Police department.” A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of criminal or traffic laws.

“Police officer.” A full-time or part-time employee assigned to criminal or traffic law enforcement duties of a police department of a county, city, borough, town or township. The term also includes a member of the State Police Force.

“Police station.” The station or headquarters of a police department or a Pennsylvania State Police station or headquarters.

“Private agency.” A children and youth social service agency subject to the requirements of 55 Pa. Code Ch. 3680 (relating to administration and operation of a children and youth social service agency).

“Program, activity or service.” A public or private educational, athletic or other pursuit in which children participate. The term includes, but is not limited to, the following:

(1) A youth camp or program.

(2) A recreational camp or program.

(3) A sports or athletic program.

(4) An outreach program.

(5) An enrichment program.

(6) A troop, club or similar organization.

“Protective services.” Those services and activities provided by the department and each county agency for children who are abused or are alleged to be in need of protection under this chapter.

“Recent act.” Any act committed within two years of the date of the report to the department or county agency.

“Recent act or failure to act.” Any act or failure to act committed within two years of the date of the report to the department or county agency.

“Recklessly.” The term shall have the same meaning as provided in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

“Resource family.” A family which provides temporary foster or kinship care for children who need out-of-home placement and may eventually provide permanency for those children, including an adoptive family.

“Risk assessment.” A Commonwealth-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child.

“Safety assessment.” A Commonwealth-approved systematic process that assesses a child's need for protection or services, based on the threat to the safety of the child.

“School.” A facility providing elementary, secondary or postsecondary educational services. The term includes the following:

(1) Any school of a school district.

(2) An area vocational-technical school.

(3) A joint school.

(4) An intermediate unit.

(5) A charter school or regional charter school.

(6) A cyber charter school.

(7) A private school licensed under the act of January 28, 1988 (P.L. 24, No. 11), [FN4] known as the Private Academic Schools Act.

(8) A private school accredited by an accrediting association approved by the State Board of Education.

(9) A nonpublic school.

(10) A community college which is an institution now or hereafter created pursuant to Article XIX-A of the act of March 10, 1949 (P.L. 30, No. 14), [FN5] known as the Public School Code of 1949, or the former act of August 24, 1963 (P.L. 1132, No. 484), known as the Community College Act of 1963.

(11) An independent institution of higher education which is an institution of higher education which is operated not for profit, located in and incorporated or chartered by the Commonwealth, entitled to confer degrees as set forth in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and entitled to apply to itself the designation “college” or “university” as provided for by standards and qualifications prescribed by the State Board of Education pursuant to 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).

(12) A State-owned university.

(13) A State-related university.

(14) A private school licensed under the act of December 15, 1986 (P.L. 1585, No. 174), [FN6] known as the Private Licensed Schools Act.

(15) The Hiram G. Andrews Center.

(16) A private residential rehabilitative institution as defined in section 914.1-A(c) of the Public School Code of 1949. [FN7]

“School employee.” An individual who is employed by a school or who provides a program, activity or service sponsored by a school. The term excludes an individual who has no direct contact with children.

“Secretary.” The Secretary of Human Services of the Commonwealth.

“Serious bodily injury.” Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

“Serious mental injury.” A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or

(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

“Serious physical neglect.” Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(1) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(2) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

“Sexual abuse or exploitation.” Any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:

(i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

This paragraph does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age.

(2) Any of the following offenses committed against a child:

(i) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

- (ii) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).
- (iii) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (iv) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).
- (v) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).
- (vi) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
- (vii) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).
- (viii) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
- (ix) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).
- (x) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).
- (xi) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
- (xii) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
- (xiii) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

“Student.” An individual enrolled in a public or private school, intermediate unit or area vocational-technical school who is under 18 years of age.

“Subject of the report.” Any child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator in a report made to the department or a county agency under this chapter.

“Substantial evidence.” Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

“Substantiated child abuse.” Child abuse as to which there is an indicated report or founded report.

“Under investigation.” A child abuse report pursuant to this chapter which is being investigated to determine whether it is “founded,” “indicated” or “unfounded.”

“Unfounded report.” Any report made pursuant to this chapter unless the report is a “founded report” or an “indicated report.”

(b) Deleted by 2013, Dec. 18, P.L. 1170, No. 108, § 1, effective Dec. 31, 2014.

(b.1) Child abuse.--The term “child abuse” shall mean intentionally, knowingly or recklessly doing any of the following:

(1) Causing bodily injury to a child through any recent act or failure to act.

(2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(4) Causing sexual abuse or exploitation of a child through any act or failure to act.

(5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(7) Causing serious physical neglect of a child.

(8) Engaging in any of the following recent acts:

(i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.

(iii) Forcefully shaking a child under one year of age.

(iv) Forcefully slapping or otherwise striking a child under one year of age.

(v) Interfering with the breathing of a child.

(vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), [FN8] where the victim of the sexual offense was under 18 years of age when the crime was committed.

(B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(9) Causing the death of the child through any act or failure to act.

(c) Restatement of culpability.--Conduct that causes injury or harm to a child or creates a risk of injury or harm to a child shall not be considered child abuse if there is no evidence that the person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.

(d) Child abuse exclusions.--The term "child abuse" does not include any conduct for which an exclusion is provided in section 6304 (relating to exclusions from child abuse).

CREDIT(S)

1990, Dec. 19, P.L. 1240, No. 206, § 2, effective in 90 days. Amended 1994, Dec. 16, P.L. 1292, No. 151, § 1, effective July 1, 1995; 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 14, effective in 60 days; 2002, Dec. 9, P.L. 1549, No. 201, § 2, effective in 60 days; 2004, Nov. 29, P.L. 1291, No. 160, § 1, effective in 60 days [Jan. 28, 2005]; 2006, Nov. 9, P.L. 1358, No. 146, § 2, effective in 180 days [May 8, 2007]; 2006, Nov. 29, P.L. 1581, No. 179, § 2, effective in 180 days [May 29, 2007]; 2008, July 3, P.L. 276, No. 33, § 1, effective in 180 days [Dec. 30, 2008]; 2013, Dec. 18, P.L. 1170, No. 108, § 1, effective Dec. 31, 2014; 2013, Dec. 18, P.L. 1195, No. 117, § 1, effective Dec. 31, 2014; 2013, Dec. 18, P.L. 1201, No. 119, § 1, effective Dec. 31, 2014; 2014, Jan. 22, P.L. 6, No. 4, § 1, effective in 90 days [April 22, 2014]; 2014, April 7, P.L. 388, No. 29, § 1, effective Dec. 31, 2014; 2014, April 15, P.L. 417, No. 33, § 1, effective Dec. 31, 2014; 2014, May 14, P.L. 645, No. 44, § 1, effective Dec. 31, 2014; 2014, May 14, P.L. 653, No. 45, § 1, effective Dec. 31, 2014; 2014, July 2, P.L. 843, No. 91, § 2, effective in 60 days [Sept. 2, 2014]; 2014, Oct. 22, P.L. ____, No. 153, § 2, effective Dec. 31, 2014. Current through 2014 Regular Session Acts 1 to 171, 173 to 198 and 200 to 204

RHODE ISLAND

R.I. GEN. LAWS § 14-1-3 (2015). Delinquent and Dependent Children. Definitions.

The following words and phrases when used in this chapter shall, unless the context otherwise requires, be construed as follows:

(1) “Adult” means a person eighteen (18) years of age or older, except that “adult” includes any person seventeen (17) years of age or older who is charged with a delinquent offense involving murder, first degree sexual assault, first degree child molestation, or assault with intent to commit murder, and that person shall not be subject to the jurisdiction of the family court as set forth in §§ 14-1-5 and 14-1-6 if after a hearing, the family court determines that probable cause exists to believe that the offense charged has been committed and that the person charged has committed the offense.

(2) “Appropriate person,” as used in §§ 14-1-10 and 14-1-11, except in matters relating to adoptions and child marriages, means and includes:

(i) Any police official of this state, or of any city or town within this state;

(ii) Any duly qualified prosecuting officer of this state, or of any city or town within this state;

(iii) Any director of public welfare of any city or town within this state, or his or her duly authorized subordinate;

(iv) Any truant officer or other school official of any city or town within this state;

(v) Any duly authorized representative of any public or duly licensed private agency or institution established for purposes similar to those specified in § 8-10-2 or 14-1-2; or

(vi) Any maternal or paternal grandparent, who alleges that the surviving parent, in those cases in which one parent is deceased, is an unfit and improper person to have custody of any child or children.

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

(4) “The court” means the family court of the state of Rhode Island.

(5) “Delinquent” when applied to a child means and includes any child who has committed any offense which, if committed by an adult, would constitute a felony, or who has on more than one occasion violated any of the other laws of the state or of the United States or any of the

ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles.

(6) “Dependent” means any child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed or threatened with harm due to the inability of the parent or guardian, through no fault of the parent or guardian, to provide the child with a minimum degree of care or proper supervision because of:

(i) The death or illness of a parent; or

(ii) The special medical, educational, or social service needs of the child which the parent is unable to provide.

(7) “Justice” means a justice of the family court.

(8) “Neglect” means a child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed or threatened with harm when the parents or guardian:

(i) 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;

(ii) Fails to provide the child proper education as required by law; or

(iii) Abandons and/or deserts the child.

(9) “Wayward” when applied to a child means and includes any child:

(i) Who has deserted his or her home without good or sufficient cause;

(ii) Who habitually associates with dissolute, vicious, or immoral persons;

(iii) Who is leading an immoral or vicious life;

(iv) Who is habitually disobedient to the reasonable and lawful commands of his or her parent or parents, guardian, or other lawful custodian;

(v) Who, being required by chapter 19 of title 16 to attend school, willfully and habitually absents himself or herself from school or habitually violates the rules and regulations of the school when he or she attends; or

(vi) Who has on any occasion violated any of the laws of the state or of the United States or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles.

(10) The singular shall be construed to include the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.

(11) For the purposes of this chapter, “electronic surveillance and monitoring devices” means any “radio frequency identification device (RFID)” or “global positioning device” that is either tethered to a person or is intended to be kept with a person and is used for the purposes of tracking the whereabouts of that person within the community.

CREDIT(S)

P.L. 1944, ch. 1441, § 3; P.L. 1969, ch. 252, § 1; P.L. 1980, ch. 291, § 1; P.L. 1984, ch. 216, § 1; P.L. 1989, ch. 542, § 9; P.L. 1994, ch. 178, § 1; P.L. 1994, ch. 260, § 1; P.L. 1995, ch. 133, § 1; P.L. 2011, ch. 151, art. 17, § 3, eff. June 29, 2011. The statutes and Constitution are current through Chapter 555 of the January 2014 session.

R.I. GEN. LAWS § 40-11-2 (2015). Abused and Neglected Children. 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.

CREDIT(S)

P.L. 1976, ch. 91, § 2; P.L. 1979, ch. 248, § 9; P.L. 1981, ch. 139, § 1; P.L. 1984, ch. 257, § 1; P.L. 1985, ch. 371, § 1; P.L. 1989, ch. 147, § 1; P.L. 1997, ch. 326, § 131; P.L. 1999, ch. 83, § 101; P.L. 1999, ch. 130, § 101; P.L. 2000, ch. 69, § 2; P.L. 2003, ch. 141, § 1; P.L. 2003, ch. 148, § 1; P.L. 2006, ch. 547, § 1, eff. July 10, 2006; P.L. 2010, ch. 239, § 20, eff. June 25, 2010. The statutes and Constitution are current through Chapter 555 of the January 2014 session.

SOUTH CAROLINA

S.C. CODE ANN. § 63-7-20 (2015).Child Protection and Permanency. General Provisions. Definitions.

When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

(1) "Abandonment of a child" means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.

(2) "Affirmative determination" means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:

(a) the court;

(b) the Department of Social Services upon a final agency decision in its appeals process; or

(c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court's finding must be the affirmative determination.

(3) "Child" means a person under the age of eighteen.

(4) "Child abuse or neglect" or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

(i) is administered by a parent or person in loco parentis;

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

(iii) is reasonable in manner and moderate in degree;

(iv) has not brought about permanent or lasting damage to the child; and

(v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or

mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

(5) "Child protective investigation" means an inquiry conducted by the department in response to a report of child abuse or neglect made pursuant to this chapter.

