

EXHIBIT E

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Children and Family Services
DIVISION DIRECTOR Mischa Martin
CONTACT PERSON Alexandra Rouse
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. (501) 508.8875 FAX NO. (501) 404.4619 E-MAIL Alexandra.Rouse@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Christin Harper
PRESENTER E-MAIL Christin.Harper@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Child Maltreatment Investigation Determinations Updates
2. What is the subject of the proposed rule? See attached.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

A.C.A. §§ 9-28-103 and 12-18-105.

7. What is the purpose of this proposed rule? Why is it necessary?
See attached.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>

9. Will a public hearing be held on this proposed rule? Yes _____ No X
If yes, please complete the following:

Date: N/A

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 2, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
July 1, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Children and Family Services

PERSON COMPLETING THIS STATEMENT Christin Harper

TELEPHONE NO. (501) 682.8541 FAX NO. (501) 683.4854 EMAIL: Christin.Harper@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Child Maltreatment Investigation Determinations Updates

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____
If an agency is proposing a more costly rule, please state the following:
 - (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

Other (Identify) _____ 0
 Total _____ 0

Other (Identify) _____ 0
 Total _____ 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____ 0
 Federal Funds _____ 0
 Cash Funds _____ 0
 Special Revenue _____ 0
 Other (Identify) _____ 0
 Total _____ 0

Next Fiscal Year

General Revenue _____ 0
 Federal Funds _____ 0
 Cash Funds _____ 0
 Special Revenue _____ 0
 Other (Identify) _____ 0
 Total _____ 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____ 0

Next Fiscal Year

\$ _____ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____ 0

Next Fiscal Year

\$ _____ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

NOTICE OF RULE MAKING

The Director of the Division of Children and Family Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed child maltreatment investigation rule(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 9-28-103 and 12-18-105.

Effective July 1, 2020:

The Division of Children and Family Services (DCFS) issues an updated Child Maltreatment Investigation Determinations Updates Guide, PUB-357. It provides rules for child maltreatment investigators on the legal elements required to make a true finding of child maltreatment under the Child Maltreatment Act. The rules help investigators identify the elements that must be established by a preponderance of the evidence before conduct can be found to constitute maltreatment of a child under the Act. The guide, formerly known as the Child Maltreatment Assessment Protocol, updates, amends, and clarifies the prior rules. Specifically, the rules explain the legal assessment for investigative staff, clarifies the five categories of maltreatment, articulates circumstances and exceptions for each category, and refines language to focus the scope of investigations to the legal elements required by the Act.

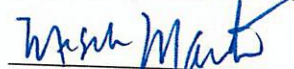
DCFS also revises Form CFS-328-A, "Request for Name Removal from the Central Registry." The revision makes clear that if an individual is found guilty of or pleads guilty or nolo contendere to an act of child maltreatment, then that individual does not qualify for a request to be removed from the registry even if the act is subsequently expunged. The individual shall remain in the registry unless the conviction is reversed or vacated.

DCFS is making technical corrections to PUB-357 to match the new terminology of the title. Technical corrections include Procedure II-B1, Procedure II-C2, Procedure II-D4, Procedure XIII-A6, and Excerpt Policy II-D. In addition, DCFS is making a content change removing the notifications of automatic removals.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than **May 2, 2020**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6164.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **4501829309**


Mischa Martin, Director

Division of Children and Family Services

From: [Toni Roy](#)
To: [Thomas Herndon](#)
Subject: FW: Full Ad Run - Child Maltreatment Investigation Determinations
Date: Wednesday, April 1, 2020 11:04:20 AM
Attachments: [image001.png](#)
[image002.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

Thanks,
Toni Roy

From: legalads@arkansasonline.com <legalads@arkansasonline.com>
Sent: Wednesday, April 1, 2020 10:35 AM
To: Toni Roy <Toni.Roy@dhs.arkansas.gov>
Subject: Re: Full Ad Run - Child Maltreatment Investigation Determinations

[EXTERNAL SENDER]

Thanks, Toni. Will run as requested.

So you'll understand, this notice will run in print and digitally in all 75 counties in Arkansas only on [Sun](#) 4/5; on each of the other days, the notice will run in print only in Benton County, Madison County, and Washington County, but will be available digitally everywhere our subscribers happen to be.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Toni Roy" <Toni.Roy@dhs.arkansas.gov>
To: "Legal Ads" <legalads@arkansasonline.com>
Cc: "Thomas Herndon" <Thomas.Herndon@dhs.arkansas.gov>, "Jack Tiner" <jack.tiner@dhs.arkansas.gov>, "Alexandra Rouse" <Alexandra.Rouse@dhs.arkansas.gov>, "Everlean Porter" <Everlean.Porter@dhs.arkansas.gov>
Sent: Wednesday, April 1, 2020 10:20:26 AM
Subject: Full Ad Run - Child Maltreatment Investigation Determinations

Please run the attached public notice:

Friday, April 3rd,
Saturday, April 4th; and
Sunday, April 5th .

I am aware that distribution will be provided to all counties on Sundays and limited distribution on other days. Please let me know if you have any questions or concerns.

Please invoice to: **AR Dept. of Human Services**
Accounts Payable, ATTN: Everlean Porter
P.O. Box 8068, Slot W 406
Little Rock, AR 72203-8068
501-396-6472

AR Dept. Of Human Services
Accounts Payable, ATTN: Everlean Porter
P.O. Box 8068, Slot W 406
Little Rock, AR 72203 – 8068
501-396-6472

Thank you,


TONI ROY

Office of Legislative & Intergovernmental Affairs

[Office of Rules Promulgation](#)

Program Administrator

P: 501.320.6164

F: 501.404.4619

700 Main Street

P.O. Box 1437, Slot S295

Little Rock, AR 72203-1437

Toni.Roy@dhs.arkansas.gov

humanservices.arkansas.gov



This email may contain sensitive or confidential information.

CONFIDENTIALITY NOTICE: The information contained in this email message and any attachment(s) is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It is intended solely for the use of the entity to which this email is addressed. If you are not the intended recipient, you are hereby notified that reading, copying or distribution this transmission is **STRICTLY PROHIBITED**. The sender has not waived any applicable privilege by sending the accompanying transmission. If you have received this transmission in error, please notify the sender by return and delete the message and attachment(s) from your system.

From: [Toni Roy](#)
To: register@sos.arkansas.gov
Cc: [Thomas Herndon](#); [Jack Tiner](#); [Mac Golden](#); [Alexandra Rouse](#)
Subject: DHS/DCFS Proposed Filing - Child Maltreatment Investigation Determinations
Date: Wednesday, April 1, 2020 11:20:24 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image009.png](#)
[SoS - Child Maltreatment Investigation Determination.pdf](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

Afternoon,

This ad will run in the Arkansas Democrat Gazette on the following dates:

Friday, April 3, 2020;
Saturday, April 4, 2020; and
Sunday, April 5, 2020.

The public comment period will end on 05.02.2020.

Please let me know if you have any questions or concerns.

Thank you,



TONI ROY

Office of Legislative & Intergovernmental Affairs

[Office of Rules Promulgation](#)

Program Administrator

P: 501.320.6164

F: 501.404.4619

700 Main Street

P.O. Box 1437, Slot S295

Little Rock, AR 72203-1437

Toni.Roy@dhs.arkansas.gov

humanservices.arkansas.gov



Statement of Necessity and Rule Summary Child Maltreatment Investigation Determinations Updates

Statement of Necessity:

This rule revision allows the Division to provide to investigative staff the legal elements that must be present to make a true determination of child maltreatment as outlined in the Arkansas Child Maltreatment Act.

Summary:

Effective July 1, 2020, the Division of Children and Family Services Policy & Procedure Manual is being revised as follows:

- PUB 357: Child Maltreatment Investigation Determination Guide (formerly Child Maltreatment Assessment Protocol):
 - Makes clear that the purpose of the document is to provide rules for child maltreatment investigators regarding the legal elements required to make a true finding for child maltreatment under the Child Maltreatment Act (as opposed to assessing safety of a child at a point in time).
 - Clarifies the five (5) primary categories of maltreatment (i.e., Abandonment, Abuse, Neglect, Sexual Abuse, and Sexual Exploitation) and specific maltreatment types under each of those categories.
 - Articulates the legal elements required for each maltreatment category (e.g., role of alleged offender in the alleged victim's life, age of victim, age of offender, and any exceptions that may apply to a particular category as outlined in the Child Maltreatment Act, etc.)
 - Strikes language regarding the acceptance of child maltreatment reports and "usage" in order to narrow the scope of investigative determinations to the legal elements required by the Child Maltreatment Act.
- Technical changes to references to PUB-357 in other locations in policy and procedure to match the new terminology of the title and scope of the publication:
 - Procedure II-B1
 - Procedure II-C2
 - Procedure II-D4
 - Procedure XIII-A6
 - Excerpt Policy II-D
- Procedure XIII-A4: Automatic Name Removal from Child Maltreatment Central Registry
 - Strikes notification of automatic removal only. No other changes to automatic name removal criteria or process.
- CFS-328-A Request for Name Removal from Central Registry:
 - Adds to form CFS-328-A the existing requirement per A.C.A. 12-18-908 that if an individual is found guilty of or pleads guilty or nolo contendere to an act of child maltreatment, then that individual does not qualify for a request to be removed from the registry even if the act is subsequently expunged.

Arkansas Department of Human Services
Division of Children and Family Services

Child Maltreatment Investigation Determination Guide

PUB-357 R. July 2020

Introduction

This publication outlines the legal elements required to make a true finding for child maltreatment at the conclusion of a child maltreatment investigation as per the Child Maltreatment Act. This publication is promulgated under the authority of § 12-18-105 of the Arkansas Code to carry out the Child Maltreatment Act. The information within this publication, therefore, has the force and effect of law.

This publication is designed to help investigators identify the elements that must be established before an allegation of child maltreatment can be determined true under the Child Maltreatment Act, which defines child maltreatment as conduct that falls under one (1) or more of five (5) categories: (1) Abandonment, (2) Abuse, (3) Neglect, (4) Sexual Abuse, and (5) Sexual Exploitation.

To do this, Section 1 sets out the statutory definition and exceptions for each category of child maltreatment. Section 1 then explains the elements required to make a true finding for each category of child maltreatment and each type of child maltreatment that may occur under each category of child maltreatment. Section 2 provides an index of all thirty-eight (38) types of child maltreatment.

An investigator can only make a true finding as to one (1) or more of the five (5) categories of child maltreatment and only then if the investigator finds that each of the elements for the applicable child maltreatment category type are established by a preponderance of the evidence. "Preponderance of the evidence" is a legal standard of proof that means that it is "more likely than not" that child maltreatment occurred based on all the evidence that the investigator is able to collect during the given investigation.

A true finding cannot be made based solely on the examples given in this publication; a true finding must be based on the investigator's determination that each element of the given category type of child maltreatment is supported by a preponderance of the evidence. The examples do not change the elements required to constitute child maltreatment, but rather merely provide possible ways in which a given category type of child maltreatment could occur.

Glossary

A/O. Alleged Offender. The person alleged to have committed child maltreatment.

A/V. Alleged Victim. The person who is the alleged victim of child maltreatment.

Investigator. An employee of the Department of Human Services (DHS) or the Arkansas State Police who investigates allegations of child maltreatment.

Mark-Up

Section 1: Categories and Types of Maltreatment

1.1 Abandonment.

1.2 Abuse.

1.3 Neglect.

1.4 Sexual Abuse.

1.5 Sexual Exploitation.

Mark-Up

1.1 Abandonment

Definition

Abandonment means the failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause. Abandonment also means an articulated intent to forego parental responsibility.

Exceptions

Married Minor Exception. Abandonment does not include acts or omissions of a parent towards a married minor.

Disrupted Adoption Exception. Abandonment does not include situations in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abandonment is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abandonment:

Abandonment for an indefinite period:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;
- 3) A/O did not provide reasonable support for the A/V and maintain regular contact with the A/V through statement or contact; and
- 4) A/O intends to continue the lack of reasonable support and regular contact for an indefinite period in the future.

Abandonment without just cause:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;

- 3) A/O did not provide support for the A/V or maintain regular contact with the A/V; and
- 4) A/O did not have just cause in failing to support or maintain regular contact with the A/V.

Abandonment by articulated intent:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred; and
- 3) A/O articulated an intent to forego parental responsibility of the A/V.

