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## Definitions of Child Abuse and Neglect

Child abuse and neglect are defined by Federal and State laws. At the State level, child abuse and neglect may be defined in both civil and criminal statutes.

This publication presents civil definitions that determine the grounds for intervention by State child protective agencies.<sup>1</sup> At the Federal level, the Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as:

Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.<sup>2</sup>

<sup>1</sup> States also may define child abuse and neglect in criminal statutes. These definitions provide the grounds for the arrest and prosecution of the offenders. For information on the criminal aspects of child abuse and neglect, visit the National Center for Prosecution of Child Abuse website at <http://www.ndaa.org/ncpca.html>.

<sup>2</sup> CAPTA Reauthorization Act of 2010 (P.L. 111-320), § 5101, Note (§ 3).

The CAPTA definition of sexual abuse includes:

The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or

The rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.<sup>3</sup>

In response to increased awareness of the sex trafficking of minors in the United States, the Justice for Victims of Trafficking Act of 2015 amended the Federal definition of child abuse with the addition of the following special rule:

A child shall be considered a victim of “child abuse and neglect” and of “sexual abuse” if the child is identified, by a State or local agency employee of the State or locality involved, as being a victim of sex trafficking (as defined in § 103(10) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) or a victim of severe forms of trafficking in persons described in § 103(9)(A).<sup>4</sup>

## Types of Abuse

Nearly all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands provide civil definitions of child abuse and neglect in statute.<sup>5</sup> States recognize the different types of abuse in their definitions, including physical abuse, neglect, sexual abuse, and emotional abuse. Some States also provide definitions in statute for parental substance abuse and/or for abandonment as child abuse.

<sup>3</sup>42 U.S.C.A. § 5106g(a)(4) (2015).

<sup>4</sup>42 U.S.C. § 5106g(b) (2015).

<sup>5</sup>Massachusetts defines child abuse and neglect in regulation.

## Physical Abuse

Physical abuse is generally defined as “any nonaccidental physical injury to the child” and can include striking, kicking, burning, or biting the child, or any action that results in a physical impairment of the child. In approximately 38 States and American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, the definition of abuse also includes acts or circumstances that threaten the child with harm or create a substantial risk of harm to the child’s health or welfare.<sup>6</sup> In seven States, the crime of human trafficking, including labor trafficking, involuntary servitude, or trafficking of minors, is included in the definition of child abuse.<sup>7</sup>

## Neglect

Neglect is frequently defined as the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child’s health, safety, and well-being are threatened with harm. Approximately 25 States, the District of Columbia, American Samoa, Puerto Rico, and the Virgin Islands include failure to educate the child as required by law in their definition of neglect.<sup>8</sup> Ten States and American Samoa specifically define medical neglect as failing to provide any special medical treatment or mental health care needed by the child.<sup>9</sup> In addition, four States define medical neglect as the withholding of medical treatment or nutrition from disabled infants with life-threatening conditions.<sup>10</sup>

<sup>6</sup>The word “approximately” is used to stress the fact that the States frequently amend their laws. This information is current through April 2016. The States are Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

<sup>7</sup>Hawaii, Illinois, Indiana, Louisiana, Mississippi, North Carolina, and Utah.

<sup>8</sup>The States that define “failure to educate” as neglect include Arkansas, Colorado, Connecticut, Delaware, Idaho, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

<sup>9</sup>Arkansas, Florida, Mississippi, Iowa, North Dakota, Ohio, Oklahoma, Tennessee, Texas, and West Virginia.

<sup>10</sup>Indiana, Kansas, Minnesota, and Montana.

## Sexual Abuse/Exploitation

All States include sexual abuse in their definitions of child abuse. Some States refer in general terms to sexual abuse, while others specify various acts as sexual abuse. Sexual exploitation is an element of the definition of sexual abuse in most jurisdictions. Sexual exploitation includes allowing the child to engage in prostitution or in the production of child pornography. In 21 States, the definition of sexual abuse includes human trafficking, including sex trafficking or trafficking of children for sexual purposes.<sup>11</sup>

## Emotional Abuse

Almost all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands include emotional maltreatment as part of their definitions of abuse or neglect.<sup>12</sup> Approximately 33 States, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico provide specific definitions of emotional abuse or mental injury to a child.<sup>13</sup> Typical language used in these definitions is “injury to the psychological capacity or emotional stability of the child as evidenced by an observable or substantial change in behavior, emotional response, or cognition” and injury as evidenced by “anxiety, depression, withdrawal, or aggressive behavior.”