(6) "Child protective services" means assistance provided by the department as a result of indicated reports or affirmative determinations of child abuse or neglect, including assistance ordered by the family court or consented to by the family. The objectives of child protective services are to:

(a) protect the child's safety and welfare; and

(b) maintain the child within the family unless the safety of the child requires placement outside the home.

(7) "Court" means the family court.

(8) "Department" means the Department of Social Services.

(9) "Emergency protective custody" means the right to physical custody of a child for a temporary period of no more than twenty-four hours to protect the child from imminent danger.

Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

(10) "Guardianship of a child" means the duty and authority vested in a person by the family court to make certain decisions regarding a child, including:

(a) consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment;

(b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and

(c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.

(11) “Indicated report” means a report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.

(12) “Institutional child abuse and neglect” means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is the employee of a public or private residential home, institution, or agency.

(13) “Legal custody” means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.

(14) “Mental injury” means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional.

(15) “Party in interest” includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.

(16) “Person responsible for a child's welfare” includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.

(17) "Physical custody" means the lawful, actual possession and control of a child.

(18) "Physical injury" means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

(19) "Preponderance of evidence" means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

(20) "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

(21) "Protective services unit" means the unit established within the Department of Social Services which has prime responsibility for state efforts to strengthen and improve the prevention, identification, and treatment of child abuse and neglect.

(22) "Subject of the report" means a person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

(23) "Suspected report" means all initial reports of child abuse or neglect received pursuant to this chapter.

(24) "Unfounded report" means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise.

CREDIT(S)

HISTORY: 2008 Act No. 361, § 2.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 25-5-30 (2015). Domestic Relations. Circumstances suggesting serious detriment to child

Serious detriment to a child may exist whenever there is proof of one or more of the following extraordinary circumstances:

(1) The likelihood of serious physical or emotional harm to the child if placed in the parent's custody;

- (2) The extended, unjustifiable absence of parental custody;
- (3) The provision of the child's physical, emotional, and other needs by persons other than the parent over a significant period of time;
- (4) The existence of a bonded relationship between the child and the person other than the parent sufficient to cause significant emotional harm to the child in the event of a change in custody;
- (5) The substantial enhancement of the child's well-being while under the care of a person other than the parent;
- (6) The extent of the parent's delay in seeking to reacquire custody of the child;
- (7) The demonstrated quality of the parent's commitment to raising the child;
- (8) The likely degree of stability and security in the child's future with the parent;
- (9) The extent to which the child's right to an education would be impaired while in the custody of the parent; or
- (10) Any other extraordinary circumstance that would substantially and adversely impact the welfare of the child.

CREDIT(S)

Source: SL 2002, ch 126, § 2. Current through the 2014 Regular Session, 2014 general election results, and Supreme Court Rule 14-10

S.D. CODIFIED LAWS § 26-8A-2 (2015). 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.

CREDIT(S)

Source: SDC 1939, § 43.0301 (12) as enacted by SL 1968, ch 164, § 1; SL 1984, ch 192, § 1; SL 1990, ch 170, § 4; SL 1991, ch 217, § 111B; SDCL Supp, § 26-8-6; SL 1998, ch 204, § 2; SL 2004, ch 181, § 1; SL 2005, ch 141, § 1; SL 2008, ch 137, § 1. Current through the 2014 Regular Session, 2014 general election results, and Supreme Court Rule 14-10

S.D. CODIFIED LAWS § 26-8A-26.1 (2015).Additional reasons for termination of parental rights

In addition to the provisions of § 26-8A-26, the court may find that good cause exists for termination of parental rights of a parent who:

(1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-15, 22-16-20, 22-22-1, 22-22-24.3, 22-22A-2, 22-22A-3, 26-10-1, or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(2) Aided or abetted, attempted, conspired, or solicited to commit a crime defined in § 22-16-4, 22-16-7, 22-16-15, or 22-16-20 or the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(3) Committed a crime defined in § 22-18-1.1, 22-22-7, or subdivision 22-23-2(2) against the child or another child of such parent, or committed conduct described by those sections that violated the law or ordinance of another jurisdiction having elements similar to the offense described by those sections;

(4) Has been determined by a court by clear and convincing evidence to have subjected the child or another child to torture, sexual abuse, abandonment for at least six months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect was a serious threat to the safety of the child or another child;

(5) Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult;

(6) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;

(7) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;

(8) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion;

(9) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, the child has been removed from the parent's custody on two separate occasions, and the Department of Social Services offered or provided family services on each of the two separate occasions the child was removed;

(10) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or risk of harm resulting from a crime, act, or omission as specified in subdivision (1), (2), or (3) of this section; or

(11) Is required to register as a sex offender pursuant to chapter 22-24B.

CREDIT(S)

Source: SL 1998, ch 161, § 4; SL 1999, ch 136, § 2; SL 2001, ch 141, § 2; SL 2007, ch 167, § 2; SL 2012, ch 147, § 2. Current through the 2014 Regular Session, 2014 general election results, and Supreme Court Rule 14-10

TENNESSEE

TENN. CODE ANN. § 37-1-102 (2015). Definitions.

(a) As used in this chapter, any reference to the department of correction is construed to mean the department of children's services, unless the reference is clearly intended to designate the department of correction.

(b) As used in this part, unless the context otherwise requires:

(1) "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;

(2) "Administrative hearing" is an action by the judge or magistrate of the juvenile court in conformity with legislative intent in terminating the home placement of a juvenile;

(3) "Adult" means any person eighteen (18) years of age or older;

(4) "Child" means:

(A) A person under eighteen (18) years of age; or

(B) A person under nineteen (19) years of age for the limited purpose of:

(i) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person's eighteenth birthday;

(ii) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department of children's services with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person's eighteenth birthday; or

(iii) Remaining under the jurisdiction of the juvenile court for resolution of a delinquent offense or offenses committed prior to a person's eighteenth birthday but considered by the juvenile court after a person's eighteenth birthday with the court having the option of retaining jurisdiction for adjudication and disposition or transferring the person to criminal court under § 37-1-134;

(C) In no event shall a person eighteen (18) years of age or older be committed to or remain in the custody of the department of children's services by virtue of being adjudicated dependent and neglected, unruly or in need of services pursuant to § 37-1-175, except as provided in § 37-5-106(a)(20);

(D) This subdivision (b)(4) shall in no way be construed as limiting the court's jurisdiction to transfer a person to criminal court under § 37-1-134;

(E) A person eighteen (18) years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under this subsection (b) through its contempt power under § 37-1-158;

(F) No exception shall be made for a child who may be emancipated by marriage or otherwise; and

(G) A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417;

(5) "Commissioner" means commissioner of children's services;

(6) "Court order" means any order or decree of a judge, magistrate or court of competent jurisdiction. A "valid court order" is one that is authorized by law, and any order entered in the minutes of a court of record is presumed to be valid;

(7) "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom temporary legal custody of the child has been given by order of a court;

(8) "Custody" means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, moral and emotional well-being of the child. "Custody," as herein defined, relates to those rights and responsibilities as exercised either by the parents or by a person or organization granted custody by a court of competent jurisdiction. "Custody" shall not be construed as the termination of parental rights set forth in § 37-1-147. "Custody" does not exist by virtue of mere physical possession of the child;

(9) "Delinquent act" means an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(23)(A)(iii) and the crime is not a traffic offense as defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony;

(10) "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation;

(11) "Department" means the department of children's services;

(12) "Dependent and neglected child" means a child:

(A) Who is without a parent, guardian or legal custodian;

(B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;

(C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

(G) Who is suffering from abuse or neglect;

(H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;

(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or

(J)(i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;

(ii) For the purposes of this subdivision (b)(12)(J):

(a) A related caregiver shall include the child's biological, step or legal grandparent, great grandparent, sibling, aunt, uncle or any other person who is legally or biologically related to the child; and

(b) A child willfully left with a related caregiver as defined in subdivision (b)(12)(J)(ii)(a) because of the parent's military service shall not be subject to action pursuant to § 37-1-183;

(13) "Detention" means confinement in a secure or closed type of facility that is under the direction or supervision of the court or a facility that is designated by the court or other authority as a place of confinement for juveniles;

(14) "Foster care" means the temporary placement of a child in the custody of the department of children's services or any agency or institution, whether public or private, for care outside the home of a parent or relative, by blood or marriage, of the child, whether the placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise;

(15) "Foster parent" means, for purposes other than § 37-2-414, a person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care at a private residence for a child or children who have been placed in foster care, or in the case of a child or children placed for adoption, a person who has provided care for the child or children for a period of six (6) months or longer in the absence of a power of attorney or court order;

(16) "Juvenile court" means the general sessions court in all counties of this state, except in those counties and municipalities in which special juvenile courts are provided by law, and "judge" means judge of the juvenile court;

(17) "Nonjudicial days" means Saturdays, Sundays and legal holidays. Nonjudicial days begin at four thirty p.m. (4:30 p.m.) on the day preceding a weekend or holiday, and end at eight o'clock a.m. (8:00 a.m.) on the day after a weekend or holiday;

(18) "Probation" means casework service as directed by the court, as a measure for the protection, guidance and well-being of the child and such child's family. Probation methods shall be directed to the discovery and correction of the basic causes of maladjustment;

(19) "Protective supervision" means supervision ordered by the court of children found to be dependent or neglected or unruly;

(20) "Restitution" means compensation that is accomplished through actual monetary payment to the victim of the offense by the child who committed the offense, or symbolically, through unpaid community service work by the child, for property damage or loss incurred as a result of the delinquent offense;

(21) "Severe child abuse" means:

(A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a child that is likely to cause serious bodily injury or death;

(ii) "Serious bodily injury" shall have the same meaning given in § 39-15-402(d).

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;

(C) The commission of any act towards the child prohibited by §§ 39-13-502 -- 39-13-504, 39-13-515, 39-13-522, 39-15-302, 39-15-402, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring;

(22) "Shelter care" means temporary care of a child in physically unrestricted facilities; and

(23) "Unruly child" means a child in need of treatment and rehabilitation who:

(A) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007;

(B) Habitually is disobedient of the reasonable and lawful commands of the child's parent(s), guardian or other legal custodian to the degree that such child's health and safety are endangered;

(C) Commits an offense that is applicable only to a child; or

(D) Is away from the home, residence or any other residential placement of the child's parent(s), guardian or other legal custodian without their consent. Such child shall be known and defined as a "runaway".

CREDIT(S)

1970 Pub.Acts, c. 600, § 2; 1973 Pub.Acts, c. 81, § 3; 1975 Pub.Acts, c. 326, § 1; 1976 Pub.Acts, c. 425, § 1; 1977 Pub.Acts, c. 87, § 1; 1977 Pub.Acts, c. 482, § 1; 1978 Pub.Acts, c. 543, § 1; 1978 Pub.Acts, c. 704, § 3; 1979 Pub.Acts, c. 271, § 1; 1979 Pub.Acts, c. 289, § 2; 1980 Pub.Acts, c. 796, § 1; 1980 Pub.Acts, c. 838, § 3; 1981 Pub.Acts, c. 120, § 1; 1981 Pub.Acts, c. 316, §§ 1, 3; 1982 Pub.Acts, c. 882, § 4; 1982 Pub.Acts, c. 934, § 16; 1983 Pub.Acts, c. 9, § 1; 1983 Pub.Acts, c. 254, § 1; 1983 Pub.Acts, c. 435, § 2; 1984 Pub.Acts, c. 789, § 5; 1985 Pub.Acts, c. 441, § 1; 1985 Pub.Acts, c. 478, § 30; 1989 Pub.Acts, c. 278, §§ 29, 77; 1990 Pub.Acts, c. 988, § 2; 1993 Pub.Acts, c. 276, § 1, eff. July 1, 1993; 1995 Pub.Acts, c. 532, §§ 4 to 6, eff. Jan. 1, 1996; 1996 Pub.Acts, c. 1079, §§ 73, 77 to 84, 183, eff. May 21, 1996; 2000 Pub.Acts, c. 947, § 8G, eff. June 23, 2000; 2002 Pub.Acts, c. 868, § 1, eff. July 17, 2002; 2009 Pub.Acts, c. 235, § 1, eff. May 20, 2009; 2009 Pub.Acts, c. 411, §§ 5 to 8, 10, eff. July 1, 2009; 2010 Pub.Acts, c. 1065, § 4, eff. July 1, 2010; 2011 Pub.Acts, c. 158, § 19, eff. May 5, 2011; 2011 Pub.Acts, c. 314, §§ 3, 4, eff. May 27, 2011; 2011 Pub.Acts, c. 486, § 1, eff. July 1, 2011; 2014 Pub.Acts, c. 711, § 1, eff. July 1, 2014. Current through end of the 2014 Second Reg. Sess.

