

Child Torture: State Statutory Considerations

(Current as of March 2009)

Note: Text in red are sentence provisions that correspond to the enumerated statutory offense levels and are not part of the statute.

**Statutes are current through the 2007 regular session and annotations are current through August 1, 2008.*
*** Statutes are current through the 2007 regular session and annotations are current through November 18, 2008.*
**** Statutes are current through the 2007 regular session and annotations are current through March 2, 2009.*
***** Statutes are current through the 2007 regular session and annotations are current through December 20, 2008.*

ALABAMA.....	4
ALA. CODE § 12-15-65 (2008.) Hearings; procedure; prehearing review.....	4
ALA. CODE § 12-15-312 (2008). Reasonable efforts in judicial determinations; situations in which reasonable efforts are not required.....	7
ALA. CODE § 12-15-319 (2008). Grounds for termination of parental rights; factors considered; presumption arising from abandonment.....	9
ALA. CODE § 15-25-39 (2008). Definition.....	11
ALA. CODE § 13A-6-65.1 (2008). Sexual Torture.....	12
ALA. CODE § 13A-12-191 (2008). Definitions.....	12
ALA. CODE § 13A-12-191 (2008). Dissemination or display of obscene matter.....	14
ALA. CODE § 13A-12-192 (2008). Possession of obscene material.....	14
ALA. CODE § 26-15-3 (2008). Penalties.....	14
ALASKA.....	15
ALASKA STAT. § 47.10.086 (2009). Reasonable Efforts.....	15
ARIZONA.....	17
ARIZ. REV. STAT. § 13-2921 (2008). Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definitions.....	17
ARKANSAS.....	19
ARK. CODE ANN. § 5-27-401 (2008). Definitions.....	19
ARK. CODE ANN. § 9-13-402 (2008). Employing or consenting to the use of a child in a sexual performance.....	20
CALIFORNIA.....	21
COLORADO.....	21
COLO. REV. STAT. § 18-6-403 (2008). Sexual exploitation of children.....	21
COLO. REV. STAT. § 18-7-501 (2008). Definitions.....	23
COLO. REV. STAT. § 18-7-502 (2008). Unlawful acts.....	24
CONNECTICUT.....	25
CONN. GEN. STAT. § 53-20 (2008). Cruelty to persons.....	25
DELAWARE.....	26
DEL. CODE ANN. tit. 10, § 901 (2008). Definitions.....	26
DEL. CODE ANN. tit. 11, § 1103 (2008). Definitions relating to children.....	30
DISTRICT OF COLUMBIA.....	32
D.C. CODE ANN. § 22-1101 (2008). Definition and penalty [Formerly § 22-901].....	32
FLORIDA.....	32
FLA. STAT. ANN. § 775.0847 (2008). Possession or promotion of certain images of child pornography; reclassification.....	32
FLA. STAT. ANN. § 827.03 (2008). Abuse, aggravated abuse, and neglect of a child; penalties.....	34
GEORGIA.....	35
GA. CODE ANN. § 16-12-100 (2008). Sexual exploitation of children; reporting violation; forfeiture; penalties.....	35

GA. CODE ANN. § 19-7-5 (2008). Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.....	38
HAWAII.....	43
HAW. REV. STAT. ANN. § 707-750 (2008). Promoting child abuse in the first degree.....	43
HAW. REV. STAT. ANN. § 707-751 (2008). Promoting child abuse in the second degree.....	44
HAW. REV. STAT. ANN. § 707-752 (2008). Promoting child abuse in the third degree	46
IDAHO.....	47
IDAHO CODE ANN. § 16-1619 (2008). Adjudicatory hearing -- Conduct of hearing -- Consolidation...	47
IDAHO CODE ANN. § 16-2005 (2008). Conditions under which termination may be granted.....	49
IDAHO CODE ANN. § 18-1506A (2008). Ritualized abuse of a child -- Exclusions -- Penalties -- Definition.....	52
IDAHO CODE ANN. § 18-1507 (2008). Sexual exploitation of a child.....	53
ILLINOIS.....	55
325 ILL. COMP. STAT. ANN. 5/3 (2009). Definitions.....	55
325 ILL. COMP. STAT. ANN. 5/7 (2009). Time and manner of making reports.....	57
325 ILL. COMP. STAT. ANN. 5/7.14 (2009). [Classification of reports].....	58
705 ILL. COMP. STAT. ANN. 405/2-3 (2009). Neglected or abused minor.....	59
720 ILL. COMP. STAT. ANN. 5/12-33 (2009). Ritualized abuse of a child	62
INDIANA.....	63
IOWA.....	63
IOWA CODE § 726.6 (2008). Child endangerment	63
KANSAS*.....	64
KAN. STAT. ANN. § 21-3609 (2007). Abuse of a child.	64
KAN. STAT. ANN. § 38-2202 (2007). Definitions.....	65
KENTUCKY.....	69
KY. REV. STAT. ANN. § 508.100 (2008). Criminal Abuse in The First Degree	69
KY. REV. STAT. ANN. § 508.110 (2008). Criminal Abuse in The Second Degree.....	69
KY. REV. STAT. ANN. § 508.120 (2008). Criminal Abuse in The Third Degree.....	70
LOUISIANA.....	70
MAINE.....	70
MARYLAND.....	70
MD. CODE ANN., CTS. & JUD. PROC. § 3-812 (2008). Waiver of reunification efforts in cases of abuse, torture, or crimes of violence.....	70
MASSACHUSETTS.....	72
MICHIGAN.....	72
MICH. COMP. LAWS SERV. § 722.638 (2008). Submission of petition for authorization under § 712A.2; conditions; request for termination of parental rights; conference.	72
MICH. COMP. LAWS SERV. § 750.136b (2008). Definitions; Child abuse.....	73
MINNESOTA.....	78
MISSISSIPPI.....	79
MISS. CODE ANN. § 97-5-39 (2008). Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.....	79
MISSOURI.....	80
MONTANA.....	80
NEBRASKA.....	81
NEB. REV. STAT. ANN. § 43-283.01 (2008). Preserve and reunify the family; reasonable efforts; requirements	81
NEVADA.....	82
NEW HAMPSHIRE.....	82
NEW JERSEY.....	82
NEW MEXICO.....	82
N.M. STAT. ANN. § 30-6-1 (2008). Abandonment or abuse of a child	82
N.M. STAT. ANN. § 32A-4-2 (2008). Definitions	83
NEW YORK.....	86
NORTH CAROLINA.....	86

N.C. Gen. Stat. § 7B-101 (2008). Definitions.....	86
N.C. GEN. STAT. § 14-27.2A (2008). Rape of a Child; Adult Offender	89
N.C. Gen. Stat. § 14-27.4A (2008). Sexual Offense with a child; Adult Offender.....	90
NORTH DAKOTA.....	90
OHIO.....	90
OHIO REV. CODE ANN. § 2919.22 (2009). Endangering Children	91
OKLAHOMA.....	98
OKLA. STAT. ANN. tit. 10, § 7001-1.3 (2008). Definitions.....	98
OKLA. STAT. ANN. tit. 10, § 7003-4.6 (2008). Returning Child to home	98
OKLA. STAT. ANN. tit. 10, § 7115 (2009). Child abuse--Child neglect--Child sexual abuse--Child sexual exploitation--Enabling—Penalties.....	100
OKLA. STAT. ANN. tit. 10, § 7303-1.4 (2008). Petition to be filed within certain time--Order removing child from home prohibited absent certain determinations--"Responsible adult" defined.....	103
OKLA. STAT. ANN. tit. 21, § 1024.1 (2008). Definitions	104
OREGON**	106
OR. REV. STAT. § 163.115 (2007). Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.....	106
OR. REV. STAT. § 163.125 (2007). Manslaughter in the second degree.....	109
OR. REV. STAT. § 419B.502 (2007). Termination upon finding of extreme conduct.....	109
PENNSYLVANIA	110
RHODE ISLAND.....	110
R.I. GEN. LAWS § 11-37-8.2.1 (2009). Penalty for first degree child molestation sexual assault -- Jessica Lunsford Child Predator Act of 2006	110
SOUTH CAROLINA***	112
S.C. CODE ANN. § 20-7-763 (2007). Reasonable effort to preserve or reunify family; when required; termination.....	112
SOUTH DAKOTA.....	114
S.D. CODIFIED LAWS § 22-24A-2 (2009). Definitions	114
S.D. CODIFIED LAWS § 26-8A-21.1 (2009). Reunification with parent not required	116
S.D. CODIFIED LAWS § 26-8A-26.1 (2009). Termination of parental rights -- Good cause considerations	117
S.D. CODIFIED LAWS § 26-10-1 (2009). Abuse of or cruelty to minor as felony -- Defense to charge	118
TENNESSEE.....	118
TENN. CODE ANN. § 39-15-402 (2008). Aggravated child abuse and aggravated child neglect or endangerment.....	118
TEXAS****	119
TEX. PENAL CODE ANN. § 22.04 (2007). Injury to a Child, Elderly Individual, or Disabled Individual	119
UTAH.....	122
UTAH CODE ANN. § 76-5-109 (2008). Child abuse -- Child abandonment.....	122
VERMONT	126
VIRGINIA.....	126
VA. CODE ANN. § 16.1-281 (2009). Foster care plan.....	126
VA. CODE ANN. § 16.1-283 (2009). Termination of residual parental rights.....	128
VA. CODE ANN. § 40.1-103 (2009). Cruelty and Injuries to Children; penalty; abandoned infant	132
WASHINGTON.....	132
WASH. REV. CODE ANN. § 9A.32.055 (2009). Homicide by abuse	132
WASH. REV. CODE ANN. § 9A.36.120 (2009). Assault of a child in the first degree	133
WASH. REV. CODE ANN. § 9A.36.130 (2009). Assault of a child in the second degree	133
WEST VIRGINIA	134
W. VA. CODE ANN. § 49-6-3 (2008). Petition to court when child believed neglected or abused -- Temporary custody	134
W. VA. CODE ANN. § 49-6-5 (2008). Disposition of neglected or abused children	137
WISCONSIN.....	140
WYOMING.....	140

WYO. STAT. ANN. § 14-2-309 (2008). Grounds for termination of parent-child relationship; clear and convincing evidence	141
FEDERAL LEGISLATION	142
42 U.S.C.S. § 671 (2009). State plan for foster care and adoption assistance	142
AMERICAN SAMOA.....	149
GUAM.....	150
PUERTO RICO	150
U.S. VIRGIN ISLANDS.....	150

ALABAMA

ALA. CODE § 12-15-65 (2008.) Hearings; procedure; prehearing review

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

Relatives, pre-adoptive parents, or foster parents who have been approved by the Department of Human Resources providing care to a child shall be given notice and an opportunity to be heard in any hearing to be held with respect to a child in their care, except that no such person shall be made a party to the case by virtue solely of such notice and opportunity to be heard.

(b) After the filing of a petition when the petition alleges or evidence reveals to the court that a child may be a multiple needs child, and that previous plans developed by an agency, or agencies, have not met the needs of the child, the court, on its own motion or motion of a party or party's parent or guardian or upon motion of the Department of Youth Services, a school system, the Department of Human Resources, the Department of Public Health, the Department of Mental Health and Mental Retardation, or juvenile court probation services, may refer the child to the county children's services facilitation team for evaluation and review. This evaluation may occur prior to any hearing, or the court may suspend proceedings during the hearing or prior to disposition to review the findings and recommendations of the county children's services facilitation team.