<sup>11</sup> Commercial sexual exploitation, including the production of child pornography, can be regarded as types of sex trafficking. The States that specifically include the term “sex trafficking” in their civil definitions of child abuse include Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, North Carolina, North Dakota, Oklahoma, Texas, and Vermont.

<sup>12</sup> All States except Georgia and Washington.

<sup>13</sup> Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

## Parental Substance Abuse

Parental substance abuse is an element of the definition of child abuse or neglect in some States.<sup>14</sup> Circumstances that are considered abuse or neglect in some States include:

- ③ Prenatal exposure of a child to harm due to the mother’s use of an illegal drug or other substance (14 States and the District of Columbia)<sup>15</sup>
- ③ Manufacture of a controlled substance in the presence of a child or on the premises occupied by a child (12 States)<sup>16</sup>
- ③ Allowing a child to be present where the chemicals or equipment for the manufacture of controlled substances are used or stored (three States)<sup>17</sup>
- ③ Selling, distributing, or giving drugs or alcohol to a child (seven States and Guam)<sup>18</sup>
- ③ Use of a controlled substance by a caregiver that impairs the caregiver’s ability to adequately care for the child (eight States)<sup>19</sup>

## Abandonment

Approximately 17 States and the District of Columbia include abandonment in their definitions of abuse or neglect, generally as a type of neglect.<sup>20</sup> Approximately 19 States, Guam, Puerto Rico, and the Virgin Islands provide definitions for abandonment that are separate from the definition of neglect.<sup>21</sup> In general, it is considered abandonment of the child when the parent’s identity or whereabouts are unknown, the child has been left by the parent in circumstances in which the child suffers serious harm, or the parent has failed to maintain contact with the child or to provide reasonable support for a specified period of time.

<sup>14</sup> For summaries of statutes and a more complete discussion of this issue, see Information Gateway’s *Parental Drug Use as Child Abuse* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/drugexposed/>.

<sup>15</sup> Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, North Dakota, Oklahoma, Oregon, South Dakota, and Wisconsin.

<sup>16</sup> Colorado, Indiana, Iowa, Montana, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, and Washington.

<sup>17</sup> Arizona, Arkansas, and Washington.

<sup>18</sup> Arkansas, Florida, Hawaii, Illinois, Minnesota, Ohio, and Texas.

<sup>19</sup> California, Delaware, Kentucky, Minnesota, New York, Oklahoma, Rhode Island, and Texas.

<sup>20</sup> California, Colorado, Connecticut, Illinois, Kentucky, Louisiana, Minnesota, Nevada, New Jersey, North Carolina, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wyoming.

<sup>21</sup> Arizona, Arkansas, Florida, Idaho, Indiana, Kansas, Maine, Massachusetts, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, Texas, and West Virginia.

## Standards for Reporting

Generally speaking, a report must be made when an individual knows or has reasonable cause to believe or suspect that a child has been subjected to abuse or neglect.<sup>22</sup> In seven States, American Samoa, the Northern Mariana Islands, and the Virgin Islands, a report is required when the reporter knows that the child is being subjected to conditions or circumstances that would lead a reasonable person to believe could result in the child being abused or neglected.<sup>23</sup> These standards guide mandatory reporters in deciding whether to make a report to child protective services. For example, in Connecticut and Kansas, a report is specifically required when a person suspects that a child is a victim of human trafficking.

## Persons Responsible for the Child

In addition to defining acts or omissions that constitute child abuse or neglect, several States' statutes provide specific definitions of persons who can be reported to child protective services as perpetrators of abuse or neglect. These persons have some relationship or regular responsibility for the child. This generally includes parents, guardians, foster parents, relatives, or other caregivers responsible for the child's welfare.

## Exceptions

A number of States provide exceptions in their reporting laws that exempt certain acts or omissions from their statutory definitions of child abuse and neglect. For instance, in 12 States and the District of Columbia, financial inability to provide for a child is exempted from the definition of neglect.<sup>24</sup> In 17 States, the District of Columbia, American Samoa, and the Northern Mariana Islands, physical discipline of a child, as long as it is reasonable and causes no bodily injury to the child, is an exception to the definition of abuse.<sup>25</sup>

<sup>22</sup> For more information on professionals' responsibility to report suspected child abuse and neglect, see the Information Gateway publication *Mandatory Reporters of Child Abuse and Neglect* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/mandat/>.

<sup>23</sup> Arkansas, Hawaii, Idaho, Missouri, Nebraska, Utah, and Wyoming.