TENN. CODE ANN. § 37-1-130 (2015). Disposition of dependent or neglected child; abuse; written findings of fact; trial home visits

(a) If the child is found to be dependent or neglected, the court may make any of the following orders of disposition best suited to the protection and physical, mental and moral welfare of the child:

- (1) Subject to the restrictions of § 37-1-129(e), permit the child to remain with the child's parents, guardian or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;
- (2) Subject to the restrictions of § 37-1-129(e), and subject to conditions and limitations as the court prescribes, transfer temporary legal custody to or grant permanent guardianship in accordance with part 8 of this chapter to any of the following:
 - (A) Any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
 - (B) The department of children's services:
 - (i) Any child placed in the custody of the department of children's services shall become a resident of the county in which such child is placed by the department. The board of education of each local school system shall assign the student to a public school pursuant to § 49-6-3102;
 - (ii) In order to assure appropriate placement for students with disabilities, the procedures required by the state board of education must be followed;
 - (iii) If a student is determined to be a child with disabilities as defined by state and federal laws and regulations and, therefore, entitled to special education and related services, a multi-disciplinary team of the receiving school system must be convened prior to the placement of the child in the school system for the purpose of developing an appropriate educational program. The department shall notify the receiving school system as far in advance of the intended placement as possible. A representative from the department must be present at the multi-disciplinary team meeting;
 - (iv) Placements in educational programs not following the requirements set forth in this section shall be the financial responsibility of the department of education;
 - (v) Any financial responsibility required under the provisions of this section for the education of children with disabilities whose parents are not residents of the county in which the children are placed shall be borne by the department of education and not by any local government. This provision shall not act to reduce federal funds for children with disabilities or special education going to any local education agency;

(C) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(D) An individual in another state with or without supervision by an appropriate officer under § 37-1-142;

(3) In those counties having a county department of children's services, commit the child to the custody of such county department; or

(4) Without making any of the foregoing orders, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with § 37-1-141 if the child is or is about to become a resident of that state.

(b) Unless a child found to be dependent or neglected is found also to be delinquent, the child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children. Any disposition under this section shall be implemented as soon as possible after entry of the court's order. A disposition under subdivision (a)(2) or (3) shall, in no event, result in the child's detention in shelter care, as defined in § 37-1-116, or other temporary placement, without provision of necessary services consistent with the child's assessments or evaluations, in excess of thirty (30) days after entry of the court's order.

(c) No child who has been found to be a victim of severe child abuse shall be returned to the custody or residence of any person who engaged in or knowingly failed to protect the child from the brutality or abuse unless the court finds on the basis of clear and convincing evidence that the child will be provided a safe home free from further such brutality and abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or petition for certiorari is filed, within five (5) days thereafter, excluding Sundays. No such child shall be returned to such custody on the basis of the court's order until five (5) days after entry of the order without the consent of the department and the petitioner.

(d)(1) When the department determines that a child who has been committed to the department under this section is ready to return home, the department shall notify the court in writing of its intention to place the child at home on a trial home visit. If the court objects to the trial home visit, it must notify the department of its objection in writing or set a hearing within fifteen (15) days of the date of the notice, with such hearing to be held at the earliest possible date. If the hearing is not set nor a written objection received within fifteen (15) days of the date of the notice, the department may place the child on a trial home visit. The notice shall include the provision that the department's legal custody of the child shall terminate in ninety (90) days.

(2) If during the ninety-day period the department determines that the trial home visit is not in the child's best interest and removes the child on an emergency basis or seeks to remove the child on a non-emergency basis, the department shall file a motion for review by the court of

the trial home visit and shall provide notice to the parent or parents, guardian or other custodian. The court shall hold a hearing on such motion within three (3) days of an emergency removal and shall set a hearing within fifteen (15) days to be held at the earliest possible date if the motion seeks the court's permission to make a non-emergency removal.

(3) During the ninety-day trial home visit, the court may periodically review the child's status and may make any orders that the best interest of the child may require.

CREDIT(S)

1970 Pub.Acts, c. 600, § 30; impl. am. by 1975 Pub.Acts, c. 219, § 1; 1977 Pub.Acts, c. 482, § 4; 1978 Pub.Acts, c. 886, § 1; 1979 Pub.Acts, c. 143, § 9; 1985 Pub.Acts (1st Ex. Sess.), c. 6, § 2; 1996 Pub.Acts, c. 1079, §§ 73, 90, 91, eff. May 21, 1996; 1999 Pub.Acts, c. 508, § 7, eff. June 17, 1999; 2007 Pub.Acts, c. 372, § 3, eff. July 1, 2007; 2011 Pub.Acts, c. 314, §§ 1, 2, eff. May 27, 2011; 2013 Pub.Acts, c. 397, § 1, eff. July 1, 2013. Current through end of the 2014 Second Reg. Sess.

TENN. CODE ANN. 37-1-409 (2015). Confidential and privileged information; criminal penalties

(a)(1) Except as otherwise provided by this section and §§ 37-1-612 and 37-5-107, reports of harm made under this part and the identity of the reporter are confidential, except when the juvenile court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to an indictment or conviction.

(2) Except as may be ordered by the juvenile court as herein provided, the name of any person reporting child abuse shall not be released to any person, other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney general upon subpoena of the Tennessee bureau of investigation, without the written consent of the person reporting. Such person's identity shall be irrelevant to any civil proceeding and shall, therefore, not be subject to disclosure by order of any court. This shall not prohibit the subpoenaing of a person reporting child abuse when deemed necessary by the district attorney general or the department to protect a child who is the subject of a report; provided, that the fact that such person made the report is not disclosed.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of harm under this part, directly or

indirectly derived from the records, papers, files or communications of the department or divisions thereof acquired in the course of the performance of official duties.

(c) In addition to such other purposes as may be directly connected with the administration of this part, the department shall also grant access to information to those persons specified in § 37-1-612.

(d) The department may confirm whether a child abuse or neglect investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

(e) The department shall adopt such rules as may be necessary to carry out the following purposes:

(1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse, physical abuse, emotional abuse, or neglect; and

(2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect.

(f) Except as specifically provided in this chapter, nothing in this chapter shall prevent the department from sharing information with the district attorney general and law enforcement personnel for the purpose of cooperating with a law enforcement investigation. Information from departmental records that is shared with the district attorney general or law enforcement by the department shall remain confidential to the same extent that information not shared with the district attorney general and law enforcement is confidential. Unless otherwise ordered by a court, or to the extent that such information is used for criminal prosecution, or to the extent required under the Tennessee rules of criminal procedure after criminal charges have been filed, any portion of shared information that does not become part of a court record shall remain confidential to the same extent as information not shared by the department remains confidential.

(g) A violation of this section is a Class B misdemeanor.

CREDIT(S)

1973 Pub.Acts, c. 81, § 1; 1977 Pub.Acts, c. 343, § 4; 1978 Pub.Acts, c. 886, § 4; 1985 Pub.Acts, c. 478, § 42; 1987 Pub.Acts, c. 145, §§ 15, 23; 1988 Pub.Acts, c. 964, § 3; 1989 Pub.Acts, c. 591, § 112; 2000 Pub.Acts, c. 981, § 51, eff. July 1, 2000; 2005 Pub.Acts, c. 391, § 11, eff. July 1, 2005; 2008 Pub.Acts, c. 1146, § 3; 2009 Pub.Acts, c. 358, § 3, eff. July 1, 2009. Current through end of the 2014 Second Reg. Sess

**TENN. CODE ANN. § 37-1-602 (2015). Juvenile Courts and Proceedings.
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.

CREDIT(S)

1985 Pub.Acts, c. 478, § 3; 1988 Pub.Acts, c. 953, § 12; 1996 Pub.Acts, c. 1079, § 73, eff. May 21, 1996; 2000 Pub.Acts, c. 981, §§ 51, 55, eff. July 1, 2000; 2008 Pub.Acts, c. 893, §§ 1, 2, eff. May 8, 2008. Current through end of the 2014 Second Reg. Sess.

TEXAS

TEX. FAM. CODE ANN. § 261.001 (2015). The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship. Definitions

In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including conduct that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or

the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

(2) "Department" means the Department of Family and Protective Services.

(3) "Designated agency" means the agency designated by the court as responsible for the protection of children.

(4) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(v) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

- (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
 - (B) a member of the child's family or household as defined by Chapter 71;
 - (C) a person with whom the child's parent cohabits;
 - (D) school personnel or a volunteer at the child's school; or
 - (E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.
- (6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.
- (7) "Board" means the Board of Protective and Regulatory Services.
- (8) "Born addicted to alcohol or a controlled substance" means a child:
- (A) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and
 - (B) who, after birth as a result of the mother's use of the controlled substance or alcohol:
 - (i) experiences observable withdrawal from the alcohol or controlled substance;
 - (ii) exhibits observable or harmful effects in the child's physical appearance or functioning; or
 - (iii) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.
- (9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, § 86, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 19.01(26), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 59, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 268, § 1.11, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 593, § 3.32, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 4.03, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1142 (S.B. 44), § 1, eff. Sept. 1, 2013. Current through the end of the 2013 Third Called Session of the 83rd Legislature

TEX. FAM. CODE ANN. § 32.005 (2015). Examination Without Consent of Abuse or Neglect of Child

(a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, § 1, eff. Sept. 1, 1997. Current through the end of the 2013 Third Called Session of the 83rd Legislature

UTAH

UTAH CODE ANN. § 76-5-109 (2015). Utah Criminal Code. Child abuse-- Child abandonment

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.

(b)(i) "Child abandonment" means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C)(I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) "Child abandonment" does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) "Enterprise" is as defined in Section 76-10-1602.

(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f)(i) "Serious physical injury" means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;

(C) causes serious emotional harm to the child; or

(D) involves a substantial risk of death to the child.

(ii) "Serious physical injury" includes:

(A) fracture of any bone or bones;

(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

(i) the child suffers a serious physical injury; or

(ii) the person or enterprise receives, directly or indirectly, any benefit.

(5)(a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

CREDIT(S)

Laws 1981, c. 64, § 1; Laws 1992, c. 192, § 1; Laws 1997, c. 289, § 5, eff. May 5, 1997; Laws 1997, c. 303, § 2, eff. May 5, 1997; Laws 1998, c. 81, § 1, eff. May 4, 1998; Laws 1999, c. 67, § 1, eff. March 17, 1999; Laws 2000, c. 125, § 1, eff. May 1, 2000; Laws 2005, c. 95, § 4, eff. May 2, 2005; Laws 2006, c. 75, § 14, eff. May 1, 2006; Laws 2008, c. 45, § 2, eff. May 5, 2008; Laws 2011, c. 366, § 161, eff. May 10, 2011.

UTAH CODE ANN. § 78A-6-105 (2015). Judiciary and Judicial Administration. Juvenile Court Act. 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.

(v) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" is as defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical, emotional, or developmental injury or damage;

(b) sexual abuse; or

(c) sexual exploitation.

(20)(a) “Incest” means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) “Intellectual disability” means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) “Legal custody” means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) “Mental disorder” means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) “Minor” means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) “Molestation” means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) “Natural parent” means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(27)(a) “Neglect” means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d)(i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(28) "Neglected child" means a child who has been subjected to neglect.

(29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b)(i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) "Physical abuse" means abuse that results in physical injury or damage to a child.

(32) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35)(a) “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and
- (iii) major medical, surgical, or psychiatric treatment.

(36) “Secure facility” means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) “Severe abuse” means abuse that causes or threatens to cause serious harm to a child.

(38) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.

(39) “Sexual abuse” means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

- (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
- (ii) child bigamy, Section 76-7-101.5;
- (iii) incest, Section 76-7-102;
- (iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(44) "Substantiated" is as defined in Section 62A-4a-101.

(45) "Supported" is as defined in Section 62A-4a-101.

(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) “Unsubstantiated” is as defined in Section 62A-4a-101.

(49) “Without merit” is as defined in Section 62A-4a-101.