(c) The parties shall be advised of their rights under law in their first appearance at intake and before the court. They shall be informed of the specific allegations in the petition and given an opportunity to admit or deny the allegations.

(d) If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether or not the child is a dependent child or, if the petition alleges delinquency or in need of supervision, as to whether or not the acts ascribed to the child were committed by the child. If the court finds that the allegations in

the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care, theretofore ordered in the proceedings.

(e) If the court finds on proof beyond a reasonable doubt, based upon competent, material, and relevant evidence, that a child committed the acts by reason of which the child is alleged to be delinquent or in need of supervision it may proceed immediately to hear evidence as to whether the child is in need of care or rehabilitation and to file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered.

(f) If the court finds from clear and convincing evidence, competent, material, and relevant in nature, that the child is dependent and in need of care or supervision or from clear and convincing evidence, competent, relevant, and material in nature, that the child is in need of care or rehabilitation as a delinquent child or a child in need of supervision, or from clear and convincing evidence, competent, relevant, and material in nature that parental rights should be terminated, the court may proceed immediately, in the absence of objection showing good cause or at a postponed hearing, to make proper disposition of the case.

(g) If the court enters an order removing a child from his or her home or continuing a child in a placement outside of his or her home pursuant to this title, the order shall contain as specific findings, if warranted by the evidence, all of the following:

(1) That continuing the placement of a child in his or her home would be contrary to the best interests of the child.

(2) That reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home, or that an emergency situation exists which requires the immediate temporary removal of the child from his or her home and that it is reasonable not to make efforts to prevent removal of the child from his or her home due to the emergency situation.

(3) That reasonable efforts have been made or will be made to reunite the child and his or her family, or that efforts to reunite the child and his or her family have failed.

(h) In disposition hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports.

(i) A statement made by a child under the age of 12 describing any act of sexual conduct

performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in all dependency cases brought by the State of Alabama acting by and through a local department of human resources if:

(1) The statement was made to a social worker, child sex abuse therapist or counselor, licensed psychologist, physician, or school or kindergarten teacher or instructor; and

(2) The court finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability. In making its determination the court may consider the physical and mental age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, and any other factor deemed appropriate.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to rebut the statement. This child hearsay exception applies to all hearings involving dependency including, but not limited to, the 72-hour hearing, the dependency hearing, and the disposition hearing.

(j) This exception contained herein shall not apply to a criminal proceeding or charge.

(k) On its own motion or that of a party, the court may continue the disposition hearing under this section for a reasonable period to receive reports and other evidence bearing on the disposition or need for care or rehabilitation. In this event, the court shall make an appropriate order for detention or temporary care for the child, or the child's release for detention or temporary care during the period of the continuance, subject to such conditions as the court may impose.

(l) A proceeding to allow a child to withdraw from school shall be commenced by petition. The petition shall be granted only upon a showing of good cause for withdrawal. No child shall be deemed incorrigible, in need of supervision, or unamenable to treatment based on the filing of the petition.

In the case of any child 14 years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs and, after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance and authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of 18.

(m) As used in this chapter, "reasonable efforts" refers to efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home, and to make it possible for a child to return safely to the child's home. In determining the reasonable efforts to be made with

respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts shall not be required to be made where the parental rights to a sibling have been involuntarily terminated or where a court of competent jurisdiction has determined that a parent has done any of the following:

- (1) Subjected the child to an aggravated circumstance, including, but not limited to, abandonment, torture, chronic abuse, substance abuse, or sexual abuse.
- (2) Committed murder or voluntary manslaughter of another child of such parent.
- (3) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of such parent.
- (4) Committed a felony assault which resulted in the serious bodily injury to the child or another child of such parent. The term "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Nothing in the exceptions to making reasonable efforts listed in this subsection shall be interpreted to require the reunification of a child with a stepparent or paramour of a parent under similar circumstances.

(n) If reasonable efforts are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in situations as described above, a permanency hearing, as provided in Section 12-15-62, shall be held for the child within 30 days after the determination. Reasonable efforts shall be made to place the child and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child for adoption or with a legal guardian or custodian may be made concurrently with other reasonable efforts.

ALA. CODE § 12-15-312 (2008). Reasonable efforts in judicial determinations; situations in which reasonable efforts are not required

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

- (1) In the first order of the juvenile court that sanctions the removal, whether continuation of the residence of the child in the home would be contrary to the welfare of

the child. This order may be the pick-up order that the juvenile court issues on the filing of a dependency petition.

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

(3) Within 12 months after the child is removed from the home of the child and not less than every 12 months thereafter during the continuation of the child in out-of-home care, whether reasonable efforts have been made to finalize the existing permanency plan.

(b) As used in this chapter, reasonable efforts refers to efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the home of the child, and to make it possible for a child to return safely to the home of the child. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize a permanent plan for the child.

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

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

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

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

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

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

2. Repeatedly leaving the child with someone who is unwilling or incapable of

providing care and not returning for the child as promised.

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

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

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

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

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

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

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

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

ALA. CODE § 12-15-319 (2008). Grounds for termination of parental rights; factors considered; presumption arising from abandonment

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

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

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

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

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

(4) Conviction of and imprisonment for a felony.

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

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

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

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

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

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

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

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

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

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

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

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

ALA. CODE § 15-25-39 (2008). Definition

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

(1) Rape in any degree.

(2) Sodomy in any degree.

(3) Sexual abuse in any degree.

(4) Sexual misconduct.

(5) Enticing a child to enter a vehicle, room, house, office, or other place, for immoral purposes.

(6) Any crime involving the production of child pornography.

(7) Torture and willful abuse of a child under 18 years of age by responsible person as defined in Section 26-15-3.

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

(9) Attempted murder.

(10) Assault first degree.

(11) Assault second degree.

(12) Assault third degree.

(13) Harassment.

ALA. CODE § 13A-6-65.1 (2008). Sexual Torture

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

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

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

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

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

ALA. CODE § 13A-12-191 (2008). Definitions

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

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

(2) Display publicly. The exposing, placing, posting, exhibiting or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Applying contemporary local community standards, on the whole, appeals to the prurient interest; and

2. Is patently offensive; and

3. On the whole, lacks serious literary, artistic, political or scientific value.

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

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

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

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

ALA. CODE § 13A-12-191 (2008). Dissemination or display of obscene matter

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

ALA. CODE § 13A-12-192 (2008). Possession of obscene material

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

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

ALA. CODE § 26-15-3 (2008). Penalties

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

ALASKA

ALASKA STAT. § 47.10.086 (2009). Reasonable Efforts

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

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

(2) actively offer the parent or guardian, and refer the parent or guardian to, the services identified under (1) of this subsection; the department shall refer the parent or guardian to community-based family support services whenever community-based services are available and desired by the parent or guardian; and

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

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

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

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

(2) the parent or guardian has

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

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

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

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

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

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

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

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

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

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

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

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

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

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

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

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

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

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

ARIZONA

ARIZ. REV. STAT. § 13-2921 (2008). Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definitions

Text of section effective January 1, 2009. For section effective until January 1, 2009, see the preceding version.

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

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

2. If done recklessly, the offense is a class 3 felony.

3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable

adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

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

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

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

E. This section does not apply to:

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

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

F. For the purposes of this section:

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

- (a) Intentional infliction of physical harm.

(b) Injury caused by criminally negligent acts or omissions.

(c) Unlawful imprisonment, as described in section 13-1303.

(d) Sexual abuse or sexual assault.

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

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

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

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

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

ARKANSAS

ARK. CODE ANN. § 5-27-401 (2008). Definitions

As used in this subchapter:

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

(A) Performed live or photographed;

(B) Filmed;

(C) Videotaped; or

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

(2) "Promote" means to:

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

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

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

(4) "Sexual conduct" means:

(A) Actual or simulated sexual intercourse;

(B) Deviate sexual activity;

(C) Sexual bestiality;

(D) Masturbation;

(E) Sadomasochistic abuse; or

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

(5) "Sexual performance" means any performance or part of a performance that includes sexual conduct by a child under seventeen (17) years of age.

ARK. CODE ANN. § 9-13-402 (2008). Employing or consenting to the use of a child in a sexual performance

(a) It is unlawful for any person, knowing the character and content of the performance, to employ, authorize, or induce a child under seventeen (17) years of age to engage in a sexual performance.

(b) It is also unlawful for a parent or legal guardian or custodian of a child under seventeen (17) years of age to consent to the participation by the child in a sexual performance.

(c) Any person violating this section is guilty of a:

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

(2) Class B felony for a subsequent offense.

CALIFORNIA

COLORADO

COLO. REV. STAT. § 18-6-403 (2008). Sexual exploitation of children

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

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

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

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

(b) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

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

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area,

the undeveloped or developing genitals or pubic area of the human male or female child, the human breasts, or the undeveloped or developing breast area of the human child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

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

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

(g) "Sadomasochism" means:

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

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

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

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

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

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

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

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

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

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

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

(4) (Deleted by amendment, L. 2003, p. 1882, § 1, effective July 1, 2003.)

(5) The sexual exploitation of a child is a class 3 felony; except that sexual exploitation of a child by possession of sexually exploitative material pursuant to paragraph (b.5) of subsection (3) of this section is a class 6 felony, but a second or subsequent offense by such possession or a first or subsequent offense of possession of more than twenty different items qualifying as sexually exploitative material is a class 4 felony.

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

COLO. REV. STAT. § 18-7-501 (2008). Definitions

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

(1) "Child" means a person under the age of eighteen years.

(2) "Harmful to children" means that quality of any description or representation, in whatever form, of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(a) Taken as a whole, predominantly appeals to the prurient interest in sex of children;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and

(c) Is, when taken as a whole, lacking in serious literary, artistic, political, and scientific value for children.

(3) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, of:

- (a) The character and content of any material described herein which is reasonably susceptible of examination; and
- (b) The age of the child; however, an honest mistake shall constitute an excuse from liability hereunder if a reasonable bona fide attempt is made to ascertain the true age of such child.
- (4) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- (5) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, sodomy, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast.
- (6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (7) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

COLO. REV. STAT. § 18-7-502 (2008). Unlawful acts

- (1) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a child:
- (a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children; or
- (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.
- (2) It shall be unlawful for any person knowingly to sell to a child an admission ticket or pass, or knowingly to admit a child to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children or to

exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by children not admitted to any such premises.

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

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

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

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

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

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

CONNECTICUT

CONN. GEN. STAT. § 53-20 (2008). Cruelty to persons.

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

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

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

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

DELAWARE

DEL. CODE ANN. tit. 10, § 901 (2008). Definitions

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

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

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

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

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

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

persons who previously lived in the household such as paramours of a member of the child's household;

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

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

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

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

(4) "Child" means a person who has not reached his or her 18th birthday.

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

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

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

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

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

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

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

2. The child is living in a nonrelated home on an extended basis without the consent

and approval of the DSCYF or any agency or court licensed or authorized to place children in a nonrelated home; or

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

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

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

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

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

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

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

- l. Daughter-in-law;
- m. Grandfather;
- n. Grandmother;
- o. Grandson;
- p. Granddaughter;
- q. Stepfather;
- r. Stepmother.

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

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

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

a. A parent, guardian, or custodian;

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Relative" means any person within the immediate family, and any grandparent, uncle, aunt or first cousin.

(21) "Sexual abuse" means any act against a child that is described as a sex offense in [§ 761\(g\) 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.