Mark-Up

1.2 Abuse

Definition

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

- Extreme or repeated cruelty to a child;
- Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;
- Any injury that is at variance with the history given;
- Any nonaccidental physical injury;
- Any of the following intentional or knowing acts, with physical injury and without justifiable cause: throwing, kicking, burning, biting, or cutting a child; striking a child with a closed fist; shaking a child; or striking a child on the face or head;
- Any of the following intentional or knowing acts, with or without physical injury: striking a child six (6) years of age or younger on the face or head; shaking a child three (3) years of age or younger; interfering with a child's breathing; pinching, biting, or striking a child in the genital area; tying a child to a fixed or heavy object; or binding or tying a child's limbs together;
- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, marijuana, alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service), a narcotic, or an over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
- Any of the following intentional or knowing acts, with or without physical injury: exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamines;
- Any of the following intentional or knowing acts, with or without physical injury: subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;
- Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or
- Female genital mutilation.

This list is illustrative of unreasonable actions and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. This means that other acts or omission can constitute abuse if the action is unreasonable and the A/O is a parent, guardian, custodian, person eighteen (18) years of age or older who lives in the home with the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare. However, if the act or omission could fall within the definition of one (1) of the types of abuse, then the act or omission must meet the elements of that type of abuse to constitute child maltreatment.

Exceptions

Physical Discipline Exception. Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate.

Appropriate Restraint Exception. Abuse does not include when a child suffers transient pain or minor temporary marks as a result of an appropriate restraint if: the person exercising the restraint is an employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the person exercising the restraint is acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the child welfare agency has policy and procedures regarding restraints; no other alternative exists to control the child except for a restraint; the child is in danger or hurting himself or herself or others; the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; the restraint is for a reasonable period of time; and the restraint is in conformity with training and child welfare agency's policies and procedures.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abuse:

Extreme or repeated cruelty.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) At least one (1) act or omission of the A/O towards the child was extremely cruel or more than (1) one act or omission of the A/O towards the child was cruel.

Threat of harm.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions created a realistic and serious threat to the A/V of death, permanent or temporary disfigurement, or impairment of a bodily organ.

NOTE: True findings for abuse involving the threat of harm can be made even if the A/V was not injured; this type only requires that the A/O created a realistic and serious threat to the A/V of death, disfigurement, or impairment of a bodily organ.

Mental injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions caused injury injured A/V's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the A/V's ability to function within the A/V's normal range of performance and behavior related to intellectual, emotional, or psychological development.

Injury at variance with explanation given.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
and
- 3) A/V's injury is not consistent with the history given by the A/O or given by anyone else related to the A/O's care of the A/V.

Nonaccidental physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
and
- 3) A/O's act or omission caused any nonaccidental physical injury to the A/V.

NOTE: True findings for nonaccidental physical injuries can be made regardless of whether the A/O intended to cause the physical injury that the A/V suffered; the relevant and culpable act or omission is the act or omission that caused the nonaccidental physical injury.

Abuse with physical injury and without justifiable cause.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's

parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O threw the A/V, kicked the A/V, burned the A/V, bit the A/V, cut the A/V, struck the A/V with a closed fist, shook the A/V, or struck the A/V's face or head;
- 4) A/O intentionally or knowingly committed the act in 3);
- 5) A/O did not have a justifiable cause in committing the act or omission; and
- 6) A/O's act or omission caused any physical injury to the A/V.

Abuse with or without physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O struck the A/V who was six (6) years of age or younger on the face or head, shook the A/V who was three (3) years of age or younger, interfered with the A/V's breathing, pinched the A/V in the genital area, bit the A/V in the genital area, struck the A/V in the genital area, tied the A/V to a fixed or heavy object, or bound or tied the A/V's limbs together; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's

parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O gave or permitted the A/V to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse involving substances that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance interfered with the A/V's normal physiological functions.

NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion. Staff are encouraged to consult with a physician as needed for any questions related to what may constitute normal physiological function.

Abuse involving substances that may alter the mood of a child.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O gave, or permitted the A/V to consume or inhale, a substance not prescribed by a physician that has the capacity to alter the mood of the child, including without limitation:
 - A. Marijuana;
 - B. Alcohol unless it is given to the A/V during a recognized and established religious ceremony or service;
 - C. A narcotics; or
 - D. An over-the-counter drug, but only if:
 1. A/O purposely administers an overdose to the A/V or purposely gives an inappropriate over-the-counter drug to the A/V: and

2. A/V is detrimentally impacted by the overdose or the inappropriate over-the-counter drug; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving exposure to a chemical that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V , or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O exposed A/V to a chemical that has the capacity to interfere with normal physiological functions, including without limitation, a chemical used or generated during the manufacture of methamphetamines; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse involving exposure to a chemical that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance actually interfered with the A/V's physiological functions.

NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion.

Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's

parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy;
- 4) Medical personnel confirmed that A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy; and
- 5) A/O intentionally or knowingly committed Munchausen syndrome by proxy or a factitious illness by proxy.

NOTE: True findings for abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness can be made regardless of whether the act caused A/V any physical injuries.

NOTE: Munchausen syndrome by proxy and factitious illness by proxy are often diagnosed with newer terms such as factitious disorder imposed on another, pediatric condition falsification, or medical child abuse. If the A/O sought treatment for a fabricated medical condition, then these other diagnoses are each sufficient to establish Munchausen syndrome by proxy or factitious illness by proxy.

Human trafficking.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O recruited, harbored, transported, or obtained the A/V for labor or services;
- 4) A/O committed the act in 3) through force, fraud, or coercion;
- 5) A/O committed the act in 3) for the purpose of subjecting the A/V to involuntary servitude, peonage, debt bondage, or slavery.

Female genital mutilation

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was a female under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O removed all or part of the A/V's external female genitalia or otherwise harmed the A/V's female genitalia unless
 - A. The conduct is performed by a licensed medical professional;
 - B. The conduct occurs in the furtherance of a surgical or other lawful medical procedure; and
 - C. The procedure is:
 1. Necessary to preserve or protect the physical health of the A/V; or
 2. Part of a sex reassignment procedure requested by the A/V.

NOTE: Female genital mutilation includes without limitation procedures such as a clitoridectomy; the partial or total removal of the clitoris or the prepuce; the excision or the partial or total removal of the clitoris and the labia minora (with or without the excision of the labia majora); the infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting or appositioning the labia minora or the labia majora (with or without the excision of the clitoris); pricking, piercing, incising, scraping, or cauterizing the genital area; or any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

1.3 Neglect

Definition

Neglect means acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of a married minor, that constitute one (1) of the following:

- Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;
- Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;
- Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;
- Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;
- Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;
- Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm, or, in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

- Failure to appropriately supervise the child that results in the child's being placed in inappropriate circumstances creating a dangerous situation, or a situation that puts the child at risk of harm;
- Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled;
- An act or omission by the child's parent, custodian, or guardian resulting in the child being habitually and without justification absent from school;
- Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child; or
- At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of neglect is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of neglect:

Failure to prevent abuse.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed or refused to prevent the abuse of the A/V; and
- 4) A/O knew or had reasonable cause to know the A/V was being abused or had been abused.

NOTE: True findings for neglect involving the failure to prevent abuse can be made only if the A/V was abused. If the A/V did not suffer abuse, the separate type of neglect involving the failure to protect from maltreatment or parental unfitness may be applicable because that type does not require that the A/V be maltreated.

Failure to provide necessary food, clothing, shelter, or medical treatment.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed or refused to provide necessary food, clothing, shelter, or medical treatment necessary for the A/V's well-being unless
 - A. The failure or refusal is caused primarily by the financial inability of the person legally responsible for the A/V, and
 - B. No services for relief have been offered.

Failure to protect from maltreatment or parental unfitness.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, A/V care facility, public or private school, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness; and
- 4) A/O knew or should have known about the condition that posed a risk of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the A/V.

NOTE: True findings for neglect involving the failure to protect from child maltreatment or parental unfitness can be made even if the A/V was not

maltreated or subjected to parental unfitness; this type only requires that the A/O failed to take reasonable action to protect the A/V from the risk of child maltreatment or parental unfitness.

Failure to provide for essential and necessary needs.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide, or is irremediably unable to provide, for the essential physical, mental, or emotional needs of the A/V, including without limitation the failure to provide a shelter that does not pose a risk to the health or safety of the A/V.

Failure to provide for care, maintenance, or support.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide for the A/V's
 - A. Care and maintenance,
 - B. Proper and necessary support, or
 - C. Medical, surgical, or other necessary care.

Failure to assume responsibility for a child.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;

- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to assume responsibility for the care and custody of the A/V even though the A/O was able to do so, or to participate in a plan to assume responsibility for the care and custody of the A/V even though the A/O was able to do so.

Inadequate supervision by leaving a child alone.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to appropriately supervise the A/V and left the A/V alone at an inappropriate age or in inappropriate circumstances; and
- 4) The A/O's act or omission created a dangerous situation or a situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two (2) factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V and the foreseeability of harm if the A/V was left alone in those circumstances.

Inadequate supervision by placing child in a dangerous situation.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to appropriately supervise the A/V and placed the A/V in:

- A. Inappropriate circumstances that created a dangerous situation,
or
B. A situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V.

Educational neglect by failing to enroll a child in school.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was between six (6) years of age and seventeen (17) years of age when the alleged neglect occurred; and
- 3) A/O failed to ensure that A/V was enrolled in school or was being legally homeschooled.

NOTE: A home school is a school provided by a parent or legal guardian for his or her own child.

NOTE: Staff must determine if a child is legally home-schooled as per A.C.A. 6-15-503. Please consult with local Office of Chief Counsel (OCC) attorney to determine if a child is legally home-schooled.

Educational neglect due to absence from school.

- 1) A/O is a parent, custodian, or guardian;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O's act or omission caused the A/V to be habitually absent from school; and
- 4) A/V's absences were not justified.

Presence of illegal substance in a child when a child is born.

- 1) A/O is the A/V's mother;

- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/V had the illegal substance in the A/V's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/V's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/V at birth.

Presence of illegal substance in a mother when a child is born.

- 1) A/O is the A/V's mother;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/O had the illegal substance in the A/O's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/O's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/O when the A/V is born.

1.4 Sexual Abuse

Definition

Sexual abuse means:

- By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; indecent exposure; or forcing the watching of pornography or live sexual activity;
- By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a caretaker to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact; forcing or encouraging the watching of pornography; forcing, permitting, or encouraging the watching of live sexual activity; forcing the listening to a phone sex line; an act of voyeurism; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
- By a person eighteen (18) years of age or older to a person who is younger than (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Exceptions

Defense and Affirmative Defense Exceptions.

Pursuant to 12-18-804, for any act or omission of child maltreatment that would be a criminal offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of: a statute of limitation; lack of capacity as a result of mental disease or defect under § 5-2-312; and affirmative defenses under §§ 5-1-112 — 5-1-114.

For example, if a teacher and a student have a sexual relationship, an affirmative defense may apply. If the teacher engages in sexual intercourse or deviate sexual activity with a student less than 21 years of age and the teacher uses his or her position of trust or authority over the victim, then the conduct would fall under the definition of sexual abuse. However, if the teacher was no more than 3 years older than the student, then the affirmative defense would apply.

Staff must consult with local OCC attorney regarding possible defense and affirmative defense exceptions.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual abuse:

Sexual intercourse.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 1. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 2. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred; and
 3. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse

described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred; and
 - C. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
- A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 - 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 - 4. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V;

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V; and

- D. A/O used forcible compulsion to engage in the sexual intercourse or attempted sexual intercourse, which is where either A/V did not want to engage in the sexual intercourse or attempted sexual intercourse, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual intercourse or attempted sexual intercourse.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: The exception to sexual abuse may apply to this type of sexual abuse.

Deviate sexual activity.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
- A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 - D. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the

circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 - D. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:

A. The A/O was the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
5. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however, slight of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V;
5. A/O used forcible compulsion to engage in the deviate sexual activity or attempted deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity; and
6. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as

the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
- A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V; and
 - D. A/O used forcible compulsion to engage in the deviate sexual activity or deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity.
 - E. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: The exception to sexual abuse may apply to this form of sexual abuse.

Sexual contact.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 - A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 - D. Where sexual contact is:
 1. An act of sexual gratification; and
 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual contact described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to

normal affectionate hugging.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 - D. Where sexual contact is:
 - 1. An act of sexual gratification; and
 - 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
- A. The A/O was the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
5. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves
 - (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - (2) The encouraging of the A/V to touch the offender in a sexual manner; or
 - (3) The offender requesting to touch the A/V in a sexual manner; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;

2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V;
5. A/O used forcible compulsion to engage in the sexual contact or attempted sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact; and
6. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves
 - (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - (2) The encouraging of the A/V to touch the offender in a sexual manner; or
 - (3) The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing

the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
- A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V; and
 - D. A/O used forcible compulsion to engage in the sexual contact or sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact.
 - E. Where sexual contact is:
 - 1. An act of sexual gratification; and
 - 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the

evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

Indecent exposure.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O exposed his or her sexual organs to the A/V;
- 4) A/O intended to arouse or gratify the sexual desire of the A/O or some other person; and
- 5) A/O knew that exposing his or her sexual organs was likely to cause affront or alarm.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Pornography.