<sup>24</sup> Arkansas, Florida, Kansas, Louisiana, Massachusetts, New Hampshire, North Dakota, Pennsylvania, Texas, Washington, West Virginia, and Wisconsin.

<sup>25</sup> Arkansas, California, Colorado, Florida, Georgia, Indiana, Minnesota, Mississippi, Missouri, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, and Washington.

CAPTA specifies that nothing in the act should be construed as establishing a Federal requirement that a parent or legal guardian provide any medical service or treatment that is against the religious beliefs of the parent or legal guardian (42 U.S.C. § 5106i). At the State level, 31 States, the District of Columbia, American Samoa, Guam, and Puerto Rico provide in their civil child abuse reporting laws an exception to the definition of child abuse and neglect for parents who choose not to seek medical care for their children due to religious beliefs.<sup>26</sup> However, 16 of the 31 States, American Samoa, and Puerto Rico authorize the court to order medical treatment for the child when the child's condition warrants intervention.<sup>27</sup> Three States specifically provide an exception for Christian Science treatment.<sup>28</sup> Seven States require mandated reporters to report instances when a child is not receiving medical care so that an investigation can be made.<sup>29</sup>

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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<sup>26</sup> Alabama, Alaska, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, Utah, Vermont, Virginia, and Wyoming.

<sup>27</sup> Alabama, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nevada, Ohio, Oklahoma, and Pennsylvania.

<sup>28</sup> Arizona, Connecticut, and Washington.

<sup>29</sup> Florida, Michigan, Minnesota, Missouri, Ohio, Oklahoma, and Pennsylvania.

## California

### Physical Abuse

#### Citation: Welf. & Inst. Code § 300

A child may be considered dependent (and subject to supervision by the Department of Social Services) when:

- The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.
- The child is younger than age 5 and has suffered severe physical abuse by a parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.
- The child's parent or guardian caused the death of another child through abuse or neglect.
- The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

For the purposes of this subdivision, 'severe physical abuse' means:

- Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death
- Any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling
- More than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness
- The willful, prolonged failure to provide adequate food

### Neglect

#### Citation: Welf. & Inst. Code § 300

A child may be considered dependent when:

- The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of:
  - » The failure or inability of the parent or guardian to adequately supervise or protect the child
  - » The willful or negligent failure of the parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left
  - » The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment
  - » The inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse
- The child's sibling has been abused or neglected, and there is a substantial risk that the child will be abused or neglected. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

### Sexual Abuse/Exploitation

#### Citation: Welf. & Inst. Code § 300; Penal Code § 11165.1

A child is considered dependent if he or she has been sexually abused; there is a substantial risk that the child will be sexually abused, as defined in § 11165.1 of the Penal Code, by his or her parent, guardian, or a household member; or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

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

'Sexual abuse' means sexual assault or sexual exploitation as defined below:

- 'Sexual assault' includes rape, incest, sodomy, lewd or lascivious acts upon a child, or child molestation.
- 'Sexual exploitation' refers to any of the following:
  - » Depicting a minor engaged in obscene acts; preparing, selling, or distributing obscene matter that depicts minors; employing a minor to perform obscene acts
  - » Knowingly permitting or encouraging a child to engage in, or assisting others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction involving obscene sexual conduct
  - » Depicting a child in, or knowingly developing, duplicating, printing, or exchanging any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct

### **Emotional Abuse**

**Citation: Welf. & Inst. Code § 300**

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

### **Abandonment**

**Citation: Welf. & Inst. Code § 300**

A child is considered dependent when:

- The child has been left without any provision for support.
- Physical custody of the child has been voluntarily surrendered pursuant to § 1255.7 of the Health and Safety Code, and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section.
- The child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child.
- A relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.
- The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights, or an adoption petition has not been granted.

### **Standards for Reporting**

**Citation: Penal Code § 11166**

A mandatory reporter shall make a report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

The term 'reasonable suspicion' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. 'Reasonable suspicion' does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any 'reasonable suspicion' is sufficient.

### **Persons Responsible for the Child**

**Citation: Welf. & Inst. Code § 300**

A person responsible for a child's welfare includes the child's parent or guardian. As used in this section, 'guardian' means the legal guardian of the child.

**Exceptions****Citation: Welf. & Inst. Code §§ 300; 300.5**

Serious physical harm does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

No child shall be found to be dependent solely due to the lack of an emergency shelter for the family.

A physical disability, such as blindness or deafness, is not considered a bar to raising happy and well-adjusted children unless a parent's disability prevents him or her from exercising care and control.

A child whose parent has been adjudged a dependent child shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

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

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