DEL. CODE ANN. tit. 11, § 1103 (2008). Definitions relating to children

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

(b) "Child" shall mean any individual 18 years of age or less. For the purposes of §§ 1108, 1109, 1110, 1111 and 1112A of this Title, "child" shall also mean any individual

who is intended by the defendant to appear to be 14 years of age or less.

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

(d) "Neglect" or "neglected child" is as defined in [§ 901 of Title 10](#).

(e) "Prohibited sexual act" shall include:

(1) Sexual intercourse;

(2) Anal intercourse;

(3) Masturbation;

(4) Bestiality;

(5) Sadism;

(6) Masochism;

(7) Fellatio;

(8) Cunnilingus;

(9) Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

(10) Sexual contact;

(11) Lascivious exhibition of the genitals or pubic area of any child;

(12) Any other act which is intended to be a depiction or simulation of any act described in this subsection.

(f) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

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

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

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

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

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 22-1101 (2008). Definition and penalty [Formerly § 22-901]

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

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

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

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

(c) (1) Any person convicted of cruelty to children in the first degree shall be fined not more than \$ 10,000 or be imprisoned not more than 15 years, or both.

(2) Any person convicted of cruelty to children in the second degree shall be fined not more than \$ 10,000 or be imprisoned not more than 10 years, or both.

FLORIDA

FLA. STAT. ANN. § 775.0847 (2008). Possession or promotion of certain images of child pornography; reclassification

(1) For purposes of this section:

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

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

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

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

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

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

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

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

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

1. A child who is younger than the age of 5.
2. Sadomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

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

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

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

FLA. STAT. ANN. § 827.03 (2008). Abuse, aggravated abuse, and neglect of a child; penalties

(1) "Child abuse" means:

(a) Intentional infliction of physical or mental injury upon a child;

(b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

(c) 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.

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](#).

(2) "Aggravated child abuse" occurs when a person:

(a) Commits aggravated battery on a child;

(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or

(c) Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

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](#).

(3) (a) "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.

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.

(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 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](#).

(4) For purposes of this section, "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.

GEORGIA

GA. CODE ANN. § 16-12-100 (2008). Sexual exploitation of children; reporting violation; forfeiture; penalties

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

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

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

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

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

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

(B) Bestiality;

(C) Masturbation;

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) It is unlawful for any person knowingly to bring or cause to be brought into this

state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

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

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

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

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

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

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

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

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

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

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

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

(B) Any visual medium produced, transported, shipped, or received in violation of

this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

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

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

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

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

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

GA. CODE ANN. § 19-7-5 (2008). Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

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

- (1) "Abused" means subjected to child abuse.
- (2) "Child" means any person under 18 years of age.
- (3) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;

- (B) Neglect or exploitation of a child by a parent or caretaker thereof;
- (C) Sexual abuse of a child; or
- (D) Sexual exploitation of a child.

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

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

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

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

(4) "Sexual exploitation" means conduct by a child's parent or caretaker who allows, permits, encourages, or requires that child to engage in:

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

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in [Code Section 16-12-100](#).

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

(A) Physicians licensed to practice medicine, interns, or residents;

(B) Hospital or medical personnel;

(C) Dentists;

(D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;

(E) Podiatrists;

(F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 24 of Title 43;

(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;

(H) School teachers;

(I) School administrators;

(J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;

(K) Child welfare agency personnel, as that agency is defined pursuant to [Code Section 49-5-12](#);

(L) Child-counseling personnel;

(M) Child service organization personnel; or

(N) Law enforcement personnel.

(2) If a person is required to report abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as a member of the staff of a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall

report or cause a report to be made in accordance with this Code section. A staff member who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

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

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

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

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication

to that person which is otherwise made privileged or confidential by law.

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

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

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

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

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

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

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

HAWAII

HAW. REV. STAT. ANN. § 707-750 (2008). Promoting child abuse in the first degree.

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

(a) Produces or participates in the preparation of child pornography;

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

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

(2) As used in this section:

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

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

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

"Community standards" means the standards of the State.

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

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

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

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

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

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

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

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

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

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

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

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

HAW. REV. STAT. ANN. § 707-751 (2008). Promoting child abuse in the second degree

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

(a) Disseminates child pornography;

(b) Reproduces child pornography with intent to disseminate;

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

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

(2) As used in this section:

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

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

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

"Community standards" means the standards of the State.

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

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

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

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

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

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

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

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

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

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

that the defendant knew the person to be a minor.

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

HAW. REV. STAT. ANN. § 707-752 (2008). Promoting child abuse in the third degree

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

(a) Child pornography;

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

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

(2) As used in this section:

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

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

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

"Community standards" means the standards of the State.

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

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

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

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

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

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

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

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

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

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

IDAHO

IDAHO CODE ANN. § 16-1619 (2008). Adjudicatory hearing -- Conduct of hearing -- Consolidation

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

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

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

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

jurisdiction over the child.

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

(a) Place the child under protective supervision in his own home for an indeterminate period not to exceed the child's eighteenth birthday; or

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

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

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

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

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

(d) Reasonable efforts were not required as the parent had subjected the child to aggravated circumstances as determined by the court including, but not limited to: abandonment; torture; chronic abuse; sexual abuse; committed murder; committed voluntary manslaughter of another child; aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; committed a battery that results in serious bodily injury to a child; or the parental rights of the parent to a sibling of the child have been terminated involuntarily and that as a result, a hearing to determine the permanent future plan for this child will be held within thirty (30) days of this determination.

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

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

which the court finds to be acceptable to such authorized agency.

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

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

IDAHO CODE ANN. § 16-2005 (2008). Conditions under which termination may be granted

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

(a) The parent has abandoned the child.

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

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

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

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

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

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

(b) The parent has subjected the child to torture, chronic abuse or sexual abuse, has committed murder or intentionally killed the other parent of the child, has committed murder or voluntary manslaughter of another child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter, and/or has committed battery which resulted in serious bodily injury to a child; or

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

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

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

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

In the Matter of the termination)

of the parental rights of)

.....)

.....)

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

DATED:, 20 ..

.....

STATE OF IDAHO)

) ss.

COUNTY OF ...)

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

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

..... (District Judge or Magistrate)

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

- (1) It is witnessed by a magistrate or district judge of the state where signed; or
- (2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or
- (3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.
- (5) Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.
- (6) If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or

additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

IDAHO CODE ANN. § 18-1506A (2008). Ritualized abuse of a child -- Exclusions -- Penalties – Definition

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

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

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

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

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

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

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

(g) Unlawfully dissects, mutilates, or incinerates a human corpse.

(2) The provisions of this section shall not be construed to apply to:

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

(b) The lawful medical practice of circumcision or any ceremony related thereto; or

(c) Any state or federally approved, licensed or funded research project.

(3) Any person convicted of a violation of this section shall be imprisoned in the state prison for a term of not more than life.

(4) For the purposes of this section, "child" means any person under eighteen (18) years of age.

IDAHO CODE ANN. § 18-1507 (2008). Sexual exploitation of a child

(1) The legislature hereby finds and declares that the commercial sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose; and that to protect children from commercial sexual exploitation it is necessary to prohibit the production for trade or commerce of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.

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

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.

(d) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(f) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

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

(h) "Sadomasochism" means:

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

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

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

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

(k) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

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

(a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes any sexually exploitative material.

(4) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

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

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

ILLINOIS

325 ILL. COMP. STAT. ANN. 5/3 (2009). Definitions

Sec. 3. As used in this Act unless the context otherwise requires:

"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 1961, as amended [[720 ILCS 5/1-1](#) et seq.], 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 1961 [[720 ILCS 5/12-34](#)], against the child; or

(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 [[720 ILCS 570/102](#)] in violation of Article IV of the Illinois Controlled Substances Act [[720 ILCS 570/401](#) et seq.] or in violation of the Methamphetamine Control and Community Protection Act [[720 ILCS 646/1](#) et seq.], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act [[720 ILCS 570/301](#) et seq.] and are dispensed to such child in a manner that substantially complies with the prescription.

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 [[325 ILCS 2/1](#) et seq.].

"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 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 [[705 ILCS 405/3-5](#)] 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 [[720 ILCS 570/102](#)] 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 [[325 ILCS 2/1](#) et seq.]. 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 [[325 ILCS 5/4](#)]. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of The School Code, as amended [[105 ILCS 5/26-1](#) et seq.].

"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 [[325 ILCS 5/7.2](#)].

"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, 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 [[325 ILCS 5/7.7](#)] and his or her parent, guardian or other person responsible who is also named in the report.

"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.

325 ILL. COMP. STAT. ANN. 5/7 (2009). Time and manner of making reports

Sec. 7. Time and manner of making reports. All reports of suspected child abuse or neglect made under this Act shall be made immediately by telephone to the central register established under Section 7.7 [[325 ILCS 5/7.7](#)] on the single, State-wide, toll-free telephone number established in Section 7.6 [[325 ILCS 5/7.6](#)], or in person or by telephone through the nearest Department office. The Department shall, in cooperation with school officials, distribute appropriate materials in school buildings listing the toll-free telephone number established in Section 7.6 [[325 ILCS 5/7.6](#)], including methods of making a report under this Act. The Department may, in cooperation with appropriate members of the clergy, distribute appropriate materials in churches, synagogues, temples, mosques, or other religious buildings listing the toll-free telephone number established in Section 7.6 [[325 ILCS 5/7.6](#)], including methods of making a report under this Act.

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

"Any person who knowingly transmits a false report to the Department commits the

offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961 [[720 ILCS 5/26-1](#)]. A first violation of this subsection is a Class A misdemeanor, punishable by a term of imprisonment for up to one year, or by a fine not to exceed \$ 1,000, or by both such term and fine. A second or subsequent violation is a Class 4 felony."

The report required by this Act shall include, if known, the name and address of the child and his parents or other persons having his custody; the child's age; the nature of the child's condition including any evidence of previous injuries or disabilities; and any other information that the person filing the report believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect. Reports made to the central register through the State-wide, toll-free telephone number shall be immediately transmitted by the Department to the appropriate Child Protective Service Unit. All such reports alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age 12 and under, shall also be immediately transmitted by the Department to the appropriate local law enforcement agency. The Department shall within 24 hours orally notify local law enforcement personnel and the office of the State's Attorney of the involved county of the receipt of any report alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and, internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age twelve and under. All oral reports made by the Department to local law enforcement personnel and the office of the State's Attorney of the involved county shall be confirmed in writing within 24 hours of the oral report. All reports by persons mandated to report under this Act shall be confirmed in writing to the appropriate Child Protective Service Unit, which may be on forms supplied by the Department, within 48 hours of any initial report.

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

325 ILL. COMP. STAT. ANN. 5/7.14 (2009). [Classification of reports]

Sec. 7.14. All reports in the central register shall be classified in one of three categories: "indicated", "unfounded" or "undetermined", as the case may be. After the report is classified, the person making the classification shall determine whether the child named in the report is the subject of an action under Article II of the Juvenile Court Act of 1987 [[705 ILCS 405/2-1](#) et seq.]. If the child is the subject of an action under Article II of the

Juvenile Court Act [705 ILCS 405/2-1 et seq.], the Department shall transmit a copy of the report to the guardian ad litem appointed for the child under Section 2-17 of the Juvenile Court Act [705 ILCS 405/2-17]. All information identifying the subjects of an unfounded report shall be expunged from the register forthwith, except as provided in Section 7.7 [325 ILCS 5/7.7]. Unfounded reports may only be made available to the Child Protective Service Unit when investigating a subsequent report of suspected abuse or maltreatment involving a child named in the unfounded report; and to the subject of the report, provided that the subject requests the report within 60 days of being notified that the report was unfounded. The Child Protective Service Unit shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action. Identifying information on all other records shall be removed from the register no later than 5 years after the report is indicated. However, if another report is received involving the same child, his sibling or offspring, or a child in the care of the persons responsible for the child's welfare, or involving the same alleged offender, the identifying information may be maintained in the register until 5 years after the subsequent case or report is closed.