- 1) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;

3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
4. A/O forced or encouraged A/V to watch pornography, which is:
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
 - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
 - c. Obscene or licentious material; or

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or directed the A/V to watch pornography.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O forced A/V to watch pornography, which is
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

- b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
- c. Obscene or licentious material; and
- 5. A/O forced A/V where either A/V did not want to watch the pornography, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch pornography; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Live Sexual Activity.

- 1) If the A/O was fourteen (14) years old or older and the A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. The A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 - 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 - 4. A/O forced, encouraged, or permitted the A/V to watch live sexual activity; or

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or even permitted the A/V to watch live sexual activity.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O forced A/V to watch live sexual activity; and
5. A/O forced A/V where either A/V did not want to watch the live sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch live sexual activity; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Phone Sex Line.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;

- 4) A/O forced A/V to listen to a phone sex line; and
- 5) A/O forced A/V where either A/V did not want to listen to the phone sex line, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to listen to the phone sex line; or

Voyeurism.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 4) A/O looked at the A/V in a private location or place in which a child may reasonably be expected to be nude or partially nude; and
- 5) A/O's purpose in looking was for sexual arousal or gratification; or

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Sex Trafficking.

- 1) A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O recruited, harbored, transported, obtained, patronized, or solicited A/V; and
- 4) A/O's purpose was to facilitate a commercial sex act.

1.5 Sexual Exploitation

Definition

Sexual exploitation means:

- By a person eighteen (18) years of age or older to a child who is not his or her spouse: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.
- By a caretaker to a child: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual exploitation:

Sexual exploitation

- 1) A/O was, when the alleged sexual abuse occurred:
 - A. Eighteen (18) years old or older and not A/V's spouse; or
 - B. A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and

3) A/O:

- A. Allowed, permitted, or encouraged A/V to participate or be depicted in prostitution, obscene photography, or obscene filming; or
- B. Obscenely depicted, obscenely posed, or obscenely postured the A/V for any use or purpose.

Section 2: Index of All Child Maltreatment Types Within Each Maltreatment Category (types listed alphabetically within each category)

ABANDONMENT

Abandonment for an indefinite period

Abandonment without just cause

Abandonment by articulated intent

ABUSE

Abuse involving exposure to a chemical that may interfere with normal physiological functions

Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness

Abuse involving substances that may alter the mood of a child

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions

Abuse with physical injury and without justifiable cause

Abuse with or without physical injury

Extreme or repeated cruelty

Female genital mutilation

Human trafficking

Injury at variance with explanation given

Mental injury

Nonaccidental physical injury

Threat of Harm

NEGLECT

Educational neglect by failing to enroll a child in school

Educational neglect due to absence from school

Failure to assume responsibility for a child

Failure to prevent abuse

Failure to protect from maltreatment or parental unfitness

Failure to provide necessary food, clothing, shelter, or medical treatment

Failure to provide for care, maintenance, or support

Failure to provide for essential and necessary needs

Inadequate supervision by leaving a child alone

Inadequate supervision by placing child in a dangerous situation

Presence of illegal substance in a child when a child is born

Presence of illegal substance in a mother when a child is born

SEXUAL ABUSE

Deviate sexual activity

Indecent exposure

Live sexual activity

Phone sex line

Pornography

Sex trafficking

Sexual contact

Sexual intercourse

Voyeurism

SEXUAL EXPLOITATION

Sexual exploitation

**~~ARKANSAS DEPARTMENT OF
HUMAN SERVICES
DIVISION OF CHILDREN AND
FAMILY SERVICES~~**



PUI

**~~Child Maltreatment
Assessment Protocol~~**

CHILD MALTREATMENT ASSESSMENT PROTOCOL

TABLE OF CONTENTS

Page

Introduction	1
Definitions	3

<u>Type of Maltreatment</u>	<u>Priority</u>	<u>Page</u>
Abandonment	I	7
Abuse With a Deadly Weapon	I	7
Bone Fractures	I	8
Brain Damage/Skull Fracture	I	9
Burns/Scalding	I	10
Cuts, Bruises & Welts	I or II	10
Educational Neglect	II	12
Environmental Neglect	II	14
Extreme or Repeated Cruelty to a Juvenile	II	15
Failure to Protect	I or II	15
Failure to Thrive	I	16
Human Bites	II	17
Immersion	I	18
Inadequate Clothing	II	18
Inadequate Food	II	19
Inadequate Shelter	II	20
Inadequate Supervision	II	21
Indecent Exposure	I	23
Interfering with a Child's Breathing	I	24
Internal Injuries	I	24
Kicking a Child	II	24
Lockout	II	25
Malnutrition	I	25
Medical Neglect	II	26
Medical Neglect of Infants with Disabilities	I	27
Mental Injury	I	29
Munchausen Syndrome by Proxy or Factitious Illness by Proxy	II	30
Oral Sex	I	30
Pinching, Biting or Striking a Child in the Genital Area	II	31
Poison/Noxious Substances	I	32

Pornography / Exposure to Live Sex Act	I	33
Presence of an Illegal Substance in a Child or Its Mother At The Time of Birth Resulting From the Mother's Knowing Use of the Substance	I	35
Sexual Contact	I	36
Sexual Exploitation	I	37
Sexual Penetration	I	38
Shaking a Child Age 4 or Older	II	39
Shaking a Child Age 3 or Younger	II	40
Sprains/Dislocations	II	40
Striking a Child Age 7 or Older on the Face or Head	II	41
Striking a Child Age 6 or Younger on the Face or Head	II	41
Striking a Child with a Closed Fist	II	42
Subdural Hematoma	I	43
Substance Misuse	II	43
Suffocation	I	45
Threat of Harm	I	45
Throwing a Child	II	46
Tying/Close Confinement	II	46
Underaged Juvenile Offender (Under 13 Years Of Age)	I	47
Voyeurism	I	48

INTRODUCTION

The following is a protocol to be used when a DCFS Family Service Worker (FSW) or the Arkansas State Police Crimes Against Children Division (CACD) Investigator conducts a Child Maltreatment Assessment. The protocol was developed under the authority of ACA 12-18-105, which authorizes the director to promulgate regulations to carry out the Child Maltreatment Act. It identifies and defines the various types of child maltreatment a FSW/CACD Investigator may encounter during an assessment. The protocol also identifies when and from whom an allegation of child maltreatment may be taken. Finally, it identifies those conditions, which must be met before an allegation of abuse or neglect can be founded (determined to be true). The FSW/CACD Investigator must show that a "preponderance of the evidence" supports the allegation of child maltreatment. This is a higher standard of evidence and should be understood to mean it is "more likely than not" that abuse or neglect occurred.

The Arkansas Child Maltreatment Hotline must accept reports of alleged maltreatment if the child or the child's family is present in Arkansas OR the incident occurred in Arkansas.

If the alleged offender resides in another state and the suspected maltreatment occurred in another state or country, the Hotline shall: 1) document receipt of the report, 2) forward the report to the Child Abuse Hotline of the state or country where the alleged offender resides or where the incident occurred, 3) if child protection is an issue, send the report to the Department of Human Services or the equivalent governmental agency of the state or country where the alleged offender resides.

Any record of a receipt of a report occurring in another state or country may only be used within the department for purposes of administration of the program and shall not be disclosed except to the prosecuting attorney or a law enforcement agency. Data identifying a reporter of suspected maltreatment occurring in another state or country shall not be released unless:

- A. a court of competent jurisdiction orders the release of information after the court has reviewed in-chamber the record related to the report and has found it has reason to believe the reporter knowingly made a false report;
- B. a request is made by the prosecuting attorney or law enforcement.

If the alleged maltreatment occurred in another state, but the alleged offender is a resident of Arkansas AND the report of child maltreatment or suspected maltreatment in the other state or country would also be child maltreatment in Arkansas at the time the incident occurred, the Hotline shall refer the report to DCFS or CACD as appropriate.

If the alleged maltreatment occurred in Arkansas, but the victim, his or her parents, and/or the alleged offender no longer reside in Arkansas, the Hotline will accept the report.

If the nature of a child maltreatment report (Priority I or II) suggests that a child is in immediate risk, begin the investigation immediately or as soon as possible.

No school, Head Start Program, or child care facility shall:

- Prohibit an employee or volunteer from directly reporting child maltreatment to the child abuse hotline.
- Require an employee or volunteer to obtain permission or notify any person, including an employee or supervisor, before reporting child maltreatment to the child abuse hotline.

~~No school district shall provide notification to a parent, guardian, custodian, or person standing in place of a parent if a request is made by local law enforcement, CACD, or DCFS to interview a student during the course of an investigation and a parent, guardian, custodian, or person standing in place of a parent is named as an alleged offender.~~

~~A person conducting a child maltreatment investigation shall be allowed access to the child's public and private school records during the course the child maltreatment investigation. Upon request, a public or private school shall provide the child's records fee of charge to the person conducting the investigation.~~

~~For additional information regarding all types of child maltreatment and investigative powers and responsibilities, see the Arkansas Child Maltreatment Act.~~

Mark-Up

CHILD MALTREATMENT ASSESSMENT PROTOCOL

DEFINITIONS

~~I. GENERAL:~~

~~A. ABUSE~~—Any of the following acts or omissions by a parent, guardian, custodian, foster parent, person 18 years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare but excluding the spouse of a minor:

- ~~1) Extreme or repeated cruelty to a juvenile;~~
- ~~2) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ.~~
- ~~3) Injury to a juvenile's intellectual, emotional or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior.~~
- ~~4) Any injury that is at variance with the history given.~~
- ~~5) Any non-accidental physical injury.~~
- ~~6) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:~~
 - ~~a. Throwing, kicking, burning, biting or cutting a child;~~
 - ~~b. Striking a child with a closed fist;~~
 - ~~c. Shaking a child; or~~
 - ~~d. Striking a child age seven or older on the face or head.~~
- ~~7) Any of the following intentional or knowing acts, with or without injury:~~
 - ~~a. Striking a child age six or younger on the face or head;~~
 - ~~b. Shaking a child age three or younger;~~
 - ~~c. Interfering with a child's breathing;~~
 - ~~d. Pinching, biting, or striking a child in the genital area;~~
 - ~~e. Tying a child to a fixed or heavy object or binding or tying a child's limbs together;~~
 - ~~f. Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;~~
 - ~~g. Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:~~
 - ~~i. Marijuana;~~
 - ~~ii. Alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service);~~
 - ~~iii. Narcotics; or~~

- ~~iv. Over the counter drugs (if a person purposely administers an overdose to a child or purposely administers an inappropriate over the counter drug to a child and the child is detrimentally impacted by the overdose or the over the counter drug;~~
- ~~h. Exposing the child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacture of methamphetamine; or~~
- ~~i. Subjecting a child to Munchausen's Syndrome by Proxy or a Factitious Illness by Proxy if the incident is reported by a medical professional and confirmed by medical personnel.~~

NOTE: ~~The prior list of unreasonable actions is considered illustrative and not exclusive.~~

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

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

~~Abuse does not include when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:~~

- ~~1. The person exercising the restraint is an employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act and acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Licensing Act;~~
- ~~2. The agency has policy and procedures regarding restraints;~~
- ~~3. The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;~~
- ~~4. The restraint is in conformity with training and agency policy and procedures;~~
- ~~5. No other alternative exists to control the child except for a restraint;~~
- ~~6. The child is in danger of hurting himself or others; and~~
- ~~7. The restraint is for a reasonable period of time.~~

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

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

B. DEATH ~~— The permanent cessation of all vital, bodily functions. Death is not a type of child maltreatment. However, it may be the result of child maltreatment. Death can result from any type of child maltreatment. When a child dies as the result of maltreatment, document in CHRIS the type of child maltreatment that resulted in the death and specify "death" as the injury characteristic.~~

C. ~~NEGLECT~~ Acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, but excluding the spouse of a minor and the parents of a married minor, which constitute:

- ~~1) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;~~
- ~~2) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;~~
- ~~3) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;~~
- ~~4) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional, needs of the juvenile including the failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;~~
- ~~5) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;~~
- ~~6) Failure, although able, to assume responsibility for the care and custody of the juvenile or participate in a plan to assume such responsibility; or~~
- ~~7) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm.~~