CREDIT(S)

Laws 2008, c. 3, § 371, eff. Feb. 7, 2008; Laws 2008, c. 299, § 34, eff. May 5, 2008; Laws 2011, c. 320, § 26, eff. May 10, 2011; Laws 2012, c. 49, § 2, eff. May 8, 2012; Laws 2012, c. 303, § 7, eff. May 8, 2012; Laws 2012, c. 316, § 5, eff. May 8, 2012; Laws 2014, c. 35, § 1, eff. May 13, 2014
Current through 2014 General Session.

UTAH CODE ANN. § 78A-6-508 (2015). Judiciary and Judicial Administration. Termination of Parental Rights Act. 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;

(f) a history of violent behavior; or

(g) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201.

(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.

CREDIT(S)

Laws 2008, c. 3, § 431, eff. Feb. 7, 2008; Laws 2008, c. 137, § 3, eff. May 5, 2008; Laws 2008, c. 299, § 43, eff. May 5, 2008; Laws 2009, c. 161, § 10, eff. May 12, 2009; Laws 2014, c. 409, § 2, eff. May 13, 2014.

VERMONT

VT. STAT. ANN. TIT. 33, § 4912 (2015). Child Welfare Services. Reporting Abuse of Children. Definitions

As used in this subchapter:

(1) “Abused or neglected child” means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(2) “Assessment” means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

(3) “Child” means an individual under the age of majority.

(4) “Child Protection Registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(5) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.

(6) “Harm” can occur by:

(A) Physical injury or emotional maltreatment.

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. As used in this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapters 51 and 53 of this title, a parent or other person responsible for a child’s care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone.

(C) Abandonment of the child.

(7) “Investigation” means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(8) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(9) “Multidisciplinary team” means a group of professionals, paraprofessionals, and other appropriate individuals impaneled by the Commissioner under this chapter for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.

(10) “Person responsible for a child's welfare” includes the child's parent, guardian, foster parent, any other adult residing in the child's home who serves in a parental role, an employee of a public or private residential home, institution, or agency, or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.

(11) “Physical injury” means death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(12) “Redacted investigation file” means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in section 4913 of this title.

(13) “Registry record” means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(14) “Risk of harm” means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment, or sexual abuse.

(15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child.

(16) “Substantiated report” means that the Commissioner or the Commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

CREDIT(S)

1981, Adj. Sess., No. 207, § 1; 1985, Adj. Sess., No. 211, §§ 1, 2; 1989, Adj. Sess., No. 295, §§ 1, 2; 1991, Adj. Sess., No. 141, § 1; 1995, Adj. Sess., No. 145, § 5; 2001, Adj. Sess., No. 135, § 15; 2003, No. 43, § 2; 2003, No. 66, § 136a; 2007, No. 77, § 1, eff. June 7, 2007; 2007, Adj. Sess., No. 168, § 2, eff. July 1, 2008; 2007, Adj. Sess., No. 172, § 18, eff. July 1, 2008; 2013, Adj. Sess., No. 131, § 76, eff. May 20, 2014. Current through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014).

VT. STAT. ANN. TIT. 15, § 1101 (2015). Domestic Relations. Abuse Prevention 352

The following words as used in this chapter shall have the following meanings:

(1) “Abuse” means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or causing physical harm.

(B) Placing another in fear of imminent serious physical harm.

(C) Abuse to children as defined in subchapter 2 of chapter 49 of Title 33.

(D) Stalking as defined in 12 V.S.A. § 5131(6).

(E) Sexual assault as defined in 12 V.S.A. § 5131(5).

(2) “Household members” means persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or who have dated. “Dating” means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists or existed include:

(A) the nature of the relationship;

(B) the length of time the relationship has existed;

(C) the frequency of interaction between the parties;

(D) the length of time since the relationship was terminated, if applicable.

(3) A “foreign abuse prevention order” means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Rules for Family Proceedings, chapter 69 of Title 33, or chapter 178 of Title 12.

(4) “Other state” and “issuing state” shall mean any state other than Vermont and any federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia.

(5) A “protection order” means any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts, other than support or child custody orders, whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(6) “Family” shall include a reciprocal beneficiary.

CREDIT(S)

1979, Adj. Sess., No. 153, § 1; 1981, Adj. Sess., No. 207, § 2; 1981, Adj. Sess., No. 218, § 1; 1991, Adj. Sess., No. 135, § 14; 1995, Adj. Sess., No. 170, § 26; 1997, Adj. Sess., No. 153, § 4; 1999, Adj. Sess., No. 91, § 38; 1999, Adj. Sess., No. 124, § 10; 2005, Adj. Sess., No. 193, § 3; 2009, Adj. Sess., No. 154, § 128, eff. July 1, 2010. Current through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014).

VIRGINIA

VA. CODE ANN. §16.1-228 (2015). Crimes and Offenses Generally. Family Offenses; Crimes Against Children, Etc. Definitions

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

“Abused or neglected child” means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; or
6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

“Adoptive home” means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

“Adult” means a person 18 years of age or older.

“Ancillary crime” or “ancillary charge” means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

“Boot camp” means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

“Child,” “juvenile,” or “minor” means a person less than 18 years of age.

“Child in need of services” means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

“Child in need of supervision” means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

“Child welfare agency” means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

“The court” or the “juvenile court” or the “juvenile and domestic relations court” means the juvenile and domestic relations district court of each county or city.

“Delinquent act” means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not

include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

“Delinquent child” means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

“Department” means the Department of Juvenile Justice and “Director” means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

“Family abuse” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

“Family or household member” means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

“Foster care services” means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

“Independent living arrangement” means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local

board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

“Independent living services” means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. “Independent living services” may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

“Intake officer” means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

“Jail” or “other facility designed for the detention of adults” means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

“The judge” means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

“This law” or “the law” means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

“Legal custody” means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

“Permanent foster care placement” means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

“Residual parental rights and responsibilities” means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

“Secure facility” or “detention home” means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

“Shelter care” means the temporary care of children in physically unrestricting facilities.

“State Board” means the State Board of Juvenile Justice.

“Status offender” means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

“Status offense” means an act prohibited by law which would not be an offense if committed by an adult.

“Violent juvenile felony” means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

CREDIT(S)

Acts 1972, c. 708; Acts 1973, c. 546; Acts 1974, c. 44; Acts 1974, c. 45; Acts 1977, c. 559; Acts 1978, c. 605; Acts 1979, c. 15; Acts 1981, c. 491; Acts 1984, c. 631; Acts 1985, c. 260; Acts 1986, c. 281; Acts 1986, c. 308; Acts 1987, c. 632; Acts 1988, c. 794; Acts 1990, c. 704; Acts 1990, c. 769; Acts 1990, c. 842; Acts 1991, c. 534; Acts 1992, c. 742; Acts 1992, c. 830; Acts 1992, c. 886; Acts 1993, c. 435; Acts 1993, c. 467; Acts 1993, c. 494; Acts 1994, c. 859; Acts 1994, c. 865; Acts 1994, c. 949; Acts 1996, c. 755; Acts 1996, c. 914; Acts 1999, c. 453; Acts 1999, c. 665; Acts 1999, c. 697; Acts 1999, c. 721; Acts 2002, c. 810; Acts 2002, c. 818; Acts 2003, c. 538; Acts 2003, c. 547; Acts 2003, c. 835; Acts 2004, c. 245; Acts 2004, c. 753; Acts 2006, c. 868; Acts 2008, c. 475; Acts 2008, c. 483; Acts 2011, c. 445; Acts 2011, c. 480. Current through the End of 2014 Reg. Sess. and includes cc. 1 to 5 from the 2014 Sp. S. I.

VA. CODE ANN. § 63.2-100 (2015). General Provisions Relating to Social Services. Definitions.

As used in this title, unless the context requires a different meaning:

“Abused or neglected child” means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that

child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

“Adoptive home” means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

“Adoptive placement” means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

“Adult abuse” means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

“Adult day care center” means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

“Adult exploitation” means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

“Adult foster care” means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

“Adult neglect” means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

“Adult protective services” means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

“Assisted living care” means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

“Assisted living facility” means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home

or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

“Auxiliary grants” means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

“Birth family” or “birth sibling” means the child's biological family or biological sibling.

“Birth parent” means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

“Board” means the State Board of Social Services.

“Child” means any natural person under 18 years of age.

“Child day center” means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

“Child day program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

“Child-placing agency” means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

“Child-protective services” means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It

also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

“Child support services” means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

“Child-welfare agency” means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

“Children's residential facility” means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by § 35.1-18; and
3. A licensed or accredited hospital legally maintained as such.

“Commissioner” means the Commissioner of the Department, his designee or authorized representative.

“Department” means the State Department of Social Services.

“Department of Health and Human Services” means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

“Disposable income” means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

“Energy assistance” means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

“Family day home” means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

“Family day system” means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

“Foster care placement” means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

“Foster home” means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

“General relief” means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

“Independent foster home” means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

“Independent living” means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

“Independent living arrangement” means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

“Independent living services” means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. “Independent living services” may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

“Independent physician” means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

“Intercountry placement” means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

“Interstate placement” means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

“Kinship care” means the full-time care, nurturing, and protection of children by relatives.

“Local board” means the local board of social services representing one or more counties or cities.

“Local department” means the local department of social services of any county or city in this Commonwealth.

“Local director” means the director or his designated representative of the local department of the city or county.

“Merit system plan” means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

“Parental placement” means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

“Public assistance” means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

“Qualified assessor” means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

“Registered family day home” means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

“Residential living care” means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of “residential living care” includes the services provided by independent living facilities that voluntarily become licensed.

“Social services” means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

“Special order” means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

“Temporary Assistance for Needy Families” or “TANF” means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

“Temporary Assistance for Needy Families-Unemployed Parent” or “TANF-UP” means the Temporary Assistance for Needy Families program for families in which both natural or adoptive

parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

“Title IV-E Foster Care” means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

CREDIT(S)

Acts 2002, c. 747, eff. Oct. 1, 2002; Acts 2003, c. 467; Acts 2004, c. 70; Acts 2004, c. 196; Acts 2004, c. 245; Acts 2004, c. 753; Acts 2004, c. 814; Acts 2006, c. 868; Acts 2007, c. 479; Acts 2007, c. 597; Acts 2008, c. 475; Acts 2008, c. 483; Acts 2009, c. 705; Acts 2009, c. 813; Acts 2009, c. 840; Acts 2011, c. 5; Acts 2011, c. 156. Amended by Acts 2012, c. 803, eff. July 1, 2013; Acts 2012, c. 835, eff. July 1, 2013; Acts 2013, c. 5; Acts 2013, c. 362; Acts 2013, c. 564 Current through the End of 2014 Reg. Sess. and includes cc. 1 to 5 from the 2014 Sp. S. I.

WASHINGTON

Wash. Rev. Code Ann. § 26.44.020 (2015). Abuse of Children.

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Abuse or neglect” means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

In re Welfare of Dodge, 29 Wash.App. 486, 628 P.2d 1343 (1981): Failure of a parent to provide emotional nurturing, stability and permanence can be as harmful to a child's well-being as physical abuse or failure to provide food, shelter, and clothing; such failure would constitute “neglect,” whether resulting in physical or emotional harm to child..

(2) “Child” or “children” means any person under the age of eighteen years of age.

(3) “Child protective services” means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and

treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Court" means the superior court of the state of Washington, juvenile department.

(8) "Department" means the state department of social and health services.

(9) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(10) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(11) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(12) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(13) “Institution” means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(14) “Law enforcement agency” means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(15) “Malice” or “maliciously” means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(16) “Negligent treatment or maltreatment” means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(17) “Pharmacist” means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) “Practitioner of the healing arts” or “practitioner” means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term “practitioner” includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(19) “Professional school personnel” include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(20) “Psychologist” means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(21) “Screened-out report” means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(22) “Sexual exploitation” includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(23) “Sexually aggressive youth” means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(24) “Social service counselor” means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(25) “Supervising agency” means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15. 190 that has entered into a performance-based contract with the department to provide child welfare services.