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

705 ILL. COMP. STAT. ANN. 405/2-3 (2009). *Neglected or abused minor*

Sec. 2-3. Neglected or abused minor. (1) Those who are neglected include:

(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parents or other person 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 other person responsible for the minor's welfare has left the minor in the care of an adult relative for any period of time; 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 [[720 ILCS 570/102](#)], 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 [[705 ILCS 405/3-5](#)] 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 [[325 ILCS 2/1](#) et seq.].

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

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

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

(iii) commits or allows to be committed any sex offense against such minor, as such sex offenses are defined in the Criminal Code of 1961, as amended [[720 ILCS 5/1-1](#) et seq.], 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; or

(v) inflicts excessive corporal punishment.

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 [[325 ILCS 2/1](#) et seq.].

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

720 ILL. COMP. STAT. ANN. 5/12-33 (2009). *Ritualized abuse of a child*

Sec. 12-33. Ritualized abuse of a child. (a) A person is guilty of ritualized abuse of a child when he or she commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

- (1) actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being;
- (2) forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;
- (3) forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;
- (4) involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;
- (5) places a living child into a coffin or open grave containing a human corpse or remains;
- (6) threatens death or serious harm to a child, his or her parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; or
- (7) unlawfully dissects, mutilates, or incinerates a human corpse.

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

- (1) lawful agricultural, animal husbandry, food preparation, or wild game hunting and fishing practices and specifically the branding or identification of livestock;
- (2) the lawful medical practice of male circumcision or any ceremony related to male circumcision;
- (3) any state or federally approved, licensed, or funded research project; or
- (4) the ingestion of animal flesh or blood in the performance of a religious service or ceremony.

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

(d) For the purposes of this Section, "child" means any person under 18 years of age.

INDIANA

IOWA

IOWA CODE § 726.6 (2008). 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. Cohabits with a person 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, guardian, or a person having custody or control over 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 2, 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.

KANSAS*

KAN. STAT. ANN. § 21-3609 (2007). Abuse of a child.

Abuse of a child is intentionally torturing, cruelly beating, shaking which results in great bodily harm or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

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

KAN. STAT. ANN. § 38-2202 (2007). 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 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. 21-4204a](#), [41-727](#), subsection (j) of [K.S.A. 74-8810](#) or subsection (m) or (n) of [K.S.A. 79-3321](#), 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. 21-3105](#), 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 [K.S.A. 21-4204a](#), 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. 2007 Supp. 38-2207](#) and [38-2208](#), and amendments thereto.

(f) "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. 2007 Supp. 38-2206](#), and amendments thereto, in a proceeding pursuant to this code.

(g) "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.

(h) "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.

(i) "Educational institution" means all schools at the elementary and secondary levels.

(j) "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.

(k) "Harm" means physical or psychological injury or damage.

(l) "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. 2007 Supp. 38-2241](#), and amendments thereto.

(m) "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.

(n) "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.

(o) "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.

(p) "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.

(q) "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.

(r) "Multidisciplinary team" means a group of persons, appointed by the court under [K.S.A. 2007 Supp. 38-2228](#), and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "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. 2007 Supp. 38-2217](#), and amendments thereto.

(t) "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.

(u) "Party" means the state, the petitioner, the child and any parent of the child.

(v) "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.

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to [K.S.A. 2007 Supp. 38-2272](#), and amendments thereto.

(x) "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.

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

(z) "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.

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.

(bb) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(cc) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person.

Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

(dd) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ee) "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.

KENTUCKY

KY. REV. STAT. ANN. § 508.100 (2008). Criminal Abuse in The First Degree

(1) A person is guilty of criminal abuse in the first degree when he intentionally abuses another person or permits another person of whom he has actual custody to be abused and thereby:

- (a) Causes serious physical injury; or
- (b) Places him in a situation that may cause him serious physical injury; or
- (c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the first degree is a Class C felony.

KY. REV. STAT. ANN. § 508.110 (2008). Criminal Abuse in The Second Degree

(1) A person is guilty of criminal abuse in the second degree when he wantonly abuses another person or permits another person of whom he has actual custody to be abused and thereby:

- (a) Causes serious physical injury; or
- (b) Places him in a situation that may cause him serious physical injury; or

(c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the second degree is a Class D felony.

KY. REV. STAT. ANN. § 508.120 (2008). Criminal Abuse in The Third Degree

(1) A person is guilty of criminal abuse in the third degree when he recklessly abuses another person or permits another person of whom he has actual custody to be abused and thereby:

(a) Causes serious physical injury; or

(b) Places him in a situation that may cause him serious physical injury; or

(c) Causes torture, cruel confinement or cruel punishment;

to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.

(2) Criminal abuse in the third degree is a Class A misdemeanor.

LOUISIANA

MAINE

MARYLAND

Md. CODE ANN., CTS. & JUD. PROC. § 3-812 (2008). Waiver of reunification efforts in cases of abuse, torture, or crimes of violence

(a) Definitions. --

(1) In this section the following words have the meanings indicated, unless the context

of their use indicates otherwise.

(2) "Crime of violence":

(i) Has the meaning stated in § 14-101 of the Criminal Law Article; or

(ii) As to a crime committed in another state, means a crime that, if committed in this State, would be a crime of violence as defined in § 14-101 of the Criminal Law Article.

(3) "Torture" means to cause intense pain to body or mind for purposes of punishment or extraction of information or for sadistic purposes.

(b) Request for finding that reasonable reunification efforts not required. -- In a petition under this subtitle, a local department may ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the local department concludes that a parent or guardian has:

(1) Subjected the child to:

(i) Chronic abuse;

(ii) Chronic and life-threatening neglect;

(iii) Sexual abuse; or

(iv) Torture;

(2) Been convicted, in any state or any court of the United States, of:

(i) A crime of violence against:

1. A minor offspring of the parent or guardian;

2. The child; or

3. Another parent or guardian of the child; or

(ii) Aiding or abetting, conspiring, or soliciting to commit a crime described in subitem (i) of this item; or

(3) Involuntarily lost parental rights of a sibling of a child.

(c) Request for finding that reasonable reunification efforts not required -- After filing of initial petition. -- If the local department determines after the initial petition is filed that any of the circumstances specified in subsection (b) of this section exists, the local department may immediately request the court to find that reasonable efforts to reunify

the child with the child's parent or guardian are not required.

(d) Waiver of requirement by court. -- If the court finds by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists, the court shall waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian.

(e) Permanent placement of child. -- If the court finds that reasonable efforts are not required, the local department shall:

(1) Request that a permanency planning hearing be held in accordance with § 3-823 of this subtitle within 30 days after the court makes the finding; and

(2) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement of the child.

(f) If a parent consents to guardianship or adoption in accordance with § 5-320 or § 5-338 of the Family Law Article, loss of parental rights shall be considered voluntary.

MASSACHUSETTS

MICHIGAN

MICH. COMP. LAWS SERV. § 722.638 (2008). Submission of petition for authorization under § 712A.2; conditions; request for termination of parental rights; conference.

Sec. 18. (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:

- (i) Abandonment of a young child.
- (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- (iii) Battering, torture, or other severe physical abuse.
- (iv) Loss or serious impairment of an organ or limb.
- (v) Life threatening injury.
- (vi) Murder or attempted murder.

(b) The department determines that there is risk of harm to the child and either of the following is true:

(i) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the family independence agency shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIA of 1939 PA 288, MCL 712A.19b.

(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1), the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.

MICH. COMP. LAWS SERV. § 750.136b (2008). Definitions; Child abuse

Sec. 136b. (1) As used in this section:

(a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(c) "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.

(d) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) "Physical harm" means any injury to a child's physical condition.

(f) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the

first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

(a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

(5) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years.

(6) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(7) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

1. Constitutionality.

The child abuse statute in defining the crime of child abuse in the fourth degree is neither vague nor overbroad in the constitutional sense. [People v Gregg \(1994\) 206 Mich App 208, 520 NW2d 690.](#)

A criminal statute may be challenged for vagueness on three grounds: (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overbroad and impinges on First Amendment freedoms; the statute proscribing child cruelty is not unconstitutionally vague. [People v Jackson \(1985\) 140 Mich App 283, 364 NW2d 310.](#)

The statute pertaining to child torture is not unconstitutionally vague since a reading of the statute would not cause people of common intelligence to speculate as to its meaning; the term "torture" does have a commonly understood meaning giving a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. [People v Shelton \(1984\) 138 Mich App 510, 360 NW2d 234](#) (among conflicting authorities noted in [People v Kelley \(1989\) 176 Mich App 219, 439 NW2d 315](#)).

Statute providing for posting of bond in exchange for suspended sentence of a defendant convicted for cruelty to children would be held to embody rational and reasonable classification based on temporary as against permanent custodianship of child in compliance with equal protection of laws. [People v Leonard \(1978\) 81 Mich App 86, 264 NW2d 130.](#)

2. Construction.

Word "shelter," as used in this section, does not include medical attention, and deprivation of medical attention does not constitute a crime hereunder. [People v](#)

[Mankel \(1964\) 373 Mich 509, 129 NW2d 894.](#)

The provisions of former section constituted distinct offenses which could be shown by the same evidence and were not within the rule which allows the prosecution to go to the jury without election on an information charging a combination of offenses in a single count. [People v Marks \(1931\) 255 Mich 271, 238 NW 217.](#)

Word "knowingly," as contained in first-degree child abuse statute, means the same thing as the word "intentionally". [People v Gould \(1997\) 225 Mich App 79, 570 NW2d 140, app den \(1999\) 459 Mich 955, 590 NW2d 572.](#)

Because crimes of manslaughter and child abuse are not of the same class or category, child abuse cannot be a cognate offense of manslaughter. [People v Flowers \(1997\) 222 Mich App 732, 565 NW2d 12, app den \(1998\) 456 Mich 953, 577 NW2d 687.](#)

Specific evil intent on the part of a defendant is not required in order to sustain a conviction under Michigan's child cruelty statute. [People v Jackson \(1985\) 140 Mich App 283, 364 NW2d 310.](#)

An unreasonable and severe corporal punishment, irrespective of the defendant's specific intent, will sustain a conviction under Michigan's child cruelty statute. [People v Jackson \(1985\) 140 Mich App 283, 364 NW2d 310.](#)

Child cruelty is a necessarily lesser included offense of child torture. [People v Shelton \(1984\) 138 Mich App 510, 360 NW2d 234](#) (among conflicting authorities noted in [People v Kelley \(1989\) 176 Mich App 219, 439 NW2d 315](#)).

The term "torture" as used in the child torture statute refers to the intentional infliction of intense or severe pain for various purposes such as sadistic pleasure, coercion, and punishment; the statute requires a showing that the defendant intentionally inflicted extreme, intense, or severe pain or injury upon the victim; such high degree of pain or injury is an additional element which is not contained in the child cruelty statute. [People v Shelton \(1984\) 138 Mich App 510, 360 NW2d 234](#) (among conflicting authorities noted in [People v Kelley \(1989\) 176 Mich App 219, 439 NW2d 315](#)).