D. ~~SEXUAL ABUSE~~

- ~~1) By a person 14 years of age or older to a person younger than 18 years of age:
 - ~~a. Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;~~
 - ~~b. Indecent exposure, or forcing, the watching of pornography or live sexual activity~~~~
- ~~2) By a person 18 years of age or older to a person not his or her spouse who is younger than 15 years of age:
 - ~~a. Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact or solicitation of these activities;~~~~
- ~~3) By a person 20 years of age or older to a person not his or her spouse who is~~

~~younger than 16 years of age:~~

~~a. Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact or solicitation of these activities;~~

~~4) By a caretaker to a person younger than 18 years of age:~~

~~a. Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact or solicitation;~~

~~b. Forcing or encouraging the watching of pornography;~~

~~c. Forcing, permitting, or encouraging the watching of live sexual activity;~~

~~d. Forcing listening to a phone sex line; or~~

~~e. Committing an act of voyeurism (see page 54).~~

~~5) By a person younger than 14 years of age to a person younger than 18 years of age:~~

~~a. Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion.~~

~~II. MALTREATMENT TYPES:~~

~~A. Most of the types of child maltreatment defined in the Child Maltreatment Assessment Protocol (PUB 357) were taken directly from the Arkansas Child Maltreatment Act (e.g., Kicking a Child and Educational Neglect).~~

~~B. Those types of child maltreatment not defined directly by the Arkansas Child Maltreatment Act are clearly implied by content in the Act. For example, "Brain Damage/Skull Fracture" in PUB 357 is implied by "bone fracture, internal injuries" in the Act. Additionally, "Substantial Risk of Death" in the Act implies "Threat of Harm" in PUB 357.~~

~~III. ACCEPTING CHILD ABUSE HOTLINE REPORTS OF CHILD MALTREATMENT NAMING AN ADULT AS THE VICTIM:~~

~~The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:~~

~~A. The alleged offender is a caretaker of any child; and~~

~~B. The person making the report is one of the following:~~

~~1) The adult victim (who was a child at the time of the maltreatment);~~

~~2) A law enforcement officer;~~

~~3) The victim's counselor or therapist; or~~

~~4) The offender's counselor or therapist.~~

CHILD MALTREATMENT ASSESSMENT PROTOCOL

ABANDONMENT (Priority I)

I. — Definition

~~Ark. Code Annotated 12-18-103(1): "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and support or maintain regular contact with a child without just cause or an articulated intent to forego parental responsibility.~~

~~**NOTE:** Abandonment does not include acts or omissions of a parent toward a married minor, ACA 12-18-103(1)(C).~~

II. — Taking a report

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child was abandoned by his or her parents.~~

~~B. Usage~~

~~The reporter has reason to believe that a child has been abandoned due to the parent's disregard of his or her responsibilities to the child.~~

III. — Founding a report

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~1) Verified that a child has been abandoned by his or her parents; and~~
- ~~2) Secured a preponderance of evidence that the parent's identity and/or whereabouts are unknown or that the parent is no longer demonstrating an interest in retaining custody or caring for the child.~~

ABUSE WITH A DEADLY WEAPON (Priority I)

I. — Definition ~~The assault or attempt to assault an individual by inflicting a wound, or conduct that reasonably could be expected to result in a wound, or the infliction of a wound, as the direct, non-accidental action of a parent or caretaker by any object which under the circumstances in which it is used creates a realistic and serious threat of causing death or serious injury. This may also include using a weapon to threaten a child:~~

~~A gunshot, stabbing injury, other injuries, or the attempt to inflict such injury using any deadly weapon.~~

~~A deadly weapon is any weapon or object that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.~~

~~Assault is conduct, which creates a substantial risk of death or physical injury.~~

II. — Taking a report

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child has received an injury as a result of abuse with a deadly weapon.~~

B. ~~Usage~~

~~The reporter has reason to believe that abuse with a deadly weapon resulted from one of the following:~~

~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~

~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person, which resulted in abuse with a deadly weapon (failure to protect).~~

III. ~~Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

A. ~~Verified that the parent or caretaker attempted to injure the child; or~~

B. ~~Verified that the child currently has a wound caused by a deadly weapon or that the child has received such a wound in the past (verification of past wounds must come from a physician, a law enforcement officer, an equally credible witness or by a direct admission from the alleged offender); and~~

C. ~~Secured a preponderance of evidence that the wound was sustained as the result of abuse or neglect as defined in Section I.~~

D. ~~Verified that a weapon was used to threaten bodily harm.~~

BONE FRACTURES (Priority I)

I. ~~Definition~~

~~A fracture is a broken bone. There are ten types of fractures, the most common being:~~

A. ~~Chip fracture: A small piece of bone is flaked from the major part of the bone~~

B. ~~Simple fracture: The bone is broken, but there is no external wound.~~

C. ~~Compound fracture: The bone is broken, and there is an external wound leading down to the site of fracture or fragments of bone protrude through the skin.~~

D. ~~Comminuted fracture: The bone is broken or splintered into pieces.~~

E. ~~Spiral fracture: Twisting causes the line of the fracture to encircle the bone in the form of a spiral.~~

F. ~~Coroner fracture (metaphysical): Caused by a pulling or jerking of an extremity.~~

II. ~~Taking a report~~

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child sustained a bone fracture as a result of maltreatment.~~

B. ~~Usage~~

~~The reporter has reason to believe that the bone fracture resulted from one of the~~

following:

- ~~1) A direct, non-accidental action of the parent, caretaker, or other person responsible for the child's welfare (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person, which resulted in a bone fracture (failure to protect).~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child currently has a bone fracture or has sustained a bone fracture in the past (such verification must come from a physician); and~~
- ~~B. Secured a preponderance of evidence that the bone fracture was sustained as the result of the abuse or neglect as defined in Section I.~~

BRAIN DAMAGE/SKULL FRACTURE (Priority I)

~~I. Definition~~

~~Brain damage is an injury to the large, soft mass of nerve tissue contained within the cranium/skull.~~

~~Skull fracture is a broken bone in the skull.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child sustained brain damage or a skull fracture as the result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe that the brain damage or skull fracture resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent, caretaker or other person responsible for the child's welfare (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person which resulted in the child sustaining brain damage or a skull fracture (failure to protect).~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~1) Verified that the child is currently brain damaged or has a fractured skull or has been brain damaged or sustained a skull fracture in the past (such verification must come from a physician); and~~
- ~~2) Secured a preponderance of evidence that the brain damage or skull fracture was sustained as the result of maltreatment as defined in Section I.~~

BURNS / SCALDING (Priority I)

I. Definition

Burns are any tissue injury resulting from excessive exposure to thermal, chemical, electrical, or radioactive agents. The effects vary according to the type, duration, and intensity of the agent and the part of the body involved. Burns are usually classified as:

- A. First degree: Superficial burns, with damage being limited to the outer layer of skin, which displays scorching or painful redness.
- B. Second degree or partial thickness burn: The damage extends through the outer layer of the skin into the inner layers. Blistering will be present within 24 hours.
- C. Third degree or full thickness burn: Burns in which the skin is destroyed with damage extending into underlying tissues, which may be charred or coagulated. Skin grafting may be required.
- D. Scalding is a burn to the skin or flesh caused by moist heat and hot vapors, such as steam.

II. Taking a report

- A. An acceptable reporter is any person with reasonable cause to suspect that a child sustained a burn or was scalded as the result of maltreatment.

B. Usage

The reporter has reason to believe that the burn or scalding resulted from one of the following:

- 1) A direct, non-accidental action of the parent or caretaker (abuse).
- 2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person which resulted in the burn or scalding (failure to protect).

III. Founding a report

This allegation of maltreatment may be founded only after the Worker has:

- A. Verified that a child has been burned or scalded. Severe burns, burns of an unknown origin, or burns where the injury is not consistent with the explanation provided for a physician or registered nurse should examine it. This includes cigarette burns, or a burn in which it appears a hot instrument was applied to the skin. All immersion burns (scalds) must be confirmed by a physician unless the alleged offender has admitted to scalding the child; and
- B. Secured a preponderance of evidence that the burn or scalding was sustained as a result of maltreatment as defined in Section I.

CUTS, BRUISES, & WELTS (Priority I, referred to Crimes Against Children Division if the child is age 3 or younger and the injury is reported by medical personnel, a medical facility, or law enforcement and involves injury to the head, face, neck, or torso excluding buttocks. All other

~~reports are to be referred to DCFS.)~~

~~I. Definition~~

- ~~A. Cut (laceration): An opening, incision, or break in the skin made by some external agent.~~
- ~~B. Bruise (ecchymosis): An injury, which results in bleeding within the skin, where the skin is discolored but not broken.~~
- ~~C. Welt: An elevation on the skin produced by a lash, blow, or allergic stimulus. The skin is not broken and the mark is reversible.~~

~~**NOTE:** Regardless of the child's age, depending on the location, severity and multiplicity of the injuries (cuts, bruises and/or welts), the case may be a Priority I.~~

~~The investigation of bruises, cuts or welts in or on any portion of the head, face, neck or abdomen that are a direct act against the child by a parent or caretaker. This does not include an injury that is the result of a failure on the part of the parent or caretaker to safeguard the child from environmental situations that resulted in those injuries.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child sustained a cut, bruise, or welt as a result of maltreatment. For the allegation to be directed to the CACD, the report must come from medical personnel, a medical facility or law enforcement and involve injuries to the head, neck, face or torso excluding buttocks of a child age 3 or under.~~

~~B. Usage~~

~~The reporter has reason to believe that the cut, bruise, or welt resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in a cut, bruise, welt (failure to protect).~~

~~**NOTE:** The hotline shall accept a report of physical abuse involving a bruise to a child even if at the time of the report the bruise is not visible, but the bruising occurred — (a) within the past 14 days and (b) as a result of physical abuse as defined in the law.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child currently has a cut, bruise, or welt or has sustained one in the past (such verification may come from a physician, registered nurse, law enforcement officer, observation by the Family Service Worker or by a direct admission from the alleged offender); and any injury must involve more than transient pain or minor temporary marks;~~
- ~~B. If the bruise was not visible at the time of the report, the existence of the bruise must be corroborated (the corroboration must be independent i.e. a neighbor, teacher, counselor, someone other than the child must have seen the bruise or photographed it)~~

for the finding to be true.

~~C. Secured a preponderance of evidence that the cut, bruise, or welt was sustained as a result of maltreatment as defined in Section I.~~

~~Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline should cause no more than transient pain or minor temporary marks.~~

~~The age, size and condition of the child and the location of the injury and the frequency of recurrence of injuries shall be considered when determining whether the physical discipline is reasonable and moderate.~~

EDUCATIONAL NEGLECT (Priority II)

I. Definition

~~Any child who is not meeting compulsory school attendance requirements because his or her parent or custodian is failing or refusing to enforce these attendance requirements is educationally neglected. A parent or custodian is failing or refusing to enforce the state's compulsory attendance requirements if:~~

~~A. The parent or guardian having custody or charge of any child between the ages of six through 17 years (by September 15 of the school year), both inclusive, fails to enroll and send the child to a public, private, or parochial school, or provide a home school for the child, or~~

~~B. The parent or guardian having custody or charge of a child of the above-referenced age disregards his or her responsibility to ensure that a child attends school, or actively prevents such child from attending school.~~

~~Examples of educational neglect include:~~

~~1) The parent or custodian who does not enroll the child in school; or,~~

~~2) The parent or custodian who prevents a child from attending school; or,~~

~~3) The parent or custodian who does not take reasonable action to ensure that the child regularly attends school; or,~~

~~4) The parent or custodian who has not made arrangements to home school the child.~~

~~**NOTE:** Failure to follow an Individualized Educational Program (IEP) does not constitute educational neglect.~~

II. Taking a report

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child~~

~~is educationally neglected.~~

~~However, the Child Abuse Hotline shall not accept a report of educational neglect from a school official unless the school has complied with A.C.A. 6-18-222. As such, the Child Abuse Hotline must confirm with the reporter of a school calling in a report of educational neglect that:~~

- ~~1) The school provided notice to the parent, guardian or person in loco parentis when the student had half of the allowed absences for that particular school district;~~
- ~~2) The date of said notice and whether the notice was provided by telephone or mail; and,~~
- ~~3) The school filed a FINS petition and the FINS case been adjudicated.~~

~~The Child Abuse Hotline will not accept a report of educational neglect from the school unless notice was provided and the FINS case has been adjudicated.~~