(26) “Unfounded” means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

CREDIT(S)

[2012 c 259 § 1, eff. Dec. 1, 2013. Prior: 2010 c 176 § 1, eff. June 10, 2010; 2009 c 520 § 17, eff. July 26, 2009; 2007 c 220 § 1, eff. Oct. 1, 2008; 2006 c 339 § 108, eff. Jan. 1, 2007; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5, eff. Jan. 1, 2007; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7; prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.] Current with all 2014 Legislation and Initiative Measures 594 (2015 c 1) and 1351 (2015 c 2)

WEST VIRGINIA

W. Va. Code Ann. § 49-1-3 (2015). Definitions relating to abuse and neglect

(1) “Abused child” means a child whose health or welfare is harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(2) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(3) "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(4) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(5) "Child abuse and neglect services" means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(6) “Child advocacy center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(D) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.

(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(J) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.

(7) “Court appointed special advocate (CASA) program” means a community organization that screens, trains and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings. Court appointed special advocate programs will be operated under the following guidelines:

(A) Standards: CASA programs shall be members in good standing with the West Virginia Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special Advocates Association and adhere to all standards set forth by these entities.

(B) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practice.

(C) Cultural competency and diversity: CASA programs promote policies, practices and procedures that are culturally competent. “Cultural competency” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(D) Case management: CASA programs must utilize a uniform case management system to monitor case progress and track outcomes.

(E) Case review: CASA volunteers meet with CASA staff on a routine basis to discuss case status and outcomes.

(F) Training: Court appointed special advocates shall serve as volunteers without compensation and shall receive training consistent with state and nationally developed standards.

(8) “Imminent danger to the physical well being of the child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian; or

(H) The parent, guardian or custodian abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety.

(9) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.

(10) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and followup for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(11)(A) "Neglected child" means a child:

(i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(ii) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(B) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(12) "Parent" means an individual defined has a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

(13) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(14) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(15) “Sexual abuse” means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(16) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(17) “Sexual exploitation” means an act whereby:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or

custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(18) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(19) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(20) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

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

(22) “Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(23) “Time-limited reunification services” means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

CREDIT(S)

Acts 1936, 1st Ex. Sess., c. 1; Acts 1941, c. 73; Acts 1977, c. 65; Acts 1978, c. 14; Acts 1984, c. 27; Acts 1990, c. 41; Acts 1991, 2nd Ex. Sess., c. 13; Acts 1992, c. 52; Acts 1994, 1st Ex. Sess., c. 17; Acts 1994, 1st Ex. Sess., c. 23; Acts 1998, c. 81, eff. July 1, 1998; Acts 1999, c. 45, eff. 90 days after March 12, 1999; Acts 2006, c. 30, eff. 90 days after March 11, 2006; Acts 2007, c. 31, eff. June 3, 2007; Acts 2011, c. 21, eff. June 5, 2011; Acts 2012, c. 26, eff. June 7, 2012.

WISCONSIN

WIS. STAT. ANN. § 48.02 (2015). Children's Code. Definitions

In this chapter, unless otherwise defined:

(1) “Abuse”, other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02, 948.025, or 948.085.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30(1m).

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(g) Manufacturing methamphetamine in violation of s. 961.41(1)(e) under any of the following circumstances:

1. With a child physically present during the manufacture.
2. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home.
3. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1e) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1m) "Alcoholism" has the meaning given in s. 51.01(1m).

(1s) “Approved treatment facility” has the meaning given in s. 51.01(2).

(2) “Child”, when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age.

(2d) “Controlled substance” has the meaning given in s. 961.01(4).

(2e) “Controlled substance analog” has the meaning given in s. 961.01(4m).

(2f) “Coordinated services plan of care” has the meaning given in s. 46.56(1)(cm).

(2g) “County department” means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) “Court”, when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) “Court intake worker” means any person designated to provide intake services under s. 48.067.

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

(5) “Developmentally disabled” means having a developmental disability, as defined in s. 51.01(5).

(5g) “Drug dependent” has the meaning given in s. 51.01(8).

(5j) “Emotional damage” means harm to a child's psychological or intellectual functioning. “Emotional damage” shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(5m) “Foreign jurisdiction” means a jurisdiction outside of the United States.

(6) “Foster home” means any facility that is operated by a person required to be licensed by s. 48.62(1) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) “Group home” means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625(1).

(8) “Guardian” means the person named by the court having the duty and authority of guardianship.

(8d) “Indian” means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8g) “Indian child” means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe in any of the following ways:

(a) As a member of the Indian tribe.

(b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) “Indian child’s tribe” means one of the following:

(a) The Indian tribe in which an Indian child is a member or eligible for membership.

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(8p) “Indian custodian” means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

(8r) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(10r) “ Juvenile detention facility” means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(11) “Legal custodian” means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) “Legal custody” means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12g) “Neglect” means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(12m) “Nonidentifying social history information” means information about a person's birth parent that may aid the person in establishing a sense of identity. “Nonidentifying social history information” may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

(a) Age at the time of the person's birth.

(b) Nationality.

(c) Race.

(d) Education.

(e) General physical appearance.

(f) Talents, hobbies and special interests.

(h) Reason for placing the child for adoption or for the termination of parental rights.

(i) Religion.

(k) Family history.

(m) Personality traits of each parent.

(13) “Parent” means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, “parent” includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the biological father. “Parent” does not include any person whose parental rights have been terminated. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian child, including an adoption under tribal

law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.805, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but does not include any person whose parental rights have been terminated.

(14) “Physical custody” means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) “Physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22(14).

(15) “Relative” means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “relative” includes an extended family member, as defined in s. 48.028(2)(am), whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(15d) “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(16) “Secretary” means the secretary of children and families.

(17) “Shelter care facility” means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66(1)(a).

(17m) “Special treatment or care” means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. “Special treatment or care” also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(18) “Trial” means a fact-finding hearing to determine jurisdiction.

(18j) “Tribal court” means a court that has jurisdiction over Indian child custody proceedings, and that is either a court of Indian offenses or a court established and operated under the code

or custom of an Indian tribe, or any other administrative body of an Indian tribe that is vested with authority over Indian child custody proceedings.

(18m) “Tribal school” has the meaning given in s. 115.001(15m).

(19) “Unborn child” means a human being from the time of fertilization to the time of birth.

Current through 2013 Act 380, published 4/25/2014

WIS. STAT. ANN. § 948.01 (2015). Crimes Against Children. Definitions

In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(1) “Child” means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17 years.

(1d) “Exhibit,” with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) “Joint legal custody” has the meaning given in s. 767.001(1s).

(1r) “Legal custody” has the meaning given in s. 767.001(2).

(2) “Mental harm” means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. “Mental harm” may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) “Person responsible for the child's welfare” includes the child's parent; stepparent; guardian; foster parent; an employee of a public or private residential home, institution, or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(3m) “Physical placement” has the meaning given in s. 767.001(5).

(3r) “Recording” includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any of the following:

(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.

2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

(6) "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

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

(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of intimate parts.

Current through 2013 Act 380, published 4/25/2014

WIS. STAT. ANN. § 948.04 (2015). Causing mental harm to a child

(1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class F felony.

(2) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

Current through 2013 Act 380, published 4/25/2014

WYOMING

Wyo. Stat. Ann. § 14-3-202 (2015). Child Protective Services. Definitions

(a) As used in W.S. 14-3-201 through 14-3-216:

(i) "A person responsible for a child's welfare" includes the child's parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child;

(ii) "Abuse" means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, unless the abandonment is a relinquishment substantially in accordance with W.S. 14-11-101 through 14-11-109, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

(A) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in his ability to function within a normal range of performance and behavior with due regard to his culture;

(B) "Physical injury" means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition;

(C) "Substantial risk" means a strong possibility as contrasted with a remote or insignificant possibility;

(D) "Imminent danger" includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. "Imminent danger" includes violation of W.S. 31-5-233(m).

(iii) "Child" means any person under the age of eighteen (18);

(iv) "Child protective agency" means the field or regional offices of the department of family services;

(v) "Court proceedings" means child protective proceedings which have as their purpose the protection of a child through an adjudication of whether the child is abused or neglected, and the making of an appropriate order of disposition;

(vi) "Institutional child abuse and neglect" means situations of child abuse or neglect where a foster home or other public or private residential home, institution or agency is responsible for the child's welfare;

(vii) "Neglect" means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone;

(viii) "State agency" means the state department of family services;

(ix) "Subject of the report" means any child reported under W.S. 14-3-201 through 14-3-216 or the child's parent, guardian or other person responsible for the child's welfare;

(x) "Unsubstantiated report" means any report made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is not supported by a preponderance of the evidence;

(xi) "Substantiated report" means any report of child abuse or neglect made pursuant to W.S. 14-3-201 through 14-3-216 that, upon investigation, is supported by a preponderance of the evidence;

(xii) to (xiv) Repealed by Laws 2002, Sp. & Bud. Sess., Ch. 86, § 3.

(xv) “Collaborative” means the interagency children's collaborative created by W.S. 14-3-215;

(xvi) “Department” means the state department of family services and its local offices;

(xvii) “Transportation” means the provision of a means to convey the child from one place to another by the custodian or someone acting on his behalf in the performance of required duties, but does not require the state to provide incidental travel or to purchase a motor vehicle for the child's own use to travel.

CREDIT(S)

Laws 1971, ch. 181, § 1; Laws 1977, ch. 110, § 2; Laws 1978, ch. 25, § 1; Laws 1983, ch. 146, § 1; Laws 1991, ch. 161, § 3; Laws 1993, ch. 1, § 1; Laws 1993, ch. 44, § 1; Laws 1994, ch. 39, § 1; Laws 1995, ch. 136, § 1, eff. July 1, 1995; Laws 2002, Sp. & Bud. Sess., ch. 86, §§ 2, 3 eff. July 1, 2002; Laws 2002, Sp. & Bud. Sess., ch. 89, § 1, eff. July 1, 2002; Laws 2003, ch. 167, § 2, eff. July 1, 2003; Laws 2005, ch. 23, § 1, eff. July 1, 2005; Laws 2005, ch. 236, § 2, eff. July 1, 2005; Laws 2006, ch. 114, § 1, eff. March 24, 2006; Laws 2007, ch. 72, § 1, eff. July 1, 2007. Current through the 2014 Budget Session

FEDERAL LEGISLATION/U.S. TERRITORIES

FEDERAL LEGISLATION

18 U.S.C.S. § 3509 (2015). Child victims' and child witnesses' rights

(a) Definitions.--For purposes of this section--

(1) the term “adult attendant” means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term “child” means a person who is under the age of 18, who is or is alleged to be--

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term “child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term “physical injury” includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term “mental injury” means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term “exploitation” means child pornography or child prostitution;

(7) the term “multidisciplinary child abuse team” means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term “sexually explicit conduct” means actual or simulated--

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(10) the term “sex crime” means an act of sexual abuse that is a criminal act;

(11) the term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(12) the term “child abuse” does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(b) Alternatives to live in-court testimony.--

(1) Child's live testimony by 2-way closed circuit television.--

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 7 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(i) The child is unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(iii) The child suffers a mental or other infirmity.

(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are--

(i) the child's attorney or guardian ad litem appointed under subsection (h);

(ii) Persons necessary to operate the closed-circuit television equipment;

(iii) A judicial officer, appointed by the court; and

(iv) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) Videotaped deposition of child.--(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) Handling of videotape.--The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) Competency examinations.--

(1) Effect on Federal Rules of Evidence.--Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) Presumption.--A child is presumed to be competent.

(3) Requirement of written motion.--A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) Requirement of compelling reasons.--A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) Persons permitted to be present.--The only persons who may be permitted to be present at a competency examination are--

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) Not before jury.--A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) Direct examination of child.--Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) Appropriate questions.--The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) Psychological and psychiatric examinations.--Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) Privacy protection.--

(1) Confidentiality of information.--(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall--

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to--

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) Filing under seal.--All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court--

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) Protective orders.--(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may--

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) Disclosure of information.--This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) Closing the courtroom.--When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(f) Victim impact statement.--In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) Use of multidisciplinary child abuse teams.--

(1) In general.--A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) Role of multidisciplinary child abuse teams.--The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including--

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) Guardian ad litem.--

(1) In general.--The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) Duties of guardian ad litem.--A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) Immunities.--A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) Adult attendant.--A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) Speedy trial.--In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) Stay of civil action.--If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(l) Testimonial aids.--The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) Prohibition on reproduction of child pornography.--

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

(2)(A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by

section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

CREDIT(S)

(Added Pub.L. 101-647, Title II, § 225(a), Nov. 29, 1990, 104 Stat. 4798; amended Pub.L. 103-322, Title XXXIII, §§ 330010(6), (7), 330011(e), 330018(b), Sept. 13, 1994, 108 Stat. 2143, 2145, 2149; Pub.L. 104-294, Title VI, § 605(h), Oct. 11, 1996, 110 Stat. 3510; Pub.L. 109-248, Title V, §§ 504, 507, July 27, 2006, 120 Stat. 629, 631; Pub.L. 111-16, § 3(11), May 7, 2009, 123 Stat. 1608.) Current through P.L. 113-234 approved 12-16-2014

42 U.S.C.S. § 13031 (2015). Child abuse reporting

(a) In general

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.