A parent who acts in good faith with an honest belief that a given discipline is done for the benefit of the child will not be subjected to judicial intervention; however, a showing that the punishment was cruel and unreasonably severe will negate any claim of good faith on behalf of the parent. [People v Alderete \(1984\) 132 Mich App 351, 347 NW2d 229.](#)

An unreasonable and severe corporal punishment, irrespective of the defendant's "evil mind" or lack of malice, will sustain a conviction under Michigan's child cruelty statute. [People v Alderete \(1984\) 132 Mich App 351, 347 NW2d 229.](#)

The infliction of torture upon a child is an element of the offense of child torture; "torture", in terms of the statute, refers to the infliction of violent bodily pain upon a child to satisfy sadistic motives; the statute applies to instances of sadism or vileness where the parent or guardian or person under whose protection or control any child may be inflicts pain for purposes other than punishment. [People v Biegajski \(1982\) 122 Mich App 215, 332 NW2d 413.](#)

Failure of a parent to provide necessary medical care for his or her injured minor child is an offense chargeable under the statute proscribing a parent's

permitting "the health of such child to be injured." [People v Anderson \(1982\) 119 Mich App 325, 326 NW2d 499.](#)

In prosecution for child abandonment, defense counsel's admission that defendant made anonymous phone call admitting abandonment relieved prosecutor from proving such fact and warranted trial court's refusal to direct verdict for defendant at close of prosecutor's case. [People v Clark \(1967\) 6 Mich App 526, 149 NW2d 919.](#)

3. Elements of offense.

The first-degree child abuse statute required the prosecution to establish, and the jury to be instructed, that to convict it must find that defendant intended to cause serious physical harm or knew that serious physical harm would be caused by her act. [People v Maynor \(2004\) 470 Mich 289, 683 NW2d 565.](#)

Where defendant was charged with first-degree child abuse for leaving her children alone in the car for several hours, the prosecution was required to establish, and the jury had to be instructed, that to convict defendant it must find, not only that defendant intended to leave her children in the car; but also that defendant intended to cause serious physical harm or that she knew that serious physical harm would be caused. [People v Maynor \(2004\) 470 Mich 289, 683 NW2d 565.](#)

As used in [MCL § 750.136b\(2\)](#), the phrase "knowingly or intentionally" modifies the phrase "causes serious physical or serious mental harm to a child;" this language requires more from defendant than an intent to commit an act. [People v Maynor \(2004\) 470 Mich 289, 683 NW2d 565.](#)

Need to draw the common-law distinction between "specific" and "general" intent is not required under the plain language of [MCL § 750.136b\(2\)](#), as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. [People v Maynor \(2004\) 470 Mich 289, 683 NW2d 565.](#)

First-degree child abuse is a specific intent crime; second-degree child abuse is a general intent crime. [People v Maynor \(2003\) 256 Mich App 238, 662 NW2d 468.](#)

The elements of first-degree child abuse are (1) the person, (2) knowingly or intentionally, (3) causes serious physical or mental harm to a child; with regard to the second element, a defendant who specifically intended to cause serious physical or mental harm to a child may be convicted of first-degree child abuse. [People v Gould \(1997\) 225 Mich App 79, 570 NW2d 140, app den \(1999\) 459 Mich 955, 590 NW2d 572.](#)

Malice or evil intent on the part of a defendant is not required in order to sustain a conviction under Michigan's child cruelty statute. [People v Alderete \(1984\) 132 Mich App 351, 347 NW2d 229.](#)

The elements of the offense of cruelty to a child are: (1) the defendant was an individual, such as a parent, guardian, or camp counselor, who was responsible for the protection of a child, and (2) the defendant punished the child in a cruel and unlawful manner. [People v Biegajski \(1982\) 122 Mich App 215, 332 NW2d 413.](#)

4. Child abuse.

A specific intent is an element of first-degree child abuse; specifically, the statute requires the doing of an act with the intent to cause physical or mental harm; in other words, in order to convict a defendant of first-degree child abuse, it must be shown that the defendant intended to harm the child, not merely that the defendant engaged in conduct that caused harm. [People v Gould \(1997\) 225 Mich App 79, 570 NW2d 140](#), app den [\(1999\) 459 Mich 955, 590 NW2d 572](#).

Second-degree child abuse is not a specific intent crime; the statute requires a wilful failure to provide necessary food, clothing, or shelter or a wilful abandonment of a child, but does not require an intent to cause injury. [People v Todd \(1992\) 196 Mich App 357, 492 NW2d 521](#), vacated on other grounds, remanded [\(1993\) 441 Mich 922, 497 NW2d 188](#) and adhered to, on remand [\(1993\) 201 Mich App 216, 506 NW2d 9](#), mod, remanded [\(1994\) 444 Mich 936, 509 NW2d 772](#) and (criticized in [People v Gould \(1997\) 225 Mich App 79, 570 NW2d 140](#)).

5. Admissibility of evidence.

By refusing to compel an election between charges of torturing and cruelly punishing; depriving of necessary food, clothing and shelter; and habitually permitting the health to be injured by exposure, want or other injury, in a prosecution for cruelty to a child under former section, the court allowed the jury to consider evidence as to each offense which would have been incompetent if separately charged and was prejudicial to defendant's rights. [People v Marks \(1931\) 255 Mich 271, 238 NW 217](#).

Circuit court did not err in granting a motion to reinstate charges of first-degree felony murder, with the underlying felony being first-degree child abuse, after a district court reduced the charges against a mother who left her two young children in a hot car for over three hours to involuntary manslaughter following a preliminary hearing; the evidence was at least sufficient to bind the defendant over for second degree murder and, further, the question of whether defendant acted with the requisite intent to support a finding of first degree murder was a question that should have been left for a jury to decide. [People v Maynor \(2003\) 256 Mich App 238, 662 NW2d 468](#).

In prosecution for cruelty to child, black and white photographs showing extent of bruises on child's body were properly introduced in evidence in support of medical testimony that bruises were result of a beating even though there was no direct testimony that defendant punished child. [People v Levy \(1970\) 28 Mich App 339, 184 NW2d 325](#), cert den [\(1971\) 404 US 827, 30 L Ed 2d 55, 92 S Ct 59](#).

In prosecution for torturing a child in a state training school, trial court's excluding from evidence transcript of civil service hearing and hearing officer's report concerning defendant's dismissal from job at school after incident was not reversible error, where hearing witnesses appeared and testified at trial, and trial court was not bound to accept findings of hearing officer. [People v Lapsley \(1970\) 26 Mich App 424, 182 NW2d 601](#).

In prosecution for torturing child in state institution, trial court properly

excluded from evidence as irrelevant training school records concerning patient beatings within five years previous to date of crime. [People v Lapsley \(1970\) 26 Mich App 424, 182 NW2d 601.](#)

6. Sufficiency of evidence.

Third-degree child abuse is a specific intent crime; this means that a defendant's conviction requires sufficient evidence to establish that the defendant subjectively desired or knew that the prohibited result would occur; sufficient evidence existed to convict the defendant where the defendant spanked her child with enough force to actually cause substantial bruising and to dislodge a blood clot from her nose. [People v Sherman-Huffman \(2000\) 241 Mich App 264, 615 NW2d 776, app gr \(2001\) 463 Mich 978, 623 NW2d 603](#) and affd [\(2002\) 466 Mich 39, 642 NW2d 339.](#)

The evidence was sufficient to support a conviction of child abuse where there was strong evidence that the child had been intentionally abused and conflicting evidence regarding which person was responsible. [People v Daoust \(1998\) 228 Mich App 1, 577 NW2d 179, app den, motion den \(1999\) 459 Mich 943, 590 NW2d 64.](#)

Where defendant, a trained EMT, admitted shaking two-month-old victim of bilateral subdural hematomas and admitted that he knew it was improper to shake a baby, and where the victim was shaken on more than one occasion and, as a result of being shaken, suffered serious physical harm, there was sufficient evidence for a rational trier of fact to find that the essential elements of first-degree child abuse were proved beyond a reasonable doubt. [People v Gould \(1997\) 225 Mich App 79, 570 NW2d 140, app den \(1999\) 459 Mich 955, 590 NW2d 572.](#)

Evidence that child's bruises were result of beating supported conviction on charge of cruelty to child who was left alone with defendant when mother went to work. [People v Levy \(1970\) 28 Mich App 339, 184 NW2d 325, cert den \(1971\) 404 US 827, 30 L Ed 2d 55, 92 S Ct 59.](#)

In nonjury prosecution for torturing child in state training school, blood tests which pointed toward conclusion that blood found in room where incident allegedly occurred was same type as that of victim supported trial court's affirmative finding on issue, even though minute amount of blood prevented establishment of blood type with absolute certainty. [People v Lapsley \(1970\) 26 Mich App 424, 182 NW2d 601.](#)

In nonjury prosecution for abandonment of child by defendant who claimed she had been without funds and had acted because of child's need for medical treatment, evidence sustained trial court's finding that defendant had intent to abandon her child. [People v Clark \(1967\) 6 Mich App 526, 149 NW2d 919.](#)

MINNESOTA

MISSISSIPPI

MISS. CODE ANN. § 97-5-39 (2008). 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 willfully 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) If the child's deprivation of necessary food, 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 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.

(c) 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 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) (a) Any person who shall intentionally (i) burn any child, (ii) torture any child or, (iii) except in self-defense or in order to prevent bodily harm to a third party, whip, strike or otherwise abuse or mutilate any child in such a manner as to cause serious bodily harm, shall be guilty of felonious abuse of a child and, upon conviction, shall be sentenced to imprisonment in the custody of the Department of Corrections for life or such lesser term of imprisonment as the court may determine, but not less than ten (10) years. For any second or subsequent conviction under this subsection, the person shall be sentenced to imprisonment for life.

(b) (i) 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.

(ii) 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.

(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) 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.

(5) 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.

(6) 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.

MISSOURI

MONTANA

NEBRASKA

NEB. REV. STAT. ANN. § 43-283.01 (2008). Preserve and reunify the family; reasonable efforts; requirements

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under [section 43-1312](#), efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in [section 43-1312](#), shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made

concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

NEVADA

NEW HAMPSHIRE

NEW JERSEY

NEW MEXICO

N.M. STAT. ANN. § 30-6-1 (2008). Abandonment or abuse of a child

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act [24-22-1 NMSA 1978] shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

- (1) placed in a situation that may endanger the child's life or health;
- (2) tortured, cruelly confined or cruelly punished; or
- (3) exposed to the inclemency of the weather.

E. Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, he is guilty of a first degree felony.

F. Whoever commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. Whoever commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. Whoever commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

N.M. STAT. ANN. § 32A-4-2 (2008). Definitions

As used in the Abuse and Neglect Act [this article]:

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" include 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 his 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 any 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 his 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 [32A-1-1 NMSA 1978] 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; and

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.

NEW YORK

NORTH CAROLINA

N.C. Gen. Stat. § 7B-101 (2008). 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](#); second degree rape as provided in [G.S. 14-27.3](#); first-degree sexual offense, as provided in [G.S. 14-27.4](#); second degree sexual offense, as provided in [G.S. 14-27.5](#); sexual act by a custodian, as provided in [G.S. 14-27.7](#); crime against nature, as provided in [G.S. 14-177](#); incest, as provided in [G.S. 14-178](#); preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in [G.S. 14-190.5](#); employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in [G.S. 14-190.6](#); dissemination of obscene material to the juvenile as provided in [G.S. 14-190.7](#) and [G.S. 14-190.8](#); displaying or disseminating material harmful to the juvenile as provided in [G.S. 14-190.14](#) and [G.S. 14-190.15](#); first and second degree sexual exploitation of the juvenile as provided in [G.S. 14-190.16](#) and [G.S. 14-190.17](#); promoting the prostitution of the juvenile as provided in [G.S. 14-190.18](#); and taking indecent liberties with the juvenile, as provided in [G.S. 14-202.1](#);

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court. -- The district court division of the General Court of Justice.