~~B. Usage~~

~~The reporter has reason to believe that a child is not home schooled and is not attending school because:~~

- ~~1) The parent or custodian did not enroll the child in the school program; or~~
- ~~2) The parent or custodian disregards the responsibility to ensure that the child is attending school or the parent or custodian actively prevents the child from attending school; or,~~
- ~~3) The parent or custodian has not taken the necessary steps to provide home schooling.~~

~~C. Factors to be considered in taking and/or founding a report~~

- ~~1) The child's physical condition, particularly as it relates to the child's ability to get ready for school, and~~
- ~~2) The child's mental abilities, particularly concerning the child's ability to get ready for school, and~~
- ~~3) The number of days missed, and~~
- ~~4) The parent's or custodian's attempts to ensure that the child attends school, and~~
- ~~5) The parent or custodian has hand-delivered to the superintendent within the time frames required by A.C.A. § 6-15-503 written notice of the parent or custodian's intent to home school the child via the Department of Education Home School Office "Notice of Intent to Home School and Home School Waiver" form.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child is not or was not meeting mandated educational requirements; and~~
- ~~B. Secured a preponderance of evidence that the child is/has been educationally neglected as defined in Section I; and~~
- ~~C. Verified the parent or custodian has failed to provide written notice to the superintendent of the intent to home school the child as required by A.C.A. § 6-15-503 and via the Department of Education Home School Office "Notice of Intent to Home School and Home School Waiver" form.~~
- ~~D. Applied the factors in Section II, C, above and determined that the child is/was educationally neglected.~~

ENVIRONMENTAL NEGLECT (Priority II)

~~I. Definition~~

~~The child's person, clothing, or living conditions are unsanitary to the point that the child's health is in danger. This may include infestations of rodents, spiders, insects, snakes, etc., human or animal feces, and rotten or spoiled food and/or garbage that the child can reach.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child is living in the conditions noted above and that the conditions are a significant threat to the child's health.~~

~~B. Usage~~

~~The reporter has reason to believe that the child is living in conditions defined above as the result of disregard of duty or negligence on the part of the child's parent or caretaker responsible for the child's welfare.~~

~~C. Factors to be considered~~

~~Special attention should be paid to the age of the child, the child's physical condition, and the living conditions in the home in order to determine whether the report constitutes an allegation of harm.~~

~~In addition, the following incident factors should be considered:~~

- ~~1) Severity of the conditions,~~
- ~~2) Frequency of the conditions,~~
- ~~3) Duration of the conditions, and~~
- ~~4) Chronicity or pattern of similar conditions.~~

~~Note: Environmental neglect pertaining to head lice shall not be accepted by the Child Abuse Hotline unless the head lice is chronic or the alleged victim currently has sores that require immediate medical attention.~~

~~III. — Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. — Verified that the conditions described exist or had existed; and~~
- ~~B. — Secured a preponderance of evidence that the unhealthful/unsanitary conditions are/were the result of neglect as defined in Section I; and~~
- ~~C. — Applied the factors in Section II, C, above, and determined that the conditions represent a threat to the child's health.~~
- ~~D. — Secured a preponderance of evidence that a child was maltreated as in Section I.~~

EXTREME OR REPEATED CRUELTY TO A JUVENILE (Priority II)

~~I. — Definition~~

~~The offender engages in activity that results in pain, suffering or grief. Examples of extreme cruelty include such things as forcing a child to observe the killing of his pet, forcing a child to eat vomit, locking a child in a closet or tying a child into a child seat for an extended period with its head covered. Milder forms of cruelty may still be identified as child maltreatment if there have been repeated acts by the offender.~~

~~II. — Taking a Report~~

- ~~A. — An acceptable reporter is any person who has reasonable cause to suspect that a juvenile has been deliberately subjected to extreme or repeated cruelty.~~
- ~~B. — Usage~~

~~The reporter has reason to believe that a juvenile has been deliberately subjected to extreme or repeated cruelty.~~

~~III. — Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. — Verified that a juvenile has been subjected to extreme (excessive or severe) cruelty and/or there is evidence that the cruelty was repeated.~~
- ~~B. — Secured a preponderance of evidence that a juvenile was subjected to extreme or repeated cruelty.~~
- ~~C. — Documented that all other types of child maltreatment have been ruled out to ensure that extreme or repeated cruelty is the correct child maltreatment type. However, extreme or repeated cruelty can be used in conjunction with other child maltreatment types.~~

FAILURE TO PROTECT (Priority I or II)

I. Definition

~~Failure of an individual responsible for the care of a child to take reasonable action to protect that child from maltreatment when that individual had reasonable cause to believe that the child was in significant danger of being maltreated.~~

~~This allegation may include situations in which a person with a documented history as an offender of child sexual abuse is allowed to be an unsupervised caretaker of a child.~~

NOTE: ~~The type of maltreatment from which the caregiver failed to protect the child, determines the Priority Level (I or II). This is a sub-issue when considering sexual abuse, physical abuse, neglect, etc.~~

II. Taking a report

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child was endangered and that an individual responsible for the care of the child failed to take reasonable action to protect the child.~~

B. Usage

~~The reporter has reason to believe that failure to protect resulted from one of the following:~~

- ~~1) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person, which resulted in maltreatment to the child.~~
- ~~2) A blatant disregard by the parent or caretaker of his or her responsibilities for the child's welfare.~~

III. Founding a report

~~This allegation of maltreatment may be founded only after the Worker has concluded that:~~

A. ~~An individual responsible for the care of a child had or should have had reasonable cause to believe that the child was in significant danger of maltreatment and failed to take action to protect the child from that danger.~~

NOTE: ~~A finding of failure to protect should not be made against a caretaker who was in significant fear of his or her own safety.~~

B. ~~Secured a preponderance of evidence that failure to protect occurred as a result of maltreatment as defined in Section I.~~

FAILURE TO THRIVE (Priority I)

I. Definition

~~A clinical term used by pediatric clinicians to describe infants and young children, generally three years of age and younger, who fail to grow as expected based on established growth standards for age and gender. A central cause of failure to thrive is under nutrition, whether or not an associated organic disease is present. Pediatric under nutrition, or Failure To Thrive~~

~~triggers an array of health problems in children and may be associated with long-term impairments in growth, physical and cognitive development, academic performance, and behavior. The majority of children who demonstrate Failure To Thrive do not have a physical disease. Most such situations are associated with problems in the child's environment.~~

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child suffers from failure to thrive.~~

~~B. Usage~~

~~The reporter has reason to believe that the child has failure to thrive syndrome as a result of the parent's or caretaker's neglect.~~

~~C. Factors to be considered~~

- ~~1) Central to the definition of Failure To Thrive is abnormal growth compared to children of similar age and sex, using typical national growth standards.~~
- ~~2) The child's symptoms, i.e. weight and/or velocity of growth and/or clinical signs of deprivation improve when the child is properly nurtured.~~
- ~~3) There appears to be significant environmental or psychosocial disruption in the child's family.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child has or had failure to thrive (such verification must come from a physician); and~~
- ~~B. Secured a preponderance of evidence that the failure to thrive was at least partially a result of the parent or caretaker's failure to provide for or meet the needs of the child.~~

HUMAN BITES (Priority II)

~~I. Definition~~

~~A bruise or cut in the skin caused by human teeth.~~

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child sustained a human bite as a result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe that the human bite resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent, caretaker, or other person responsible for the child's welfare (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by~~

~~another, which resulted in a human bite (failure to protect).~~

- ~~3) The failure of the parent or caretaker to appropriately supervise the child resulted in human bites (inadequate supervision).~~

~~III. — Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child currently has a human bite or has sustained a human bite in the past (such verification may come from a physician, dentist, registered nurse, law enforcement officer, observation by the Family Service Worker, or by a direct admission from the alleged offender); and~~
- ~~B. Secured a preponderance of evidence that the human bite was sustained as a result of maltreatment as defined in Section I.~~

IMMERSION (Priority I)

~~I. — Definition~~

~~Interference with a child's ability to breathe by holding the child's nose and mouth under water or other liquid.~~

~~II. — Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has been immersed as a result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe immersion resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another that resulted in immersion (failure to protect).~~

~~III. — Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that a child has been immersed and restricted breathing.~~
- ~~B. Secured a preponderance of evidence that the immersion occurred as a result of maltreatment as defined in Section I.~~

INADEQUATE CLOTHING (Priority II)

~~I. — Definition~~

~~Lack of adequate clothing to protect the child from the elements.~~

~~II. — Taking a report~~

- ~~A. — An acceptable reporter is any person with reasonable cause to suspect that a child is~~

~~inadequately clothed.~~

~~B. Usage~~

~~The reporter has reason to believe that a child is or recently has been inadequately clothed due to the parent or caretaker's disregard of his or her responsibilities.~~

~~C. Incident factors to be considered~~

- ~~1) Frequency of the incident,~~
- ~~2) Duration of the incident,~~
- ~~3) Chronicity or pattern of similar incidents,~~
- ~~4) Weather conditions such as extreme heat or extreme cold.~~

~~**NOTE:** Evidence of physical harm to the child such as frostbite, hypothermia, severe sunburn, or heat exhaustion is not required in order to indicate this allegation. Lack of clothing in the home is not sufficient to indicate a report of inadequate clothing unless other factors substantiate that the child is not being clothed. Other factors must be considered.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the incident or circumstances occurred; and~~
- ~~B. Secured a preponderance of evidence that the child is/has been inadequately clothed in accordance with Section II, B, above; and~~
- ~~C. Applied the factors in Section II, C, above and determined that the clothing was not appropriate to protect the child from the elements.~~
- ~~D. The mere availability of clothing is not sufficient to unfound a report of inadequate clothing.~~

INADEQUATE FOOD (Priority II)

~~I. Definition~~

~~Inadequate food is a lack of food adequate to sustain normal functioning. It is not as severe as malnutrition or failure to thrive, both of which require a medical diagnosis for a finding of "True".~~

~~Examples include:~~

- ~~A. The child who frequently and repeatedly misses meals or who is frequently and repeatedly fed insufficient amounts of food.~~
- ~~B. The child who frequently and repeatedly asks a neighbor for food and other information substantiates that the child is not being fed.~~
- ~~C. The child who is frequently and repeatedly fed unwholesome foods when his age, developmental stage, and physical condition are considered.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has received/is receiving inadequate food.~~

~~_____ B. _____ Usage~~

~~The reporter has reason to believe that the child has not received/is not receiving adequate food due to the parent or caretaker's disregard of his responsibilities.~~

~~C. _____ Incident factors to be considered:~~

- ~~1) Frequency of the occurrence,~~
- ~~2) Duration of the occurrence,~~
- ~~3) Pattern or chronicity of occurrence,~~
- ~~4) Previous history of occurrences,~~
- ~~5) Availability of adequate food.~~

~~III. _____ Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

~~A. Verified that the incident or circumstances occurred; and~~

~~B. Secured a preponderance of evidence that the child received/is receiving inadequate food as the result of maltreatment as defined in Section I; and~~

~~C. Applied the factors in Section II, C, above and determined that the amount of food received is not adequate to sustain normal functioning.~~

~~**NOTE:** Lack of food in the home is not sufficient to indicate a report of inadequate food unless other factors substantiate that the child is not being fed. On the other hand, the mere availability of food in the home is not sufficient to unfound a report of inadequate food. Other factors must also be considered. Do not found a report if the parents are making alternative arrangements to provide adequate food.~~

INADEQUATE SHELTER (Priority II)

~~I. _____ Definition~~

~~Lack of shelter which is safe and which protects from the elements.~~

~~Examples of inadequate shelter include, but are not limited to:~~

- ~~A. No housing or shelter.~~
- ~~B. Exposed, frayed electrical wiring.~~
- ~~C. Housing with structural defects that endanger the health or safety of the child.~~
- ~~D. Housing with indoor temperatures consistently below 50 degrees Fahrenheit.~~
- ~~E. Housing which is a significant fire hazard obvious to the reasonable person.~~
- ~~F. Housing with an unsafe heat source, which poses a significant fire hazard or threat of asphyxiation.~~

~~II. _____ Taking a report~~

~~A. _____ An acceptable reporter is any person with reasonable cause to suspect that a child is being inadequately sheltered.~~

~~B. _____ Usage~~

~~The reporter has reason to believe that the child is being inadequately sheltered due to~~