(b) Covered professionals

Persons engaged in the following professions and activities are subject to the requirements of subsection (a) of this section:

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

(c) Definitions

For the purposes of this section--

(1) the term “child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(2) the term “physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(3) the term “mental injury” means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term “sexually explicit conduct” means actual or simulated--

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(6) the term “exploitation” means child pornography or child prostitution;

(7) the term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term “child abuse” shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) Agency designated to receive report and action to be taken

For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a) of this section. By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

(e) Reporting form

In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

(f) Immunity for good faith reporting and associated actions

All persons who, acting in good faith, make a report by subsection (a) of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

(g) Omitted

(h) Training of prospective reporters

All individuals in the occupations listed in subsection (b)(1) of this section who work on Federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

CREDIT(S)

(Pub.L. 101-647, Title II, § 226, Nov. 29, 1990, 104 Stat. 4806.) Current through P.L. 113-234 approved 12-16-2014

AMERICAN SAMOA

Am. Samoa Code Ann. § 45.0103 (2015). Definitions

As used in this title, unless the context otherwise requires, the following definitions apply:

(1) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under paragraph (a)(1) or (a)(2) of 45.0115 are supported by evidence beyond a reasonable doubt or the allegations of a petition under paragraph (a)(3) of 45.0115 are supported by a preponderance of the evidence.

- (2) "Adult" means a person 18 years of age or older. However, any person 18 years of age or over falling under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his 18th birthday, or concerning whom a petition has been filed for his adoption other than under this title, shall be referred to as a child.
- (3) "Child" means a person under 18 years of age or a mentally retarded or developmentally disabled person regardless of age.
- (4) "Child care center" means a facility approved under law: if the facility is located in another State or Territory, it shall be licensed or approved as required by law in that state or territory.
- (5) "Child in need of supervision" means any child:
- (A) who is repeatedly absent from school in violation of the requirements of 16.0302;
- (B) who has run away from home or is otherwise beyond the control of his parent, guardian, or other legal custodial or
- (C) whose behavior or condition is such as to endanger his own or other welfare.
- (6) "Child placement agency" means an agency approved under law. If the agency is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.
- (7) "Commit" means to transfer legal custody.
- (8) "Court" means the Trial Division of the High Court of American Samoa, except for uncontested adoptions under 45.0420 through 45.0431 then court means the District Court;
- (9) (A) "Delinquent child" means any child 10 years of age or older who, regardless of where the violation occurred, has violated:
- (I) any federal, state, or territorial law;
- (II) any ordinance, the penalty for which may be a jail sentence; or
- (III) any lawful order of the court made under this title.
- (B) This definition does not apply to:
- (I) children 14 years of age or older who allegedly commit crimes of violence; or
- (II) children who within the previous 2 years have been adjudicated a delinquent child, and the act for which the child was adjudicated a delinquent would have been a felony if committed by an adult or punishable by a maximum punishment of life imprisonment or death;
- (III) children 14 years of age or older who allegedly commit any felony subsequent to any other felony which was the subject of a hearing in which the child was certified for criminal proceedings as an adult.
- (C) A child who violates any traffic law or regulation shall be designated a "juvenile traffic offender" and shall not be designated a delinquent unless it be so ordered by the court after hearing the evidence.
- (10) "Deprivation of custody" means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency or institution.
- (11) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment. Juvenile detention facilities are designated by the Court.
- (12) "Diagnostic and evaluation centers" means places for the examination and study of persons committed to the custody of the Department of Public Safety, Corrections Bureau.
- (13) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision, or neglected or

dependent. The hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.

(14) "Family care home" means a facility approved under law. If the facility is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.

(15) "Group care facilities and homes" means places other than foster family care homes providing care for small groups of children.

(16) "Guardianship of the person" means the duty and authority vested by Court action to make major decisions affecting a child including, but not limited to:

(A) the authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(B) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(C) the authority to consent to the adoption of a child when parental rights have been terminated by judicial decree; and

(D) the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution;

(17) "Half-way houses" means group care facilities for children who have been placed on probation or parole under the terms of this title.

(18) (A) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by Court action.

(B) For purposes of determining the residence of a child, guardianship is in the person to whom legal custody has been granted by the Court.

(19) "Neglected or dependent child" means a child:

(A) whose parent, guardian, or legal custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and to prevent it from recurring;

(B) who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(C) whose environment is injurious to his welfare;

(D) whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being; or

(E) who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian through no fault of his parent, guardian, or legal custodian.

(20) "Normal parental discipline" means all actions by parents, such as administration of blows by hand, strap, or light switch upon the buttocks, or any firm handling, scolding or light taps, insufficient to seriously bruise or produce medical injury or disability.

(21) "Parent" means either a natural parent of a legitimate child, or a parent by adoption, or the natural parent of an illegitimate child. A child born to a woman married at the time of its conception or birth is presumed to be the legitimate child of her husband. In the event that the mother is legally married to a different man at the time of birth than she was at the time of conception, the child is presumed to be the legitimate child of her husband at the time of

conception. If this presumption is legally rebutted and no contrary determination is made, the man to whom the mother is married at the time of the child's birth is presumed to be the legitimate father of the child. The father of an illegitimate child has no parental rights to the child unless he, prior to entry of a decree of adoption, has acknowledged the child as his own by affirmatively asserting paternity as follows:

- (A) causing his name to be affixed to the birth certificate of the child;
- (B) paying medical or hospital bills associated with the birth of the child;
- (C) paying support for the child; or
- (D) otherwise asserting his paternity in writing.

(22) "Protective supervision" means a legal status created by Court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the Court, Department of Health or other agency designated by the Court.

(23) "Receiving center" means a facility used to provide temporary detention and care for children by the Corrections Bureau pending placement in a training school, camp, or other facility.

(24) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not limited to: the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

(25) "Shelter" means the temporary care of a child in physically unrestricting facilities pending Court disposition or execution of a court order for placement. Juvenile shelter facilities are designated by the Court.

(26) "Termination of parental rights" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and responsibilities.

(27) "Training schools" means institutions providing care, education, treatment, and rehabilitation for children in a closed setting.

COPYRIGHT 2011

Am. Samoa Code Ann. § 45.2001 (2015). Definitions.

As used in this chapter unless the context otherwise requires:

(a)(1) "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(A) when a child exhibits evidence of serious bruising, bleeding, malnutrition, failure to thrive, mental injury, burns, fracture of a bone, subdural hematoma, soft tissue swelling, or death, and the condition or death is not justifiably explained, or where the history given concerning the condition or death is at variance with the degree or type of the condition or death, or circumstances indicate that the condition or death may not be the product of an accidental occurrence;

(B) when a child is subject to the sexual offenses contained in 46.3601 to 46.3617 and 46.3802, or is allowed, permitted, or encouraged by the child's parents, legal guardian, custodian, or any other person responsible for the child's health and welfare, to engage in prostitution or be the subject of obscene or pornographic photographing, filming, or depicting;

(C) any case in which the child's parents, legal guardians, custodians or any other person responsible for the child's health and welfare fail to take the action to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

(2) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture. Nothing in subparagraph (a)(I)(B) refers to acts which could be construed to be a reasonable exercise of parental discipline as defined in subsection (20) of 45.0103.

(b) "Agency" means Child Protection Agency of the Department of Human Resources.

(c) "Department" means the Department of Public Safety.

(d) "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (a) above.

(e) "Receiving agency" means the Department of Health or law enforcement agency first receiving a report of alleged child abuse.

(f) "Responsible person" means a child's parent, legal guardian, or custodian, any employee of a residential facility, any staff person providing out-of-home care or under any other settings in which children are provided care, or any other person responsible for the child's health and welfare.

(g) "Unfounded report" means any report made under this chapter which is not supported by some credible evidence.

COPYRIGHT 2011

GUAM

GUAM CODE ANN. TIT. 9, § 31.30 (2015). Child Abuse

(a) A person is guilty of child abuse when:

(1) he subjects a child to cruel mistreatment; or

(2) having a child in his care or custody or under his control, he:

(A) deserts that child with intent to abandon him;

(B) subjects that child to cruel mistreatment; or

(C) unreasonably causes or permits the physical or, emotional health of that child to be endangered.

(b) Child abuse is a felony of the third degree when it is committed under circumstances likely to result in death or serious bodily injury. Otherwise, it is a misdemeanor.

SOURCE: M.P.C. § 230.4; *Cal. § 980 (1971); Mass. ch. 273, §§ 1, 4; N.J. § 2C:24-4. 9 G.C.A.

**GUAM CODE ANN. TIT. 19, § 13101 (2015). Child Protective Act.
Definitions.**

For purposes of this Chapter:

(a) Abandonment means the desertion or willful forsaking of a minor by the person responsible for the child's welfare under circumstances in which a reasonable person would continue to provide care or custody;

(b) Abused or neglected child means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare;

(c) Authorized agency means a department or other public or private agency, or a person, organization, corporation, or benevolent society or association which is licensed or approved by such department or agency or the court to receive children for control, care, maintenance or placement;

(d) Child means a person under the age of 18 years;

(e) Child protective agency means the Guam Police Department, the Office of Special Investigation, Naval Investigative Service, the Attorney General's Office, or the Department of Public Health and Social Services and its authorized representatives, including but not limited to Child Protective Services;

(f) Child protective proceeding means any action, hearing or other civil proceeding before the court under this Chapter;

(g) Child Protective Services means the agency established by § 13301 of this Chapter under the Department of Public Health and Social Services;

(h) Clear and convincing evidence means that measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established;

(i) Criminal history record check means an examination of an individual's criminal history record through fingerprint analysis or name inquiry into territorial, state and national criminal history record files, including but not limited to the files of the Federal Bureau of Investigation, the Guam Police Department, the Prosecution Division of the Attorney General's Office, and the Child Protective Services; provided, that the information obtained shall be used exclusively for purposes under this Chapter and shall be subject to applicable federal and local laws and regulations;

- (j) Department means the Department of Public Health and Social Services and its authorized representatives, including but not limited to the Child Protective Services;
- (k) Disposition hearing means a hearing held pursuant to § 13320 of this Chapter;
- (l) Expunge means to strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any means: mechanical, electronic or otherwise;
- (m) Fact-finding hearing means an adjudicatory hearing held pursuant to § 13318 of this Chapter to determine the truth of the allegations contained in the petition filed under this Chapter;
- (n) Family means each legal parent, the grandparents, each parent's spouse, each sibling or person related by consanguinity up to the second degree or by marriage, each person residing in the same dwelling unit, and any other person or legal entity which is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care;
- (o) Family Court means the court established pursuant to § 5101, Title 9, Guam Code Annotated;
- (p) Family home means the home of the child's parents or legal custodian where there is the provision of care for the child's physical and psychological health and welfare;
- (q) Foster care means when a child is placed, pursuant to an order of the court, in a residence which has been designated as suitable by an authorized agency or the court for the appropriate care of a child;
- (r) Foster custody means the legal status created by an order of the court after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home;
- (s) Guardian ad litem means a person appointed by the court pursuant to § 13308 of this Chapter whose role is to protect and promote the needs and interests of the child or ward;
- (t) Harm to a child's physical health or welfare occurs in a case where there exists evidence of injury, including but not limited to:
- (1) Any case where the child exhibits evidence of:
- (A) skin bruising or any other internal bleeding,
- (B) any injury to skin causing bleeding,
- (C) burn or burns,
- (D) poisoning,

(E) fracture of any bone,

(F) subdural hematoma

(G) soft tissue swelling,

(H) extreme pain,

(I) death or

(J) disfigurement or impairment of any bodily organ, and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is at variance with the degree or type of such condition or death; or

(2) Any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code; or

(3) Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

(4) Any case where the physical health of the child is adversely affected because the person responsible for the child's welfare has not regularly provided the child, in a timely manner, with adequate food, clothing, shelter, psychological care, physical care, health care or supervision, when financially able to do so or if offered financial assistance or health care or other reasonable means to do so. "Adequate health care" includes any medical or non-medical health care permitted or authorized under territorial laws; provided, however, that a person responsible for the child's welfare who, while legitimately practicing his or her religious beliefs, does not specify medical treatment for a child should not for that reason alone be considered as harming or threatening harm to the child; or

(5) Any case where the child is provided with a controlled substance as defined by the Criminal and Correctional Code. However, this paragraph shall not apply to a child's family who provides such drugs to the child pursuant to the direction or prescription of a practitioner as defined in § 67.12(t) of the Criminal and Correctional Code of Guam; or

(6) Any case where the child is abandoned.