(7) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) Criminal history. -- A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in [G.S. 108A-14](#).

(11) District. -- Any district court district as established by [G.S. 7A-133](#).

(11a) Family assessment response. -- A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. -- A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge. -- Any district court judge.

(13) Judicial district. -- Any district court district as established by [G.S. 7A-133](#).

(14) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(15) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and

implement a permanent plan for the juvenile.

(18a) Responsible individual. -- An individual identified by the director as the person who is responsible for rendering a juvenile abused or seriously neglected.

(19) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(20) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(21) Substantial evidence. -- Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. -- Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

N.C. GEN. STAT. § 14-27.2A (2008). Rape of a Child; Adult Offender

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to [G.S. 15A-1340.17](#), up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to [G.S. 15A-1340.17](#). If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(e) The offense under [G.S. 14-27.2\(a\)\(1\)](#) is a lesser included offense of the offense in this section.

N.C. Gen. Stat. § 14-27.4A (2008). Sexual Offense with a child; Adult Offender

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section.

NORTH DAKOTA

OHIO

OHIO REV. CODE ANN. § 2919.22 (2009). 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 [2925.04.1] 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 [2925.04.1] 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 [4511.19.1] to 4511.197 [4511.19.7] 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 [2941.14.22] 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 (D)(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 [2941.14.22] 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 (D)(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 [2925.04.1] 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 [2925.04.1] 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 [2941.14.22] 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 (D)(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 [2967.19.1] 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 [2967.19.1] 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 [2967.19.1] 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 [4511.18.1] of the Revised Code.

(H) (1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2) (a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A) of section 4511.19 of the Revised Code;

(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this

section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(I) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code;

(2) "Limited driving privileges" has the same meaning as in section 4501.01 of the Revised Code.

(3) "Methamphetamine" has the same meaning as in section 2925.01 of the Revised Code.

OKLAHOMA

OKLA. STAT. ANN. tit. 10, § 7001-1.3 (2008). Definitions

A. When used in the Oklahoma Children's Code, unless the context otherwise requires:

54. "Torture" means to inflict:

- a. intense emotional or psychological anguish to or suffering by a child, or
- b. physical pain for the purpose of coercing or terrorizing a child;

OKLA. STAT. ANN. tit. 10, § 7003-4.6 (2008). Returning Child to home

A. The court, on its own motion or upon motion of a party, may determine that reasonable efforts to provide for the return of a child to the child's home or to preserve the family of the child shall not be required prior to or following the adjudicatory hearing if the court determines based upon competent evidence that:

1. The parent, legal guardian or custodian has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides;

2. The child or a sibling of the child:

a. has been previously adjudicated deprived pursuant to the Oklahoma Children's Code or laws from other states or territories as a result of sexual abuse or severe physical abuse,

b. following adjudication, has been removed from the custody of the parent, legal guardian or custodian,

c. has been returned to the custody of the parent, legal guardian or custodian from whom the child had originally been taken, and

d. has been removed from the custody of the parents, legal guardian or custodian of the child, pursuant to the provisions of the Oklahoma Children's Code, due to sexual abuse or severe physical abuse;

3. The child is an abandoned infant;

4. The parent, legal guardian or custodian of the child has been convicted of the murder of any child or aided or abetted, attempted, conspired or solicited the commission of murder of any child;

5. The parent, legal guardian or custodian of the child has been convicted of voluntary manslaughter of another child of the parent, legal guardian or custodian or aided or abetted, attempted, conspired in or solicited the commission of voluntary manslaughter of another child of the parent, legal guardian or custodian or another child within the household where the child resided;

6. The child has been adjudicated a deprived child, pursuant to the provisions of the Oklahoma Children's Code, as a result of a single incident of sexual abuse, severe neglect or a felonious assault resulting in serious bodily injury to the child, a sibling of the child, or a child within the household where the child resides, by the parent, legal guardian or custodian of the child;

7. The child was conceived as a result of rape or an act committed outside of this state which if committed in this state would constitute rape. This paragraph shall only apply to the parent who committed the rape or act and whose child has been placed out of the home;

8. The parents have deserted a child without good cause or excuse and such desertion continues for a period of at least six (6) months immediately prior to the filing of the petition adjudicating the child deprived or petition to terminate parental rights;

9. The parent of the child willfully abandoned the child without regard to length of abandonment, and the court finds that the abandonment itself constituted a serious danger to the health and safety of the child;

10. A child has resided out of the child's home under court order for a cumulative period of more than one (1) year within a three-year period following a deprived child adjudication;

11. a. The court ordered a permanent plan of adoption, guardianship, or other permanent out-of-home placement for any siblings of the child because the parent failed to correct the conditions which led to initial court intervention with the sibling after the sibling had been removed from that parent, or

b. The parental rights of a parent over any sibling of the child had been permanently severed and, according to the findings of the court, the parent had not subsequently made a reasonable effort to correct the problems that led to removal of the sibling of that child from that parent;

12. The parent, legal guardian or custodian who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state or who has been convicted of a sexual felony offense pursuant to Section 1024.2, 1031, 1040.52, 1040.53, 1081, 1085, 1086, 1117, 1118, 1119, 1192 or 1192.1 of Title 21 of the Oklahoma Statutes; or

13. The parent, legal guardian or custodian of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three-year period immediately prior to the filing of the deprived petition which brought that child to the court's attention.

B. Upon a determination by the court that any of the conditions specified in subsection A of this section exist, the court shall conduct a permanency hearing within thirty (30) days of the determination by the court pursuant to the provisions of Section 7003-5.6d of this title. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan.

C. Except when a petition for the termination of parental rights is required to be filed pursuant to the provisions of Section 7003-4.7 of this title, the district attorney, the child's attorney, or both may file a petition for termination of parental rights.

OKLA. STAT. ANN. tit. 10, § 7115 (2009). Child abuse--Child neglect--Child sexual abuse--Child sexual exploitation--Enabling—Penalties.

A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment. As used in this subsection, "child abuse" means the willful or

malicious abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00) or both such fine and imprisonment. As used in this subsection, "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

C. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment. As used in this subsection, "child neglect" means the willful or malicious neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of Title 21 of the Oklahoma Statutes

or as otherwise provided in subsection F of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00).

G. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

H. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment except as provided in subsection I of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

I. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00).

J. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Five Thousand Dollars (\$ 5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

K. Notwithstanding any other provision of law, any parent or other person convicted of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction for any offense of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age shall be punished by death or by imprisonment for life without parole.

OKLA. STAT. ANN. tit. 10, § 7303-1.4 (2008). Petition to be filed within certain time--Order removing child from home prohibited absent certain determinations--"Responsible adult" defined

A. If a child has been taken into custody pursuant to the provisions of the Juvenile Justice Code before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to the child's parent, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Oklahoma Juvenile Code.

B. No order of the court providing for the initial or continued removal of a child alleged or adjudicated delinquent or in need of supervision from the child's home shall be entered unless the court finds that the continuation of the child in the home of the child is contrary to the welfare of the child. The order shall include either:

1. A determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from the home or, as appropriate, reasonable efforts have been made to provide for the return of the child to the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of

the child from the home is reasonable upon consideration of the family circumstances, the safety of the child and the protection of the public; or

3. A determination that reasonable efforts to prevent the removal of the child from the home or to reunify the child and family are not required because:

a. a court of competent jurisdiction has determined that the parent has subjected the child to one of the following aggravated circumstances: abandonment, torture, chronic abuse, sexual abuse or chronic, life-threatening neglect of the child,

b. a court of competent jurisdiction has determined that the parent has been convicted of one of the following:

(1) murder of another child of the parent,

(2) voluntary manslaughter of another child of the parent,

(3) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(4) a felony assault that results in serious bodily injury to the child or another child of the parent, or

c. the parental rights of the parent with respect to a sibling have been terminated involuntarily.

C. For purposes of this section and Sections 7303-1.1 and 7303-1.2 of this title, "responsible adult" means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in another person's absence who is eighteen (18) years of age or older.

OKLA. STAT. ANN. tit. 21, § 1024.1 (2008). Definitions

A. As used in Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd

exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions.

B. As used in Sections 1021 through 1024.4 and Sections 1040.8 through 1040.24 of this title:

1. "Obscene material" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the following elements :

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards, and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography;

2. "Performance" means and includes any display, live or recorded, in any form or medium;

3. "Sexual conduct" means and includes any of the following:

a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,

b. acts of deviate sexual conduct, including oral and anal sodomy,

c. acts of masturbation,

d. acts of sadomasochistic abuse including but not limited to:

(1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or

(2) the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed,

e. acts of excretion in a sexual context, or

f. acts of exhibiting human genitals or pubic areas; and

4. "Explicit child pornography" means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

The types of sexual conduct described in paragraph 3 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

OREGON**

OR. REV. STAT. § 163.115 (2007). Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.

(1) Except as provided in [ORS 163.118](#) and [163.125](#), criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in [ORS 164.325](#);

(B) Criminal mischief in the first degree by means of an explosive as defined in [ORS 164.365](#);

(C) Burglary in the first degree as defined in [ORS 164.225](#);

(D) Escape in the first degree as defined in [ORS 162.165](#);

(E) Kidnapping in the second degree as defined in [ORS 163.225](#);

- (F) Kidnapping in the first degree as defined in [ORS 163.235](#);
 - (G) Robbery in the first degree as defined in [ORS 164.415](#);
 - (H) Any felony sexual offense in the first degree defined in this chapter;
 - (I) Compelling prostitution as defined in [ORS 167.017](#); or
 - (J) Assault in the first degree, as defined in [ORS 163.185](#), and the victim is under 14 years of age, or assault in the second degree, as defined in [ORS 163.175 \(1\)\(a\)](#) or (b), and the victim is under 14 years of age; or
- (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in [ORS 163.205](#), and:
- (A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or
 - (B) The person causes the death by neglect or maltreatment.
- (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.
- (3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:
- (a) Was not the only participant in the underlying crime;
 - (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;
 - (c) Was not armed with a dangerous or deadly weapon;
 - (d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and
 - (e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.
- (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.
- (5)(a) A person convicted of murder, who was at least 15 years of age at the time of

committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order. (f) Not less than two years after the denial of the relief sought in a petition under paragraph (c) of this subsection, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

(6) As used in this section:

(a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another person. "Assault" does not include the causing of physical injury in a motor

vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of [ORS 163.535](#), [163.545](#) or [163.547](#) or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

OR. REV. STAT. § 163.125 (2007). Manslaughter in the second degree.

(1) Criminal homicide constitutes manslaughter in the second degree when:

(a) It is committed recklessly;

(b) A person intentionally causes or aids another person to commit suicide; or

(c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in [ORS 163.205](#), and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in [ORS 163.115](#).

(2) Manslaughter in the second degree is a Class B felony.

OR. REV. STAT. § 419B.502 (2007). Termination upon finding of extreme conduct.

The rights of the parent or parents may be terminated as provided in [ORS 419B.500](#) if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child. In such case, no efforts need to be made by available social agencies to help the parent adjust the conduct in order to make it possible for the child or ward to safely return home within a reasonable amount of time. In determining extreme conduct, the court shall consider the following:

(1) Rape, sodomy or sex abuse of any child by the parent.