~~the parent or caretaker's disregard of his or her responsibilities.~~

~~C. Shelter factors to be considered include:~~

- ~~1) Seriousness of the problem.~~
- ~~2) Frequency of the problem~~
- ~~3) Duration of the problem.~~
- ~~4) Pattern or chronicity of the problem.~~
- ~~5) Previous history of shelter-related problems.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the incident or circumstances occurred; and~~
- ~~B. Secured a preponderance of evidence that the child is being or has been inadequately sheltered as the results of maltreatment as defined in Section I; and~~
- ~~C. Applied the factors in Section II, C, above and determined that the shelter is inadequate.~~

INADEQUATE SUPERVISION (Priority II)

~~I. Definition~~

~~The parent or caretaker has failed to appropriately supervise the juvenile resulting in the juvenile being left alone at an inappropriate age or in inappropriate circumstances that creates a dangerous situation or a situation that puts the child at risk of harm OR the parent or caretaker has failed to appropriately supervise the juvenile resulting in the juvenile being placed in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm (even when the parent or caretaker is present).~~

~~Examples include, but are not limited to:~~

- ~~A. Leaving the juvenile alone when the juvenile is too young to care for himself or for other children.~~
- ~~B. Leaving a juvenile alone when the juvenile has a condition that requires close supervision. Such conditions may include medical conditions, behavioral, mental, or emotional problems, developmental physical disabilities.~~
- ~~C. Leaving a juvenile in the care of an inadequate or inappropriate caretaker, as indicated by the caretaker factors in Section II, C, below.~~
- ~~D. Being present but unable to supervise because of the caretaker's condition. This includes the parent or caretaker who uses drugs or alcohol to the extent that it has the effect of producing a substantial state of stupor, unconsciousness, intoxication, or irrationality. This also includes the parent or caretaker who cannot adequately supervise the juvenile because of the parent's or caretaker's medical condition, behavioral, mental, or emotional problems, developmental or physical disability.~~

~~E. Leaving a juvenile unattended in a place that is unsafe considering their maturity, physical condition, and mental abilities.~~

~~**NOTE:** The mere occurrence of a parent or caretaker being arrested does NOT in and of itself constitute "inadequate supervision" unless the arrest was due to child maltreatment (e.g., DWI).~~

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a juvenile has been/is being inadequately supervised as a result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe that the juvenile has been/is being inadequately supervised due to the disregard of responsibilities by the parent or caretaker.~~

~~C. Factors to be considered~~

~~1) Caretaker factors include:~~

- ~~a. How long does it take the caretaker to reach the juvenile?~~
- ~~b. Can the caretaker see and hear the juvenile?~~
- ~~c. Is the caretaker accessible by telephone or pager?~~
- ~~d. Is the caretaker mature enough to assume responsibility for the situation?~~
- ~~e. Is the caretaker physically, mentally, and emotionally able to care for the juvenile?~~
- ~~f. Is the caretaker able to make appropriate judgments on the juvenile's behalf?~~

~~2) Incident factors include:~~

- ~~a. Frequency of the occurrence.~~
- ~~b. Duration of the occurrence.~~
- ~~c. Time of day or night when the incident occurs.~~
- ~~d. Juvenile's location.~~
- ~~e. Other supporting persons who have agreed to assist in supervising the juvenile.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified/secured a preponderance of evidence that inadequate supervision occurred; and~~
- ~~B. Secured a preponderance of evidence that the inadequate supervision is/was due to the parent or caretaker's neglect as defined in Section I; and~~
- ~~C. Applied the factors in Section II, C, above and determined that the supervision was inadequate.~~

INDECENT EXPOSURE (Priority I)

I. Definition

The exposure by a person aged 14 years or older of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person, or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm.

II. Taking a Report

A. ~~An acceptable reporter is any person who has reasonable cause to suspect that a person age 14 years or older exposed his/her sexual organs for the purpose of arousing or gratifying the sexual desire of the person, or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm.~~

B. ~~The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:~~

- ~~1) The alleged offender is a caretaker of any child; and,~~
- ~~2) The person making the report is one of the following:~~
 - ~~a. The adult victim;~~
 - ~~b. A law enforcement officer; or,~~
 - ~~c. The alleged offender.~~

C. Usage

~~The reporter has reason to believe that a person age 14 years or older exposed his sexual organs for the purpose of arousing or gratifying the sexual desire of the person, or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm.~~

III. Founding a Report

~~This allegation may be founded only after the Worker has:~~

~~Secured a preponderance of evidence that a person aged 14 years or older, exposed his/her sexual organs for the purpose of arousing or gratifying the sexual desire of the person, or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm.~~

INTERFERING WITH A CHILD'S BREATHING (Priority I)

~~This category of child maltreatment is contained within another category. See the category, "Suffocation."~~

INTERNAL INJURIES (Priority I)

I. Definition

~~Internal injury is an injury, which is not visible from the outside, e.g. an injury to the organs occupying the thoracic or abdominal cavities. Such injury may result from a direct blow. A person so injured may be pale, cold, perspiring freely, have an anxious expression, or may seem semi-comatose. Pain is usually intense at first, and may continue or gradually diminish, as patient grows worse.~~

II. Taking a report

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child sustained internal injuries as the result of maltreatment.~~

B. Usage

~~The reporter has reason to believe that the internal injuries resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to stop an action by another person that resulted in internal injuries (failure to protect).~~

III. Founding a report

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child currently has internal injuries or has sustained internal injuries in the past (such verification must come from a physician); and~~
- ~~B. Secured a preponderance of evidence that the internal injury was sustained as a result of maltreatment as defined in Section I.~~

KICKING A CHILD (Priority II)

I. Definition

~~The parent or caretaker has used a foot to deliver a non-accidental sudden and forceful blow to any portion of the child's body.~~

II. Taking a Report

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has sustained a sudden, forceful and non-accidental blow from the parent or caretaker's foot.~~

B. Usage

~~The reporter has reason to believe that the child has sustained a sudden and forceful~~

~~non-accidental blow from the parent's or caretaker's foot.~~

~~III. Founding a Report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Secured a preponderance of evidence that the child sustained a sudden and forceful non-accidental blow from the parent's or caretaker's foot.~~
- ~~B. Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline should cause no more than transient pain or minor temporary marks.~~

~~**NOTE:** The age, size, and condition of the child and the location of the injury and the frequency of recurrence of injuries shall be considered when determining whether the physical discipline is reasonable and moderate.~~

LOCKOUT (Priority II)

~~I. Definition~~

~~The parent or caretaker has denied the child access to the home necessary to the safety and health of the child.~~

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has been locked out of the home.~~

~~B. Usage~~

~~The reporter has reason to believe that the child has been denied access to his home.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~1) Verified that the child was denied access to the home by the parent or caretaker; and~~
- ~~2) Secured a preponderance of evidence that the lockout occurred as a result of maltreatment as defined in Section I.~~

MALNUTRITION (Priority I)

~~I. Definition~~

~~Lack of necessary or proper food substances in the body caused by inadequate food, lack of food, or insufficient amounts of vitamins or minerals results in malnutrition.~~

~~The child with malnutrition is not simply a diminutive version of a well-nourished child. There are various physical signs of malnutrition, including the following:~~

- ~~A. A decrease in lean body mass or fat; very prominent ribs; the child may often be referred to as "skin and bones."~~

- B. ~~The hair is often sparse, thin, dry, and is easily pulled out or falls out spontaneously~~
- C. ~~The child is often pale and suffers from anemia.~~
- D. ~~Excessive perspiration, especially about the head.~~
- E. ~~The face appears lined and aged, often with a pinched and sharp appearance.~~
- F. ~~The skin has an old, wrinkled look with poor turgor. Classically, skin folds hang loose on the inner thigh and buttock.~~
- G. ~~The abdomen is often protuberant.~~
- H. ~~There are abnormal pulses, blood pressure, stool patterns, inter-current infections, abnormal sleep patterns, and a decreased level of physical and mental activity.~~
- I. ~~Taking a report~~
 - A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child was malnourished as a result of maltreatment.~~
 - B. ~~Usage~~

~~The reporter has reason to believe that the child was malnourished due to the parent or caretaker's disregard of his or her responsibilities. The malnourish must be non-organic in nature.~~
- III. ~~Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

 - A. ~~Verified that the child is/was malnourished (such verification must come from a physician); and~~
 - B. ~~Secured a preponderance of evidence that the child was malnourished as a result of the parent or caretaker's disregard of his or her responsibilities.~~

MEDICAL NEGLECT (Priority II)

- I. ~~Definition~~

~~Lack of medical or mental treatment for a health problem or condition which, if untreated, could become severe enough to constitute a serious or long-term harm to the child; lack of follow-through on a prescribed treatment plan for a condition which could become serious enough to constitute serious or long-term harm to the child if the plan is unimplemented.~~
- II. ~~Taking a report~~
 - A. ~~Acceptable reporter is any person with reasonable cause to suspect that a child has been/is being medically neglected.~~
 - B. ~~Usage~~

~~The reporter has reason to believe that the child has not or is not receiving proper and necessary medical care due to the parent's or caretaker's disregard of his or her responsibilities.~~
 - C. ~~Factors to be considered~~
 - 1) ~~Seriousness of the current health problem,~~
 - 2) ~~Probable outcome if the current health problem is not treated and the seriousness~~

- of that outcome,
- 3) ~~Generally accepted medical benefits of the prescribed treatment, and~~
- 4) ~~Generally recognized side effects/harm associated with the prescribed treatment.~~

III. ~~Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that the child has/had an untreated health problem, or that a prescribed treatment plan was unimplemented. Such verification must come from a physician, registered nurse, psychologist, dentist, or by a direct admission from the alleged offender, and~~
- B. ~~Secured a preponderance of evidence that the child is/was medically neglected as defined above.~~
- C. ~~Applied the factors in Section II, C, above and determined that the problem or condition, if untreated, could result in serious or long-term harm to the child. Such verification must come from a physician, registered nurse, or dentist.~~

NOTE: ~~If the Family Service Worker determines that the parent's decision to withhold medical treatment was based solely upon a religious belief, choosing instead to furnish the child with prayer and spiritual treatment in accordance with a recognized religious method of healing by an accredited practitioner, the investigative determination will be Exempted From True Due to Religious Exemption.~~

IV. ~~Determining who is the offender~~

~~When a person, usually a relative, has assumed full time responsibility for care of the child but has not been appointed the child's legal guardian or the guardianship status is unknown when the report is taken, both that caretaker and the child's legal parents shall be named as alleged offenders. If the legal parents did not make necessary arrangements for securing medical care for the child, the parents shall be indicated as offenders of medical neglect. If the caretaker had attempted to secure medical care, but was unable to do so because the parents did not make the necessary arrangements, the caretaker shall not be indicated as an offender of medical neglect.~~

MEDICAL NEGLECT OF INFANTS WITH DISABILITIES (Priority I)

I. ~~Definition~~

~~The act of withholding of appropriate nutrition, hydration, medication, or other medically indicated treatment from an infant with disabilities with a life-threatening condition. Medically indicated treatment includes medical care which is most likely to relieve or correct all life threatening conditions and evaluations or consultations necessary to assure that sufficient information has been gathered to make informed medical decisions. Nutrition, hydration, and medication, as appropriate for the infant's needs, is medically indicated for all infants with disabilities.~~

~~Other types of treatment are not medically indicated when:~~

- A. ~~The infant is chronically and irreversibly comatose,~~
- B. ~~The provision of the treatment would be futile and would merely prolong dying, or~~

~~C. The provision of the treatment would be ineffective in ameliorating or correcting all the life-threatening conditions.~~

~~In determining whether treatment will be medically indicated, reasonable medical judgments, such as those made by a prudent physician knowledgeable about the case and its treatment possibilities, will be respected. However, opinions about the infant's future "quality of life" won't bear on whether a treatment is judged to be medically indicated.~~

NOTE: Review FSPP POLICY II-E: Medical Neglect Of an Infant with Disabilities.