(u) Indicated report means a report made pursuant to this Article if an investigation by a child protective agency results in a determination by Child Protective Services that substantial evidence of the alleged abuse exists based on available medical evidence and the investigation or an admission of the acts of harm or threatened harm by the person responsible for the child's welfare;

- (v) Licensing agency means any department or agency that licenses child care facilities;
- (w) Long-term foster custody means the legal status created by order of the court after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate long-term plan concerning the child;
- (x) Party means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to § 13306 of this Chapter, any other member of the child's family, or any other person who is alleged in the petition filed under this Chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing or contributing to the acts or condition which bring the child within this Chapter;
- (y) Permanency plan is a specific written plan prepared by Child Protective Services which sets forth the goal of the child's permanent placement as being either adoption, permanent foster custody with subsequent adoption or guardianship, or permanent foster custody until majority.
- (z) Permanency plan hearing means a hearing held pursuant to § 13324 of this Chapter.
- (aa) Person responsible for the child's welfare includes the child's parent, guardian, foster parent, an employee of a public or private residential home or an institution or authorized agency responsible for the child's welfare;
- (bb) PINS means a person in need of services who has been harmed as defined in this § 13101.
- (cc) Police officer means a person employed by the government of Guam to enforce the laws and ordinances for preserving the peace, safety, and good order of the community;
- (dd) Preliminary hearing means a hearing held pursuant to § 13317 of this Chapter;
- (ee) Preponderance of evidence means evidence which as a whole shows that the fact sought to be proved is more probable than not;
- (ff) Progress hearing means any hearing held pursuant to § 13322 of this Chapter;
- (gg) Protective custody means the legal status of a child whose physical custody is retained by a police officer, Child Protective Services social worker or physician pursuant to § 13302 of this Chapter in order to protect such child from harm or threatened imminent harm;
- (hh) Reasonable cause to believe means evidence which would cause a reasonable person to believe;
- (ii) Service plan means a specific written plan prepared by Child Protective Services and presented to members of the child's family which indicates the specific services or treatment with which the parties will be provided, the specific actions the parties must take, the specific

responsibilities that the parties must assume, and the specific consequences that may be reasonably anticipated to result from the parties' success or failure in complying with the plan;

(jj) Subject of the report means any child reported to the central register of child abuse and the person(s) responsible for the child's welfare named in the report;

(kk) Substantiated report means a report made pursuant to this Chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report is an abused or neglected child;

(ll) Suspected report means any report that is not indicated, substantiated or unsubstantiated;

(mm) Temporary foster custody means a legal status created under this Chapter pursuant to an order of the court whereby the Department assumes the duties and rights of a foster custodian over a child;

(nn) Threatened harm means any reasonably foreseeable, substantial risk of harm to a child with due consideration being given to the age of the child;

(oo) Unsubstantiated report means any report made pursuant to this Chapter if an investigation by a child protective agency results in a determination by Child Protective Services that substantial evidence of the alleged abuse does not exist.

PUERTO RICO

P.R. Laws Ann. tit. 8, § 444 (2015). Comprehensive Child Wellbeing and Protection Act. Definitions

For the purposes of this chapter, the following terms shall have the meanings indicated below:

(a) Abandonment.— Shall mean willful dereliction of or being remiss in the responsibilities that the father, mother, or other person in charge of the minor have, taking into account their age and their need for adult care. The intention to abandon can be evidenced by, but not limited to:

(1) A lack of communication with the minor for a period of at least three (3) months;

(2) a lack of participation in any plan or program designed to reunite the minor with the father, mother, or other person in charge of the wellbeing of the minor;

(3) a failure to respond to notices of hearings for protection of the minor, or

(4) when the minor is found in circumstances that make it impossible to ascertain the identity of the father, mother, or other person in charge of the minor's wellbeing; when the identity is known, but the whereabouts of the person is unknown, in spite of effort to locate him or her; or when the father, mother, or other person in charge of the minor's wellbeing fails to claim the minor within thirty (30) days after the minor is found.

(b) Sexual abuse.— Shall mean engaging in sexual conduct in the presence of a child and/or utilizing the child, voluntarily or otherwise, to engage in sexual conduct aimed at satisfying lewdness, or any other act that, if criminally prosecuted, would constitute any of the following crimes: sexual assault; lewd acts; indecent exposure or indecent proposals; producing child pornography; possessing and distributing child pornography; using a minor for child pornography; remitting, transporting, selling, distributing, publishing, exhibiting, or possessing obscene materials, and obscene shows as typified in the Penal Code of the Commonwealth of Puerto Rico.

(c) Protection cases.— Shall mean situations of abuse, institutional abuse, neglect and/or institutional neglect of minors, as these terms are defined in this section, and supported by an investigation.

(d) Lewd conduct.— Shall mean any physical activity of the human body, whether carried out alone or with other persons, including singing, talking, dancing, acting, simulating, or pantomiming, which as a whole is considered by the average person and according to contemporary community standards, to appeal to lustful interests, that is, a morbid interest in nudity, sexuality or physiological functions and which represents or depicts in an overtly offensive manner any sexual conduct and lacks any serious literary, artistic, political, religious, scientific or educational value.

(e) Emergency custody.— Shall mean that which is exercised by someone other than the father or the mother, when the situation in which a minor is found constitutes an imminent danger to the minor's safety, health, physical, mental or emotional integrity, and/or his or her social wellbeing, if no immediate action is taken with regards to the minor's custody.

(f) Custody.— Shall mean, besides that which parents have by virtue of the exercise of patria potestas, that which is granted by a court with jurisdiction.

(g) Temporary custody.— Shall mean that which is granted by a judge in a custody termination suit, or when a protection order is issued against the father, mother, or other person in charge of the minor, for a specified period, subject to review, until the conclusion of the proceedings.

(h) Physical custody.— Shall mean having a minor under one's care and protection without this implying the exercise of the rights and obligations inherent in patria potestas.

(i) Physical harm.— Shall mean any nonaccidental trauma, injury, or condition, including inadequate nourishment, which, if left unattended, could result in death, disfigurement, illness, or temporary or permanent disability of any part or function of the body, including inadequate

nourishment. The trauma, injury, or condition may also be the result of a single episode or several episodes.

(j) Mental or emotional harm.— Shall mean the impairment of the intellectual or emotional capacity of a minor, given what is considered normal for his or her age or cultural environment. Moreover and subject to proof to the contrary, emotional harm shall be presumed to exist when there is evidence that the minor recurrently manifests or exhibits behaviors such as fear, aggressive behavior towards himself or herself or towards others, feelings of abandonment or hopelessness, frustration and failure, anxiety, insecurity, withdrawal, regressive behavior or behavior appropriate for a child of a lesser age, or any other similar behavior.

(k) Department.— Shall mean the Department of the Family of the Commonwealth of Puerto Rico.

(l) Diversion.— Shall mean a program to reeducate or retrain first-time offenders convicted of the crime of abuse, institutional abuse, neglect, and/or institutional neglect.

(m) Emergency.— Shall mean any situation that represents an imminent danger to the minor's safety, health, physical, mental, or emotional integrity, and/or his or her social wellbeing, if no immediate action is taken with regard to the minor's custody.

(n) Reasonable effort.— Shall mean all those activities or services that are offered to the father, mother, or other person in charge of a minor, and to the minors themselves, at home or elsewhere, in coordination with public and private entities, to guarantee their safety and wellbeing. Such efforts are aimed at protecting the minor, protecting the non-abusive adult, educating the abuser and maintaining the living environment of the minor as unaltered as possible as the goals of the assistance process for the family, and finding a permanent placement alternative when reuniting the family is not an option.

(o) Family.— Shall mean two (2) or more persons bound together by blood or legal ties, or family or kinship relationships, who share social, financial, and emotional responsibilities, whether or not they live in the same house.

(p) Foster home.— Shall mean a place that is devoted to the substitute care of no more than six (6) children from other homes or families, twenty-four hours a day, temporarily. It shall be a home that has undergone investigation, certification, or licensing, and is under the supervision of the Department.

(q) Unsubstantiated report.— Shall mean information offered pursuant to the provisions of this chapter, which when investigated is found to be lacking in grounds to support the allegations of abuse or neglect, or is determined to be false.

(r) Report to refer situations of abuse, institutional abuse, neglect, or institutional neglect.— Shall mean oral or written information offered by a person who is obliged to report, or by any other person through the Abuse Hotline, the Puerto Rico Police Department, or the local office

of the Department, describing situations in which there is alleged suspicion or existence of abuse, institutional abuse, neglect, or institutional neglect, also known in this chapter as a 'referral.'

(s) Abuse.— Shall mean any intentional act or omission by the father, mother, or other person in charge of the minor of such a nature that it causes or puts a minor at risk of suffering damage or harm to his or her health or physical, mental, and/or emotional integrity, including sexual abuse as defined in this section. Abuse shall also mean to engage in obscene behavior and/or use the minor to carry out obscene acts; to allow another person to cause or to put the minor at risk of suffering damage or harm to his or her health or physical, mental, and/or emotional integrity; to abandon a minor willfully; to allow the father, mother, or other person in charge of the wellbeing of the minor to exploit him or her; or to allow another person to do so by forcing or allowing the minor to perform any act, including but not limited to using the minor to engage in obscene acts for profit or in order to receive any other benefit, or to incur in any conduct that, if criminally prosecuted, would constitute a crime against the health, or physical, mental, or emotional integrity of the minor, including sexual abuse of the minor. Minors will also be considered to be victims of abuse if the father, mother, or person responsible for the minor has incurred in the conduct described above, or has engaged in acts that constitute domestic violence in the presence of minors, as defined in §§ 601 et seq. of this title.

(t) Institutional abuse.— Shall mean any act or omission by a foster parent or an employee or official of a public or private institution that provides caregiving services, for twenty-four (24) hours a day or part thereof, who has control over or custody of a minor for his or her care, education, treatment, or detention, who causes harm or endangers the health, or physical, mental, and/or emotional integrity of the minor, including sexual abuse; engages in obscene conduct and/or uses the minor to perform obscene acts, known or suspected, or which occur as a result of the prevailing policies, practices, and conditions in the institution in question; exploits the minor or allows someone else to do so, including, but not limited to, using the minor to perform obscene acts for profit or in order to receive any other benefit.

(u) Best interests of the minor.— Shall mean the balance between the different factors that may affect the safety, health, physical, mental, emotional, educational, and social wellbeing of the minor, or any other that is aimed at attaining optimum development of the minor.

(v) Minor.— Shall mean any person who has not yet attained the age of eighteen (18) years.

(w) Neglect.— Shall mean a type of abuse that consists of failing to perform the duties, or to exercise the capacity to provide adequate food, clothing, shelter, education, or health care to a minor; failing to exercise supervision; failing to visit the minor or to remain in contact or frequent communication with the minor. A minor shall also be deemed a victim of neglect if the father, mother, or other person in charge of the minor has incurred in the conduct described in subsections (3) and (4) of § 634a of Title 31, part of the Civil Code of Puerto Rico.

(x) Institutional neglect.— Shall mean the neglect incurred in, or suspected to be incurred by, by the operator of a foster home, or any employee or official of a private or public institution that

provides caregiving services during a twenty-four (24) hours period or fraction thereof, or who has control over or custody of a minor for his/her care, education, treatment, or detention, who causes harm to a minor or puts him or her at risk of suffering harm to his or her health, physical, mental, and/or emotional integrity, including sexual abuse, known or suspected, or which occurs as a result of the policies, practices, and conditions in the institution in question.