(2) Intentional starvation or torture of any child by the parent.

(3) Abuse or neglect by the parent of any child resulting in death or serious physical injury.

(4) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child.

(5) Conduct by the parent to attempt, solicit or conspire, as described in [ORS 161.405](#), [161.435](#) or [161.450](#) or under comparable laws of any jurisdiction, to cause the death of any child.

(6) Previous involuntary terminations of the parent's rights to another child if the conditions giving rise to the previous action have not been ameliorated.

(7) Conduct by the parent that knowingly exposes any child of the parent to the storage or production of methamphetamines from precursors. In determining whether extreme conduct exists under this subsection, the court shall consider the extent of the child or ward's exposure and the potential harm to the physical health of the child or ward.

PENNSYLVANIA

RHODE ISLAND

R.I. GEN. LAWS § 11-37-8.2.1 (2009). Penalty for first degree child molestation sexual assault -- Jessica Lunsford Child Predator Act of 2006

(a) *Title and Legislative Intent.* The title of this section shall be "The Jessica Lunsford Child Predator Act of 2006". In enacting this section the general assembly intends that in order to ensure the safety of victims the most dangerous child predators be electronically monitored via an active global positioning system in order to ensure that their whereabouts can be easily ascertained by law enforcement and other responsible authorities at all times while providing treatment to offenders.

(b) Every person who shall violate the provisions of subdivisions 11-37-8.2.1(b)(1) -- 11-37-8.2.1(b)(2) listed herein shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior, as determined by the department of probation and parole. The persons subject to this condition of parole shall include:

(1) Persons who commit first degree child molestation sexual assault on or after January 1, 2007 and the victim of the sexual assault is twelve (12) years of age or

younger; or

(2) Persons who shall violate the conditions of § 11-37-8.1 on or after January 1, 2007 and be determined a high-risk of re-offense (level 3) offender under the conditions of § 11-37.1-12, and the person is deemed a child predator as defined in subsection 11-37-8.2.1(g) or have committed the offense in conjunction with circumstances involving kidnapping, torture or aggravated battery, and provided further that the victim to the offense is fourteen (14) years of age or younger.

(3) Any person who violates the terms of the global position monitoring conditions shall be guilty of a misdemeanor.

(c) Any costs associated with the requirements of this section shall be borne by the offender and the court is hereby authorized and empowered to utilize all resources available to collect the funds for these costs unless the court finds that the defendant is indigent. In such cases costs shall be waived in order to promote this section's legislative intent.

(d) Harboring.

(1) Any person who has reason to know that a person convicted of first degree child molestation as defined by § 11-37-8.1 or 11-37-8.2.1 is not complying or has not complied with the requirements of this section where applicable and who with the intent to assist the child molester in eluding a law enforcement agency that is seeking to find the child molester to question the child molester about or to arrest the child molester for his or her non-compliance with the requirements of this section and who:

(i) knowingly withholds information from or willfully fails to notify the law enforcement agency about the child molester's non-compliance with the requirements of this section; or

(ii) harbors or attempts to harbor or assists another person in harboring or attempting to harbor the child molester; or

(iii) knowingly conceals or attempts to conceal or assists another person in concealing or attempting to conceal the child molester; or

(iv) provides information to the law enforcement agency regarding the child molester that the person knows to be false information commits a felony and shall be subject to imprisonment for a period of five (5) years. Nothing in this subsection shall be construed as limiting the discretion of the judges to impose additional sanctions authorized in sentencing.

(2) Any person who permits a child predator as defined by this section to reside with them knowing that the child predator has failed to comply with the requirements of subsection 11-37-8.2.1(b) commits a felony punishable by up to five (5) years

imprisonment and/or a five thousand dollar (\$ 5,000) fine.

(e) Any person who intentionally tampers with damages or destroys any electronic monitoring equipment required by this section pursuant to a court order or parole board order unless such person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs commits a felony and shall be imprisoned for not less than one nor more than five (5) years.

(f) The department of corrections, prior to the release from incarceration of any child predator, shall ensure that the child predator's fingerprints are taken and forwarded to the bureau of criminal identification (BCI) division within the department of attorney general within forty-eight (48) hours after release from incarceration. The fingerprint card shall be clearly marked "Child Predator Registration Card".

(g) For the purposes of this section "child predator" shall be defined as any person convicted of any violation of § 11-37-8.1, and who on a prior occasion has been convicted of a violation of § 11-37-8.1 or § 11-37-8.3.

SOUTH CAROLINA***

S.C. CODE ANN. § 20-7-763 (2007). Reasonable effort to preserve or reunify family; when required; termination.

(A) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child's health and safety must be the paramount concern.

(B) The family court may rule on whether reasonable efforts to preserve or reunify a family should be required in hearings regarding removal of custody, review of amendments to a placement plan, review of the status of a child in foster care, or permanency planning.

(C) The family court may authorize the department to terminate or forego reasonable efforts to preserve or reunify a family when the records of a court of competent jurisdiction show or when the family court determines that one or more of the following conditions exist:

(1) the parent has subjected the child to one or more of the following aggravated circumstances:

(a) severe or repeated abuse;

(b) severe or repeated neglect;

- (c) sexual abuse;
 - (d) acts that the judge may find constitute torture; or
 - (e) abandonment;
- (2) the parent has been convicted of or pled guilty or nolo contendere to murder of another child of the parent, or an equivalent offense, in this jurisdiction or another;
- (3) the parent has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child of the parent, or an equivalent offense, in this jurisdiction or another;
- (4) the parent has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter pursuant to item (1), (2), or (3), or an equivalent offense, in this jurisdiction or another;
- (5) physical abuse of a child of the parent resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting (a) an offense against the person as provided for in Title 16, Chapter 3, (b) criminal domestic violence as defined in [Section 16-25-20](#), (c) criminal domestic violence of a high and aggravated nature as defined in [Section 16-25-65](#), or (d) the common law offense of assault and battery of a high and aggravated nature, or an equivalent offense in another jurisdiction;
- (6) the parental rights of the parent to a sibling of the child have been terminated involuntarily;
- (7) other circumstances exist that the court finds make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the permanent plan for the child.
- (D) The department may proceed with efforts to place a child for adoption or with a legal guardian concurrently with making efforts to prevent removal or to make it possible for the child to return safely to the home.
- (E) If the family court's decision that reasonable efforts to preserve or reunify a family are not required results from a hearing other than a permanency planning hearing, the court's order shall require that a permanency planning hearing be held within thirty days of the date of the order.
- (F) In determining whether to authorize the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must consider whether initiation or

continuation of reasonable efforts to preserve or reunify the family is in the best interests of the child.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 22-24A-2 (2009). Definitions

Terms used in [§§ 22-19A-1](#), [22-24A-1](#) to [22-24A-20](#), inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," any person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) Deleted by SL 2005, ch 120, § 408.
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors. This term does not include a mother's breast-feeding of her baby;
- (8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;

(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

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

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

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

(16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any

such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

S.D. CODIFIED LAWS § 26-8A-21.1 (2009). Reunification with parent not required

Nothing in [§ 26-8A-21](#) requires reunification of a child with a parent who:

(1) Committed a crime defined in [§ 22-16-4](#), [22-16-7](#), [22-16-15](#), [22-16-20](#), [22-22-1](#), [22-22-24.3](#), [22-22A-2](#), [22-22A-3](#), [26-10-1](#), or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(2) Committed a crime defined in [§ 22-18-1.1](#) against the child or another child of such parent, or committed conduct described by that section that violated the law or ordinance of another jurisdiction having elements similar to the offense described by that section;

(3) Has been determined by a court by clear and convincing evidence to have subjected the child or another child to torture, sexual abuse, abandonment for at least six months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect was a serious threat to the safety of the child or another child;

(4) Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult;

(5) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;

(6) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;

(7) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion;

(8) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, the child has been removed from the parent's custody on two separate occasions, and the Department of Social Services offered or provided family services on each of the two separate occasions the child was removed; or

(9) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or risk of harm resulting from a crime, act, or omission as specified in subdivision (1), (2), or (3) of this section.

S.D. CODIFIED LAWS § 26-8A-26.1 (2009). Termination of parental rights -- Good cause considerations

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](#), [22-22-4.3](#), [22-22A-2](#), [22-22A-3](#), [26-10-1](#), or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

(2) Committed a crime defined in [§ 22-18-1.1](#) against the child or another child of such parent, or committed conduct described by that section that violated the law or ordinance of another jurisdiction having elements similar to the offense described by that section;

(3) Has been determined by a court by clear and convincing evidence to have subjected the child or another child to torture, sexual abuse, abandonment for at least six months, chronic physical, mental, or emotional injury, or chronic neglect if the neglect was a serious threat to the safety of the child or another child;

(4) Is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and the child's need for care by an adult;

(5) Has had parental rights to another child involuntarily terminated by a prior legal proceeding;

(6) Has a documented history of abuse and neglect associated with chronic alcohol or drug abuse;

(7) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion;

(8) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, the child has been removed from the parent's custody on two separate occasions, and the Department of Social Services offered or provided family services on each of the two separate occasions the child was removed; or

(9) Has exposed the child to or demonstrated an inability to protect the child from substantial harm or risk of harm resulting from a crime, act, or omission as specified in subdivision (1), (2), or (3) of this section.

S.D. CODIFIED LAWS § 26-10-1 (2009). Abuse of or cruelty to minor as felony -- Defense to charge

Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony. The use of reasonable force, as provided in § 22-18-5, is a defense to an offense under this section. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five.

If any person convicted of this offense is the minor's parent, guardian, or custodian, the court shall include as part of the sentence, or conditions required as part of suspended execution or imposition of such sentence, that the person receive instruction on parenting approved or provided by the Department of Social Services.

TENNESSEE

TENN. CODE ANN. § 39-15-402 (2008). Aggravated child abuse and aggravated child neglect or endangerment.

(a) A person commits the offense of aggravated child abuse or aggravated child neglect or endangerment, who commits the offense of child abuse, as defined in § 39-15-401(a), or who commits the offense of child neglect or endangerment, as defined in § 39-15-401(b), and:

- (1) The act of abuse or neglect results in serious bodily injury to the child;
- (2) The act of neglect or endangerment results in serious bodily injury to the child;

(3) A deadly weapon, dangerous instrumentality or controlled substance is used to accomplish the act of abuse, neglect or endangerment; or

(4) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) Nothing in this part shall be construed to mean a child is abused, neglected, or endangered, or abused, neglected or endangered in an aggravated manner, for the sole reason the child is being provided treatment by spiritual means through prayer alone, in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner of the recognized church or religious denomination, in lieu of medical or surgical treatment.

(d) This section shall be known and may be cited as "Haley's Law".

TEXAS****

TEX. PENAL CODE ANN. § 22.04 (2007). Injury to a Child, Elderly Individual, or Disabled Individual

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury;

(3) bodily injury; or

(4) exploitation.

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1) (1), (2), (3), or (4) is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 65 years of age or older.

(3) "Disabled individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(4) "Exploitation" means the illegal or improper use of an individual or of the resources of the individual for monetary or personal benefit, profit, or gain.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), (3), or (4), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), (3), or (4).

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); or

(3) notified in writing the Department of Protective and Regulatory Services that he would no longer provide any of the care set forth in Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k) It is a defense to prosecution under this section that the act or omission consisted of:

(1) reasonable medical care occurring under the direction of or by a licensed physician;
or

(2) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(l) It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a child at the time of the offense.