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that an infant with disabilities with a life-threatening condition has been/is being medically neglected.~~

~~B. Usage~~

~~The reporter has reason to believe that the infant with disabilities has not received/is not receiving medically indicated treatment (including needed nutrition, hydration, medication, and independent evaluations and consultations) due to the parent's or caretaker's disregard of his or her responsibilities.~~

~~C. Factors to be considered include:~~

- ~~1) Infant's physical condition,~~
- ~~2) Seriousness of the current health problem,~~
- ~~3) Probable medical outcome if the current health problem is not treated and the seriousness of that outcome.~~
- ~~4) Generally accepted medical benefits of the prescribed treatment,~~
- ~~5) Generally recognized side effects/harms associated with the prescribed treatment,~~
- ~~6) The opinions of the Infant Care Review Committee (ICRC), if the hospital has an ICRC,~~
- ~~7) The judgment of the individual designated by contract for the purposes of coordination, consultation, and notification of cases of suspected medical neglect of disabled infants (Refer to FSPP II-F), and~~
- ~~8) The parent's knowledge and understanding of the treatment and the probable medical outcome.~~

~~D. On acceptance of this type allegation the Hot Line supervisor will be notified immediately. The Hot Line supervisor will immediately notify the designated DCFS Child Protective Services Field Assistance Unit (501) 682-8992.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

~~A. Verified that medical treatment (including appropriate nutrition, hydration, or medication) is/was withheld from an infant; and~~

~~B. Secured a preponderance of evidence that the infant is/has been medically neglected due to the parent's or caretaker's disregard of his or her responsibilities; and~~

- C. ~~Applied the factors in Section II, C, above and determined that the treatment was medically indicated. Such verification must come from a physician, and may come from experts in the field of neonatal pediatrics. Appropriate nutrition, hydration, and medication are medically indicated for all disabled infants.~~

MENTAL INJURY (Priority I)

I. Definition

~~Injury to the intellectual, emotional, or psychological development of a child as evidenced by observable and substantial impairment in the child's ability to function in a normal range of performance and behavior is mental injury.~~

II. Taking a report

A. Reporter

- ~~1) A medical or mental health professional~~
- ~~2) A teacher~~
- ~~3) A child care center worker~~
- ~~4) A school counselor, if the child did not disclose to the teacher~~

B. Usage

~~The reporter has reason to believe that the mental injury resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in the mental injury (failure to protect).~~

III. Founding a report

~~This allegation of maltreatment may be founded only after the Worker has:~~

~~A. Verified that the child has been mentally injured. A psychiatrist, registered psychologist, licensed clinical social worker, professional employee of a community mental health center, or licensed psychological examiner must confirm that the child has suffered a mental injury; and~~

~~B. Secured a preponderance of evidence that the mental injury resulted from maltreatment as defined in Section I.~~

NOTE: ~~Under some circumstances, such as divorce, a mental injury to a child may be an unavoidable consequence of purposeful parental action. When determining whether to found a report, the Family Service Worker should consider whether the parents or caretakers took reasonable action to minimize the degree of mental injury resulting from a necessary action or uncontrollable event.~~

MUNCHAUSEN SYNDROME BY PROXY OR FACTITIOUS ILLNESS BY PROXY (Priority II)

I. Definition

A form of child maltreatment in which the parent or guardian falsifies a child's medical history or alters a child's laboratory tests or actually causes an illness or injury in a child in order to gain medical attention for the child which may result in innumerable harmful hospital procedures.

II. Taking a report

A. Acceptable reporters include medical professionals with reasonable cause to suspect that a parent or caregiver has fabricated a medical condition in a child.

B. Usage

The reporter has reason to believe that the parent or caregiver is presenting a child to a health care provider for a fabricated medical condition.

III. Founding a report

This allegation of maltreatment may be founded only after the Worker has:

A. Verified that the child has been presented to a health care provider with a fabricated medical condition. Such verification must come from a physician, registered nurse, dentist, or by a direct admission from the alleged offender; and

B. Secured a preponderance of the evidence that the parent or caregiver has presented the child to a health care provider with a fabricated medical condition.

ORAL SEX (Priority I)

I. Definition

Any contact, however slight or the attempted contact between the sex organs of one person and the mouth of another person when one of those persons is a child. This includes acts commonly known as cunnilingus and fellatio.

This form of maltreatment does not require that the offender be a caretaker of the child.

II. Taking a Report

A. An acceptable reporter is any person with reasonable cause to suspect that a child has been involved in oral sex.

B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:

- 1) The alleged offender is a caretaker of any child; and,
- 2) The person making the report is one of the following:
 - a. The adult victim;
 - b. A law enforcement officer; or,
 - c. The alleged offender.

C. Usage

~~The reporter has reason to believe that oral sex resulted from one of the following:~~

- ~~1) A direct action by a parent or caretaker 14 years of age or older (abuse); or~~
- ~~2) A direct action by any person under any of the following circumstances:~~
 - ~~a. The alleged offender is 14 years of age or older and the alleged victim is under the age of 18 and forcible compulsion was used in the act or attempt; or~~
 - ~~b. By one person who is 18 or older to another who is under 15 and not the spouse of the alleged offender; or~~
 - ~~c. By one person who is 20 years of age or older to another person who is under 16 years of age and not the spouse of the alleged offender; or~~
 - ~~d. By one person who is a caretaker of the other who is younger than 18; or,~~
 - ~~e. By a person younger than 14 years of age (underaged juvenile offender) to a person younger than 18 years of age and forcible compulsion was used in the act or attempt.~~

~~III. Founding a report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. Verified that the child has been involved in oral sex, or the attempt to engage in oral sex; and~~

~~Secured a preponderance of evidence that the oral sex, or the attempt occurred.~~

PINCHING, BITING OR STRIKING A CHILD IN THE GENITAL AREA (Priority II)

~~I. Definition~~

~~Any act of pinching, biting or striking, directly or through clothing, a child's genital area or sex organs. The contact can be with by any part of the alleged offender or any object.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child was pinched, bitten or struck in the genital area as the result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe that the child was pinched, bitten or struck in the genital area as a result of one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person, which resulted in the child being pinched, bitten or struck in the genital area (failure to protect.)~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child is/was pinched, bitten or struck in the genital area; and~~
- ~~B. Secured a preponderance of evidence that the pinching, biting, or striking of the child's genital area was sustained as a result of maltreatment as defined in Section I.~~

POISON/NOXIOUS SUBSTANCES (Priority I)

~~I. Definition~~

~~Poison is any substance, including mood-altering chemicals taken into the body by ingestion, inhalation, injection, or absorption that interferes with normal physiological functions. This includes, but is not limited to any chemical used in, or generated during, the manufacture of methamphetamine. (Almost any substance, including water, can be poisonous if consumed in sufficient quantity; therefore, the term poison can include an excessive amount of an item rather than a specific group of substances);~~

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

~~Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacture of methamphetamine.~~

~~II. Taking a report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child consumed, inhaled or was exposed to poison and/or a noxious substance as the result of maltreatment.~~

~~B. Usage~~

~~The reporter has reason to believe the child was poisoned or ingested, inhaled or was exposed to a noxious substance as a result of one of the following:~~

- ~~1) The parent or caretaker does a direct, non-accidental action (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in the child consuming, inhaling or being exposed to poison or a noxious substance (failure to protect).~~
- ~~3) The offender blatantly disregards his responsibilities for the child's welfare (neglect).~~

~~III. Founding a report~~

This allegation of maltreatment may be founded only after the Worker has:

- A. ~~Verified that the child has consumed, inhaled or been exposed to, poison or a noxious substance (as verified by chemical analysis or by a direct admission from the alleged offender); or~~
- B. ~~Verified that a child has been physically present, or has been in the location, during any phase of the manufacturing of methamphetamine or other illegal drugs, and~~
- C. ~~Secured a preponderance of evidence that the consumption, inhaling, or exposure to the poison or noxious substance was the result of maltreatment as defined in Section I.~~

NOTE: See DCFS Policy Manual Appendix 6 (Protocol for Family Service Workers Responding to Methamphetamine and Meth Lab Exposure of Children).

PORNOGRAPHY/LIVE SEX ACT EXPOSURE/LISTENING TO A TELEPHONE SEX LINE (Priority I)

I. Definition

~~A person older than 14 forces a person younger than 18 to view or observe pornography or live sexual activity, or~~

~~A caretaker forces or encourages the watching of pornography; or forces, permits or encourages the watching of live sexual activity; or forces a child to listen to a telephone sex line.~~

~~Pornography includes:~~

- A. ~~Obscene, licentious, or offensive material;~~
- B. ~~Pictures, movies or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;~~
- C. ~~Material which depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political or scientific value.~~

~~Live sexual activity must include at least one human participant. This includes masturbation and human-on-animal sexual activity, but would not include sexual activity whose participants are exclusively animals or non-humans.~~

II. Taking a Report

- A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child has been:~~
 - 1) ~~By a caretaker forced or encouraged to watch pornography; or forced, permitted, or encouraged to watch live sexual activity; or forced to listen to a telephone sex line.~~
 - 2) ~~By any person forced to watch pornography or live sexual activity.~~

~~B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:~~

- ~~1) The alleged offender is a caretaker of any child; and~~
- ~~2) The person making the report is one of the following:~~
 - ~~a. The adult victim;~~
 - ~~b. A law enforcement officer; or,~~
 - ~~c. The alleged offender.~~

~~C. Usage~~

~~The reporter has reason to believe that a child has been forced by another person to view or observe pornography, or any live sexual activity; or that a caretaker has forced or encouraged a child to view or observe pornography; or forced, permitted, or encouraged a child to view any live sexual activity; or forced a child to listen to a telephone sex line.~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. Secured a preponderance of evidence that~~
 - ~~1) A person forced a child to view or observe pornography or any live sexual activity, or~~
 - ~~2) A caretaker forced or encouraged a child to watch pornography; or forced, permitted, or encouraged a child to watch live sexual activity; or forced a child to listen to a telephone sex line.~~

~~**NOTE:** The requirements are different to make a true finding against a caretaker than as against a non-caretaker.~~

**PRESENCE OF AN ILLEGAL SUBSTANCE IN A CHILD OR ITS MOTHER AT THE TIME OF BIRTH
RESULTING FROM THE MOTHER'S KNOWING USE OF THE SUBSTANCE (Priority I)**

I. Definition

Causing a child to be born with:

- A. An illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the child's birth; or
- B. Presence of an illegal substance in the mother at the time of birth; or
- C. An illegal substance present in the mother's bodily fluids or bodily substances as a result of her knowingly using an illegal substance before the child's birth.

"Illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

II. Taking a Report

- A. An acceptable reporter is limited to any one of the following mandated reporters, who have reasonable cause to suspect that a child has been subjected to an illegal substance before birth or the mother had an illegal substance in her system at the time of the birth: a licensed nurse; an osteopath; a physician; a resident or intern; a surgeon; an hospital social worker; or any medical personnel who may be engaged in the admission, examination, care, or treatment of persons in hospitals or similar medical settings.

B. Usage

The reporter has reason to believe that the child's condition (having an illegal substance in its body) is the direct result of prenatal exposure of the newborn to an illegal substance abused by the mother.

The reporter has reason to believe that the mother had an illegal substance in her system at the time of the birth from knowingly using an illegal substance.

When a child is stillborn and the reporter believes the child died as a result of the mother's prenatal illegal drug use, the hotline will not accept a report of neglect. Based on Arkansas statute, a stillborn delivery is not considered a birth.

III. Founding a Report

This allegation may be founded only after the Worker has:

- A. Verified that the child has an illegal substance in its bodily fluids or bodily substances or;
- B. Verified that the mother's bodily fluids or substances contained an illegal substance at the time of the birth.

IV. Garrett's Law, Illegal Substance, and Adoption

During the course of an investigation, or when DCFS has custody, when the mother or child has tested positive for the presence of an illegal substance in the bodily fluids or bodily substances, and the mother indicates that she wants to place the child for adoption through a private agency or private entity, the Family Service Worker must contact OCC immediately.

NOTE: All Garrett's Law investigations must be initiated within 24 hours.

NOTE: CAPTA still requires a Plan of Safe Care for all infants born affected by prenatal drug abuse.