(y) Protection order.— Shall mean any order issued in writing under the seal of a court, dictating the measures to be taken by a child abuser to refrain from engaging in or performing certain actions or behaviors that constitute abuse and/or neglect.

(z) Person in charge of the minor.— Shall mean the custodian, employees, or officials of the programs, centers, or institutions that provide care, education, treatment, or detention services to minors for twenty-four (24) hours a day or part thereof.

(aa) Respondent.— Shall mean any person against whom a protection order is requested.

(bb) Petitioner.— Shall mean the father, the mother, a law enforcement officer, any official of the Department of Justice and/or of the Department of the Family, a relative of the minor up to the third degree of consanguinity, or other person in charge of the minor who petitions the court for a protection order.

(cc) Permanency plan.— Shall mean the design and implementation of activities with the minor and his or her family geared to achieve the stability, safety, and best interests of the minor, taking into account the resources available.

(dd) Service plan.— Shall mean the systematic organization of the goals, objectives, and activities, expressed within a time frame, which result from a process of information gathering and evaluation based on the strong points of the family to overcome their needs and which will give direction to the social care of the minor and his or her family.

(ee) Deprivation of patria potestas.— Shall mean the termination of the rights of the parents with regard to their children, pursuant to the provisions of the Civil Code of Puerto Rico, Title 31.

(ff) Imminent risk.— Shall mean any situation that represents a danger to the health, safety, and physical, emotional, and/or sexual wellbeing of a minor.

(gg) Risk of death.— Shall mean an act that places the minor in circumstances that may cause his or her death.

(hh) Central registry.— Shall mean the working unit established in the Department to gather information about all referrals and cases of abuse, institutional abuse, neglect, or institutional neglect.

(ii) Removal.— Shall mean the action taken by the Department, on the court's authorization, to obtain custody of a minor whose stability and safety are being threatened and who must be protected.

(jj) Reuniting the family.— Shall mean bringing the minor together with the family from which he/she was removed in order to give or provide the minor with affection, health, education, safety, wellbeing, care, and companionship, and to guarantee his or her optimum development as a human being.

(kk) Secretary.— Shall mean the Secretary of the Department of the Family.

(ll) Social protective services.— Shall mean the specialized services for achieving the safety and well-being of minors, and for preventing the risk of suffering abuse, institutional abuse, neglect, or institutional neglect. It shall also mean the services provided to parents or to other persons responsible for minors, to encourage modification of their child-rearing patterns. For purposes of this definition, the fact that a minor is a parent and the subject of a report does not make the minor ineligible to receive protective services.

(mm) Subject of a report.— Shall mean any person who is referred under this chapter, including any minor, parent, or other person in charge of the wellbeing of a minor.

(nn) Protective supervision.— Shall mean supervision by the Department of a minor who continues to live at home, after a court finds that he or she has been the victim of abuse and/or neglect.

(oo) Court.— Shall mean any part of the Court of First Instance of the Commonwealth of Puerto Rico.

— Aug. 1, 2003, No. 177, § 2; Sept. 16, 2004, No. 357, § 1; Sept. 29, 2004, No. 510, § 1; Aug. 7, 2008, No. 193, § 1; Dec. 28, 2010, No. 219, § 1.

VIRGIN ISLANDS

V.I. CODE ANN. TIT. 5, § 2502 (2015). Delinquency, Persons in Need of Supervision, Abuse and Neglect. Definitions

As used in this chapter, unless it is otherwise provided or the context requires a different construction, application or meaning:

(1) 'Abandoned child' means a child whose parents, guardian, or custodian desert him for such a length of time and under such circumstances as to show an intent to evade the duty of rearing him or a reckless disregard for his needs. It shall be a rebuttable presumption that the parent

intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned. Abandonment is a form of neglect.

(2) 'Abuse' means any physical or mental injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which injury causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health or loss or protracted impairment of the function of any bodily organ. 'Abuse' includes the sexual abuse of a child, as defined by law, or the sexual exploitation, including the prostituting of a child and the photographing or other depiction of a child for pornographic purposes, or a persistent course of sexual conduct that causes a child's health or welfare to be harmed or threatened.

(3) 'Adjudicatory hearing' means a hearing conducted in accordance with sections 2517 and 2548 of this chapter in which the court makes its findings of fact and enters an appropriate order dismissing the case, withholding adjudication, or adjudicating the child to be a delinquent child, person in need of supervision, an abused or neglected child.

(4) 'Adult' means an individual 18 years of age or older.

(5) 'Attorney General' means the Attorney General of the Virgin Islands, or his designee.

(6) 'Case involving abuse' means any proceeding under this chapter in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children.

(7) 'Child' means an individual under the age of 18 years.

(8) 'Commit' means to transfer legal and physical custody.

(9) 'Consent decree' means a decree, entered after the filing of a petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision in the child's own home, under specific terms and conditions.

(10) 'Custodian' means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis.

(11) 'Delinquent act' means an act which, if committed by an adult, would constitute a crime under the laws of the Virgin Islands.

(12) 'Delinquent child' means a child who has been adjudicated to have committed a delinquent act.

(13) 'Detention care' means the temporary care of children alleged to be delinquent and held in custody pending disposition.

(14) 'Detention hearing' means a hearing at which the court determines whether it is necessary that the child be held in detention care, shelter care, some other placement outside his home, or in his own home under court imposed restrictions, pending a hearing to adjudicate delinquency, abuse or neglect or determine whether the child is a person in need of supervision.

(15) 'Detention home' means a facility to be used for the care of children alleged to be or adjudicated delinquent. A detention home may provide secure or nonsecure custody.

(16) 'Father' means, for purpose of this chapter only, a male parent of a child when:

(a) he is married to a mother of the child when the child was conceived or when the child was born, unless a court of competent jurisdiction has, through court order, ruled to the contrary; or

(b) it has been so determined by a court of competent jurisdiction; or

(c) he has been given an order of adoption of the child by a court of competent jurisdiction; or

(d) Paternity has otherwise been established pursuant to Title 16, chapter 11 of this Code; or

(e) he otherwise makes a formal or unequivocal acknowledgment;

(f) but does not mean a man whose parental rights have been terminated by a court of competent jurisdiction.

(17) 'Imminent danger to that child's life or health' means danger which involves:

(a) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct;

(b) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care;

(c) actual or attempted sexual abuse;

(d) substantial physical pain;

(e) serious bodily injury resulting in physical disfigurement;

(f) substantial impairment of the function of a bodily member or organ;

(g) injury which may result in death.

(18) 'Intake' means the acceptance of complaints and the screening of them to eliminate those which do not require action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to another public or private agency when appropriate, and the instigation of court action when necessary.

(19) 'Legal custody' means in delinquency, person in need of supervision, abuse and neglect matters, a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the territory, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities given to a guardian by the court and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

(20) 'Neglect' means the failure by those responsible for the care and maintenance of the child to provide the necessary support, maintenance, education as required by law; and medical or mental health care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.

(21) 'Parent' means the father or mother of a child and includes any adoptive parent. It does not include a person whose parental rights in respect to the child have been terminated in any manner provided by law.

(22) 'Person responsible for a child's care' includes the child's parent, guardian, custodian or other person or agency responsible for the child's welfare or care, whether the child is in his own home, shelter care, detention home, a relative's home, a foster home or a residential institution.

(23) 'Person in need of supervision' means a child who:

(a) being subject to compulsory school attendance is habitually truant from school; or

(b) habitually disobeys the reasonable demands of the person responsible for the child's care and is beyond their control; or

(c) has run away from the person responsible for the child's care; or

(d) habitually or unlawfully uses or consumes alcoholic beverages or controlled substances or habitually misuses other substances to his serious detriment.

(24) 'Probation' means the legal status created by court order following an adjudication of delinquency, or a person in need of supervision, whereby a minor is permitted to remain in a community environment, subject to supervision and to being returned to the court for violation of probation at any time during the period of probation.

(25) 'Protective supervision' means a legal status created by court order in neglect or abuse cases whereby the child is permitted to remain in his home.

(26) 'Residential institution' means a secure facility administered by the Youth Services Administration for the care of children adjudicated delinquent.

(27) 'Residual parental rights and responsibilities' means the rights and responsibilities remaining with the parent after transfer of legal custody or appointment of a guardian, including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.

(28) 'Respondent' means a party to an action, and is any parent, guardian or other person alleged to have abused or neglected such child in their care.

(29) 'Shelter care' means the temporary care of children in physically unrestricting facilities, including group homes.

(30) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter. The terms 'child', 'juvenile' and 'minor' are used interchangeably throughout this chapter and carry the same definition as 'child', indicated above.

-Added Sept. 24, 1983, No. 4855, § 2, Sess. L. 1983, p. 145; amended May 5, 1998, No. 6228, § 3, Sess. L. 1998, p. 252.

HISTORY

Amendments -1998.Paragraph (16)(d): Amended generally.

V.I. CODE ANN. TIT. 14, § 503 (2015). Crimes. Child Protection

As used in this chapter, unless the context clearly indicates otherwise:

(a) 'Abuse' means the infliction of physical, mental or emotional injury upon a child, or maltreatment, sexual conduct with a child, or exploitation of a child by any person.

(b) 'Basic necessities of life' means food, shelter, clothing, medical care and education.

(c) 'Child' means any person under the age of eighteen (18) years.

(d) 'Emotional injury' or 'mental injury' means psychological injury or harm which impairs the mental or emotional health or functioning of a child.

(e) 'Neglect' means to place a child or allow a child to be placed in a situation which a reasonable person should know is dangerous to the child's health or welfare, and includes, but is not limited to, the following:

- (1) leaving a child unsupervised, taking into account the age and developmental stage of the child;
 - (2) denying or failing to provide a child with shelter, food, clothing, medical care or education;
 - (3) leaving a child in the care of any person known to use, possess or sell illegal drugs or abuse alcohol;
 - (4) leaving a child in the care of any person known to have engaged in sexual activity with any child;
 - (5) leaving a child in the care of any person known to be incapable of providing adequate care for a child; and
 - (6) keeping a child under the age of 16 years home from school to care for other children.
- (f) "Physical injury" means the impairment of physical condition and includes, but is not limited to, any skin bruising, bleeding, failure to thrive, malnutrition, burn, bone fracture, soft tissue swelling, subdural hematoma, injury to any internal organ, or any physical condition that threatens a child's health or welfare.
- (g) "Serious emotional injury" or "serious mental injury" means that which creates a substantial risk of death, or which causes serious or protracted impairment of mental or emotional health.
- (h) "Serious physical injury" means that which creates a substantial risk of death, or which causes serious or permanent disfigurement, or which causes serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb.

Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 156. Current through Act 7578 of the 2013 Regular Session. Annotations current through April 7, 2014

V.I. CODE ANN. TIT. 14, § 504 (2012). Crimes.Child Protection. Child neglect

Any person who is responsible for the safety or welfare of a child, including, but not limited to, a child's parent, stepparent, guardian, schoolteacher, or baby sitter, who neglects a child, or who knowingly, recklessly or negligently causes or allows a child to suffer physical, mental or emotional injury, or who knowingly, recklessly or negligently deprives a child of any of the basic necessities of life, shall be punished by a fine of not less than \$500, or by imprisonment of not more than 15 years, or both.

Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 157. Current through Act 7578 of the 2013 Regular Session. Annotations current through April 7, 2014.

V.I. CODE ANN. TIT. 14, § 505 (2015). Child abuse

Any person who abuses a child, or who knowingly or recklessly causes a child to suffer physical, mental or emotional injury, or who knowingly or recklessly causes a child to be placed in a situation where it is reasonably foreseeable that a child may suffer physical, mental or emotional injury or be deprived of any of the basic necessities of life, shall be punished by a fine of not less than \$500, or by imprisonment of not more than 20 years, or both.

Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 157. Current through Act 7578 of the 2013 Regular Session. Annotations current through April 7, 2014
unconstitutional or Preempted

V.I. CODE ANN. TIT. 14, § 506 (2015). Aggravated child abuse and neglect

A person perpetrates an act of aggravated child abuse or neglect when:

(1) the child suffers serious physical injury; or

(2) the child suffers serious mental or emotional injury; or

(3) the child dies from such abuse or neglect. A person who is convicted of aggravated child abuse or neglect shall be punished by imprisonment of not less than 5 years but not more than 30 years.

Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 157. Current through Act 7578 of the 2013 Regular Session. Annotations current through April 7, 2014