Note 295. Sufficient evidence supported defendant's conviction of causing bodily injury by omission under Tex. Penal Code Ann. § 22.04; there was no question that defendant, the child victim's stepmother, had assumed the care, custody, and control of the child and had the duty to act, and there was no question that death, as what happened in this case, was included in the definition of serious bodily injury under Tex. Penal Code Ann. § 1.07(a)(46), and the evidence showed that the stepmother and the child's father took turns beating the child and the child had to endure various punishments that simply amounted to torture. [Fisher v. State, 220 S.W.3d 599, 2007 Tex. App. LEXIS 2759 \(Tex. App. Texarkana 2007\).](#)

UTAH

UTAH CODE ANN. § 76-5-109 (2008). 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 retardation, 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 Forfeitures 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).

VERMONT

VIRGINIA

VA. CODE ANN. § 16.1-281 (2009). Foster care plan

A. In any case in which (i) a local board of social services places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of social services or a child welfare agency, the local department of social services or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to [§ 2.2-5208](#) may be accepted by the court as the foster care plan if it meets the requirements of this section.

The representatives of such department or agency shall involve the child's parent(s) in the development of the plan, except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full

description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 60 days following the transfer of custody or the board's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within 60 days following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child; (v) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vi) where appropriate for children age 16 or over, the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in a separate section of the plan the department, child welfare agency or team shall (a) include a full description of the reasons for this conclusion; (b) provide information on the opportunities for placing the child with a relative or in an adoptive home; (c) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible; (d) explain why permanent foster care, independent living for a child 16 years of age or older, or continued foster care is the plan for the child. "Independent living" as used in this section has the meaning set forth in § 63.2-100.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (1) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (2) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any

other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (3) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (4) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

VA. CODE ANN. § 16.1-283 (2009). Termination of residual parental rights

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual, subject to the provisions of subsection A1 of this section. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A of this section shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2 hereof:

a. The parent or parents are suffering from a mental or emotional illness or mental deficiency of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed twelve months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a

local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or *"chronic sexual abuse"* means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or *"severe sexual abuse"* may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the

conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child fourteen years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

VA. CODE ANN. § 40.1-103 (2009). Cruelty and Injuries to Children; penalty; abandoned infant

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section shall be guilty of a Class 6 felony.

B. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

WASHINGTON

WASH. REV. CODE ANN. § 9A.32.055 (2009). Homicide by abuse

(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or

mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony.

After July 1, 1984 for a class A felony the maximum sentence imposed may be confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine

WASH. REV. CODE ANN. § 9A.36.120 (2009). Assault of a child in the first degree

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a class A felony.

After July 1, 1984 for a class A felony the maximum sentence imposed may be confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine

WASH. REV. CODE ANN. § 9A.36.130 (2009). Assault of a child in the second degree

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child; or

(b) Intentionally assaults the child and causes bodily harm that is greater than

transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the second degree is a class B felony.

After July 1, 1984 for a class B felony the maximum sentence imposed may be confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine.

WEST VIRGINIA

W. VA. CODE ANN. § 49-6-3 (2008). Petition to court when child believed neglected or abused -- Temporary custody.

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child; and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) whether or not the department made reasonable efforts to preserve the family and prevent the placement or

that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, That the court order shall state: (1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor; (2) whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home; (3) whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) what efforts should be made by the department, if any, to facilitate the child's return home: Provided, however, That if the court grants an improvement period as provided in section twelve [§ 49-6-12] of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three [§ 49-1-3], article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other

evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four [§ 49-6-4] of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three [§ 49-6-3] of this article.

(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

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

W. VA. CODE ANN. § 49-6-5 (2008). Disposition of neglected or abused children

(a) Following a determination pursuant to section two [§ 49-6-2] of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three [§ 49-6D-3], article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

- (1) Dismiss the petition;
- (2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
- (3) Return the child to his or her own home under supervision of the department;
- (4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
- (5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall

state: (A) That continuation in the home is contrary to the best interests of the child and why; (B) whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home; (C) what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (D) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (i) Be continued in foster care for a specified period; (ii) be considered for adoption; (iii) be considered for legal guardianship; (iv) be considered for permanent placement with a fit and willing relative; or (v) be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five [§ 49-7-5], article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a non-abusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors: (A) The child's need for continuity of care and caretakers; (B) the amount of time required for the child to be integrated into a stable and permanent home environment; and (C) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (i) That continuation in the home is not in the best interest of the child and why; (ii) why reunification is not in the best interests of the child; (iii) whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and (iv) whether or not the department made reasonable efforts to preserve and reunify the family, or some

portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child's other parent, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

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

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the

child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

WISCONSIN

WYOMING

WYO. STAT. ANN. § 14-2-309 (2008). *Grounds for termination of parent-child relationship; clear and convincing evidence*

(a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:

(i) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one (1) year. In making the above determination, the court may disregard occasional contributions, or incidental contacts and communications;

(ii) The child has been abandoned with no means of identification for at least three (3) months and efforts to locate the parent have been unsuccessful;

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

(v) The child has been in foster care under the responsibility of the state of Wyoming for fifteen (15) of the most recent twenty-two (22) months, and a showing that the parent is unfit to have custody and control of the child;

(vi) The child is abandoned at less than one (1) year of age and has been abandoned for at least six (6) months;

(vii) The child was relinquished to a safe haven provider in accordance with W.S. 14-11-101 through 14-11-109, and neither parent has affirmatively sought the return of the child within three (3) months from the date of relinquishment.

(b) Proof by clear and convincing evidence that the parent has been convicted of any of the following crimes may constitute grounds that the parent is unfit to have custody or control of any child and may be grounds for terminating the parent-child relationship as to any child with no requirement that reasonable efforts be made to reunify the family:

(i) Murder or voluntary manslaughter of another child of the parent or aiding and abetting, attempting, conspiring to commit or soliciting such a crime; or

(ii) Commission of a felony assault which results in serious bodily injury to a child of the parent. As used in this paragraph "serious bodily injury" means as defined by W.S. 6-1-104.

(c) Notwithstanding any other provision of this section, evidence that reasonable efforts

have been made to preserve and reunify the family is not required in any case in which the court determines by clear and convincing evidence that:

- (i) The parental rights of the parent to any other child have been terminated involuntarily;
- (ii) The parent abandoned, chronically abused, tortured or sexually abused the child; or
- (iii) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

FEDERAL LEGISLATION

42 U.S.C.S. § 671 (2009). State plan for foster care and adoption assistance

(a) Requisite features of State plan. In order for a State to be eligible for payments under this part [42 USCS §§ 670 et seq.], it shall have a plan approved by the Secretary which--

(1) provides for foster care maintenance payments in accordance with section 472 [42 USCS § 672] and for adoption assistance in accordance with section 473 [42 USCS § 673];

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this title [42 USCS §§ 620 et seq.] shall administer, or supervise the administration of, the program authorized by this part [42 USCS §§ 670 et seq.];

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part [42 USCS §§ 670 et seq.] will be coordinated with the programs at the State or local level assisted under parts A and B of this title [42 USCS §§ 601 et seq., 620 et seq.], under title XX of this Act [42 USCS §§ 1397 et seq.], and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part [42 USCS §§ 670 et seq.], use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part [42 USCS §§ 670 et seq.] referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part [42 USCS §§ 670 et seq.];

(8) subject to subsection (c), provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part [42 USCS §§ 670 et seq.], the plan or program of the State under part A, B, or D of this title [42 USCS §§ 601 et seq., 620 et seq., 651 et seq.] or under title I, V, X, XIV, XVI [42 USCS §§ 301 et seq., 701 et seq., 1201 et seq., 1351 et seq., 1381 et seq.] (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX [42 USCS §§ 1396 et seq., 1397 et seq.], or the supplemental security income program established by title XVI [42 USCS §§ 1381 et seq.], (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will--

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part [42 USCS §§ 620 et seq. or 671 et seq.] under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part [42 USCS §§ 670 et seq.] or part B of this title [42 USCS §§ 620 et seq.], and provides that a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to

any individual whose claim for benefits available pursuant to this part [42 USCS §§ 670 et seq.] is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part [42 USCS §§ 670 et seq.] and part B of this title [42 USCS §§ 620 et seq.], which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that--

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has--

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

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

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--

(i) a permanency hearing (as described in section 475(5)(C) [42 USCS § 675(5)(C)]), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 475(1) [42 USCS § 675(1)]) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) [42 USCS § 675(5)(B)] with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A [42 USCS §§ 601 et seq.] and plan approved under part D [42 USCS §§ 651 et seq.], to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part [42 USCS §§ 670 et seq.];

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20) (A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code [28 USCS § 534(e)(3)(A)]), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part [42 USCS §§ 670 et seq.], including procedures requiring that--

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) provides that the State shall--

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part [42 USCS §§ 670 et seq.];

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases; and

(C) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code [28 USCS § 534(e)(3)(A)]), on any relative guardian, and for checks described in subparagraph (B) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part [42 USCS §§ 670 et seq.];

(D) [Redesignated]

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX [42 USCS §§ 1396 et seq.]) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part [42 USCS §§ 670 et seq.]) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage--

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX [42 USCS §§ 1396 et seq.];

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX [42 USCS §§ 1396 et seq.], and the State exceeds its funding for services under such other program, any such child

shall be deemed to be receiving aid or assistance under the State plan under this part [42 USCS §§ 670 et seq.] for purposes of section 1902(a)(10)(A)(i)(I) [42 USCS § 1396a(a)(10)(A)(i)(I)]; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not--

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness;

(24) include [includes] a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide [provides] that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that--

(A)

(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract--

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from

another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part [42 USCS §§ 670 et seq.] to contract with a private agency for the conduct of a home study described in subparagraph (A);

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B [42 USCS §§ 670 et seq. or 621 et seq.] and without regard to whether foster care maintenance payments are made under section 472 [42 USCS § 672] on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child;

(28) at the option of the State, provides for the State to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis, as provided in section 473(d) [42 USCS § 673(d)];

(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that--

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) [42 USCS § 673(d)] to receive the payments;

(30) provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary school student or has completed secondary school, and for purposes of this paragraph, the term "elementary or secondary school student" means, with respect to a child, that the child is--

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child;

(31) provides that reasonable efforts shall be made--

(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(32) [**Caution: This paragraph takes effect on Oct. 1, 2009, pursuant to § 301(f) of Act Oct. 7, 2008, P.L. 110-351, which appears as a note to this section.**] provides that the State will negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the State that requests to develop an agreement with the State to administer all or part of the program under this part [42 USCS §§ 670 et seq.] on behalf of Indian children who are under the authority of the tribe, organization, or consortium, including foster care maintenance payments on behalf of children who are placed in State or tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, kinship guardianship assistance payments under section 473(d) [42 USCS § 673(d)], and tribal access to resources for administration, training, and data collection under this part [42 USCS §§ 670 et seq.]; and

(33) provides that the State will inform any individual who is adopting, or whom the State is made aware is considering adopting, a child who is in foster care under the responsibility of the State of the potential eligibility of the individual for a Federal tax credit under section 23 of the Internal Revenue Code of 1986 [26 USCS § 23].

(b) Approval of plan by Secretary. The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of child welfare records in State court proceedings. Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part [42 USCS §§ 620 et seq. or 670 et seq.], except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

AMERICAN SAMOA

GUAM

PUERTO RICO

U.S. VIRGIN ISLANDS