SEXUAL CONTACT (Priority I)

I. Definition

~~Any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, or buttocks, or anus of a person or the breast of a female. This includes encouraging of the child to touch the offender in a sexual manner. This further includes the offender requesting to touch the child in a sexual manner. Normal affectionate hugging will not be construed as sexual contact.~~

II. Taking a Report

~~A. An acceptable reporter is any person who has reasonable cause to suspect that a child has been the victim of sexual contact. Evidence of sexual gratification is not necessary when taking or accepting a report.~~

~~B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:~~

- ~~1) The alleged offender is a caretaker of any child; and~~
- ~~2) The person making the report is one of the following:~~

- ~~a. The adult victim;~~
- ~~b. A law enforcement officer; or,~~
- ~~c. The alleged offender.~~

C. Usage

~~The reporter has reason to believe that sexual contact resulted from one of the following circumstances:~~

- ~~1) The alleged offender is 14 years of age or older and the alleged victim is under the age of 18 and forcible compulsion was used in the act or attempt; or~~
- ~~2) By one person who is 18 or older to another who is under 15 and not the spouse of the alleged offender; or~~
- ~~3) By one person who is 20 years of age or older to another person who is under 16 years of age and not the spouse of the alleged offender; or~~
- ~~4) By one person who is a caretaker of the other who is less than 18 years old.~~

- ~~5) By a person younger than 14 years of age (underaged juvenile offender) to a person younger than 18 years of age.~~

~~Forcible Compulsion means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.~~

- ~~6) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in sexual contact (failure to protect).~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. Secured a preponderance of evidence that a child has been the victim of sexual contact.~~
- ~~B. There must be evidence of sexual gratification. Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~
- ~~C. Normal affectionate hugging will not be construed as sexual contact.~~

SEXUAL EXPLOITATION (Priority I)

~~I. Definition~~

~~Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, obscene filming, or obscenely depicting, obscenely posing, or obscenely posturing a child for any use or purpose.~~

~~This form of maltreatment does not require that the offender be a caretaker of the child.~~

~~II. Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has been sexually exploited.~~
- ~~B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:
 - ~~1) The alleged offender is a caretaker of any child; and,~~
 - ~~2) The person making the report is one of the following:
 - ~~a. The adult victim;~~
 - ~~b. A law enforcement officer, or,~~
 - ~~c. The alleged offender.~~~~~~

~~C. Usage~~

~~The reporter has reason to believe that a child has been sexually exploited.~~

~~The failure of the parent or caretaker to make reasonable efforts to stop an action by another person, which resulted in sexual exploitation (failure to protect).~~

III. ~~Founding a report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. Verified that the child has been sexually exploited; and~~
- ~~B. Secured a preponderance of evidence that the sexual exploitation occurred.~~

SEXUAL PENETRATION (Priority I)

I. ~~Definition:~~

~~Any penetration, however slight, of any part of the body of one person or any animal or object into the sex organ or anus of another person when at least one of the persons involved is a child. This includes acts commonly known as anal penetration, digital penetration, coition, coitus and copulation.~~

~~This form of maltreatment does not require that the offender be a caretaker of the child.~~

II. ~~Taking a report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child was sexually penetrated as a result of maltreatment.~~
- ~~B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:
 - ~~1) The alleged offender is a caretaker of any child; and~~
 - ~~2) The person making the report is one of the following:
 - ~~a. The adult victim;~~
 - ~~b. A law enforcement officer;~~
 - ~~c. ; or,~~
 - ~~d. The alleged offender.~~~~~~

C. ~~Usage~~

~~The reporter has reason to believe that sexual penetration of a child resulted from one of the following:~~

- ~~1) A direct action by any person under any of the following circumstances:
 - ~~a. The alleged offender is 14 years of age or older and the alleged victim is under the age of 18 and forcible compulsion was used in the act or attempt; or~~~~

- ~~b. By one person who is 18 or older to another who is under 15 and not the spouse of the alleged offender; or~~
- ~~c. By one person who is 20 years of age or older to another person who is under 16 years of age and not the spouse of the alleged offender; or~~
- ~~d. By one person who is a caretaker of the other who is less than 18 years old.~~
- ~~e. By a person younger than 14 years of age (underaged juvenile offender) to a person younger than 18 years of age and forcible compulsion was used in the act or attempt.~~

~~Forcible Compulsion means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.~~

- ~~2) The failure of the parent or caretaker to make reasonable and prudent efforts to prevent an action by another person, which resulted in sexual penetration (failure to protect).~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- ~~A. Verified that the child was sexually penetrated; and~~
- ~~B. Secured a preponderance of evidence that the sexual penetration or attempted sexual penetration occurred.~~

SHAKING A CHILD AGE 4 OR OLDER (Priority II)

~~I. Definition~~

~~The parent or caretaker uses one or both hands to violently and rapidly intentionally or knowingly move the body of a child age four or older in a back and forth, side to side or up and down motion.~~

~~II. Taking a Report~~

- ~~A. An acceptable reporter is any person who has reasonable cause to suspect that a child ages four or older has been intentionally or knowingly shaken by a parent or caretaker.~~
- ~~B. Usage~~

~~The reporter has reason to believe that a child ages four or older has been shaken by a parent or caretaker.~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

- ~~A. Secured a preponderance of evidence that a child age four years or older has been intentionally or knowingly shaken by a parent or caretaker causing an injury.~~

SHAKING A CHILD AGE 3 OR YOUNGER (Priority II)

I. Definition

~~The parent or caretaker uses one or both hands to violently and rapidly intentionally or knowingly move the body of a child age three or younger in a back and forth or up and down motion.~~

II. Taking a Report

A. ~~An acceptable reporter is any person who has reasonable cause to suspect that children age three or younger has been intentionally or knowingly shaken by a parent or caretaker.~~

B. Usage

~~The reporter has reason to believe that a child ages three or younger has been shaken by a parent or caretaker.~~

III. Founding a Report

~~This allegation may be founded only after the Worker has:~~

A. ~~Secured a preponderance of evidence that a child age three years or under has been intentionally or knowingly shaken by a parent or caretaker with or without causing an injury.~~

SPRAINS/DISLOCATIONS (Priority II)

I. Definition

~~Sprain: trauma to a joint, which causes pain and disability depending upon the degree of injury to ligaments. In a severe sprain, ligaments may be completely torn. The signs are rapid swelling, heat, and disability, often discoloration and limitation of function.~~

~~Dislocation: the displacement of any part, especially the temporary displacement of a bone from its normal position in a joint. The types include:~~

A. ~~Complicated dislocation: a dislocation associated with other major injuries.~~

B. ~~Compound dislocation: a dislocation in which the joint is exposed to the external air.~~

C. ~~Closed dislocation: a simple dislocation.~~

D. ~~Complete dislocation: a dislocation that completely separates the surfaces of a joint.~~

II. Taking a report

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child sustained a sprain or dislocation as a result of maltreatment.~~

B. Usage

~~The reporter has reason to believe that a sprain or dislocation resulted from one of the following:~~

~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~

- 2) ~~The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in the child sustaining a sprain or dislocation (failure to protect).~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that the child currently has a sprain or dislocation or had a sprain or dislocation in the past (such verification must come from a physician, registered nurse, or by a direct admission from the alleged offender); and~~
- B. ~~Secured a preponderance of evidence that the sprain or dislocation was sustained as a result of maltreatment as defined in Section I.~~

STRIKING A CHILD AGE 7 OR OLDER ON THE FACE OR HEAD (Priority II)

~~I. Definition~~

~~The victim child, age seven or older, has sustained a blow to the face or head inflicted intentionally or knowingly by a parent or caretaker with either an open hand or an object.~~

~~II. Taking a Report~~

- A. ~~An acceptable reporter is any person who has reasonable cause to suspect that a child has been intentionally or knowingly struck on the face or head by a parent or caretaker.~~
- B. ~~Usage~~

~~The reporter has reason to believe that a child has been intentionally or knowingly struck on the face or head by a parent or caretaker.~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

- A. ~~Secured a preponderance of evidence that a child ages seven or older has been intentionally or knowingly struck on the face or head by a parent or caretaker causing a physical injury.~~

NOTE: ~~Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline should cause no more than transient pain or minor temporary marks.~~

NOTE: ~~The age, size and condition of the child and the location of the injury and the frequency of recurrence of injuries shall be considered when determining whether the physical discipline is reasonable and moderate.~~

STRIKING A CHILD AGE 6 OR YOUNGER ON THE FACE OR HEAD (Priority II)

~~I. Definition~~

~~The victim child aged six years or younger has sustained an intentional or knowing blow to the face or head inflicted by a parent or caretaker with either an open hand or an object.~~

~~II. Taking a Report~~

~~A. An acceptable reporter is any person with reasonable cause to suspect that a child aged six years or younger has been intentionally or knowingly struck on the face or head by a parent or caretaker.~~

~~B. Usage~~

~~The reporter has reason to believe that a child aged six years or younger has been intentionally or knowingly struck on the face or head by a parent or caretaker.~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

~~A. Secured a preponderance of evidence that a child aged six years or younger has been intentionally or knowingly struck on the face or head by a parent or caretaker with or without causing an injury.~~

STRIKING A CHILD WITH A CLOSED FIST (Priority II)

~~I. Definition~~

~~The parent or caretaker has used a clenched hand to intentionally or knowingly hit the child on any part of his body.~~

~~II. Taking a Report~~

~~A. An acceptable reporter is any person who has reasonable cause to suspect that a child has been intentionally or knowingly struck with a fist by a parent or caretaker.~~

~~B. Usage~~

~~The reporter has reason to believe that the child has been intentionally or knowingly struck with a fist by a parent or caretaker.~~

~~III. Founding a Report~~

~~This allegation may be founded only after the Worker has:~~

~~A. Secured a preponderance of evidence that the child has been intentionally or knowingly struck and physically injured by a parent or caretaker with a closed fist.~~

NOTE: Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline should cause no more than transient pain or minor temporary marks.

NOTE: The age, size and condition of the child and the location of the injury and the frequency of recurrence of injuries shall be considered when determining whether the physical discipline is reasonable and moderate.

SUBDURAL HEMATOMA (Priority I)

I. Definition

~~Hematoma is a swelling or mass of blood (usually clotted) confined to an organ, tissue, or space and caused by a break in a blood vessel.~~

~~Subdural means beneath the dura mater (the outer membrane covering the spinal cord and brain).~~

~~A subdural hematoma is located beneath the membrane covering the brain and is usually the result of head injuries or the shaking of a small child or infant. It may result in loss of consciousness, seizures, mental or physical damage, or death.~~

II. Taking a report

~~A. Acceptable reporters are medical personnel, medical facilities or pediatric facilities with reasonable cause to suspect that a child sustained a subdural hematoma as the result of maltreatment.~~

B. Usage

~~The reporter has reason to believe that the subdural hematoma resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in a subdural hematoma (failure to protect).~~

III. Founding a report

~~This allegation of maltreatment may be founded only after the Worker has:~~

~~A. Verified that the child currently has a subdural hematoma or has sustained a subdural Hematoma in the past (such verification must come from a physician); and~~

~~B. Secured a preponderance of evidence that the subdural hematoma was sustained as a result of maltreatment as defined in Section I.~~

SUBSTANCE MISUSE (Priority II)

I. Definition

~~The consumption of a substance capable of intoxication to the extent that it observably affects the child's health, behavior, motor coordination, judgment, or intellectual capability. This may include such mood altering chemicals as cannabis (marijuana), hallucinogens, stimulants (including cocaine), sedatives (Valium), narcotics, or inhalants, alcohol (except alcohol given a child during a recognized religious ceremony or service); over the counter drugs (if a person purposely administers an overdose to a child or purposely gives an inappropriate over the counter drug to a child and the child is detrimentally impacted by the overdose or the over the counter drug.~~

~~Examples of substance misuse may include, but are not limited to:~~

- ~~A. Giving a minor (unless prescribed by a physician) any amount of heroin, cocaine, morphine, peyote, LSD, PCP, pentazocine, or methaqualude or encouraging, insisting, or permitting a minor's consumption of the above substances.~~
- ~~B. Giving any mood altering substance, including alcohol or sedatives (unless prescribed by a physician) to an infant or toddler.~~
- ~~C. Encouraging, assisting, or permitting a child to consume alcohol, drugs, or another mood altering substance.~~
- ~~D. Encouraging, assisting, or permitting an adolescent to consume alcohol, drugs, or another mood altering substance.~~
- ~~E. Encouraging, assisting, or permitting any minor to consume alcohol, drugs, or another mood altering substance, even if on an infrequent basis.~~
- ~~II. Taking a report~~
 - ~~A. An acceptable reporter is any person with reasonable cause to suspect that a child has consumed a mood altering substance as a result of maltreatment.~~
 - ~~B. Usage~~

~~The reporter has reason to believe that the substance misuse resulted from one of the following~~

 - ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
 - ~~2) One or more of the foregoing persons encouraged or assisted the child's consumption of the mood altering substances.~~
 - ~~3) The failure of the parent or caretaker to make reasonable efforts to stop another person from giving mood altering substances to the child (failure to protect).~~
 - ~~4) A blatant disregard to responsibilities for the child's welfare. This includes the failure of the parent or caretaker to take reasonable actions to prevent the child from misusing mood altering substances (neglect).~~
 - ~~C. Factors to be considered~~

~~The following factors should be considered when determining whether a child is involved in substance misuse:~~

 - ~~1) Age of child.~~
 - ~~2) Frequency of substance misuse.~~
 - ~~3) Amount of substance consumed.~~
 - ~~4) Degree of behavior dysfunction, or physical impairment linked to substance misuse.~~
 - ~~5) The child's culture, particularly as it relates to use of alcohol in religious ceremonies or on special occasions.~~
 - ~~6) Whether the parent's or caretaker's attempts to control an older child's substance misuse or to seek help for the child's substance misuse were reasonable under the circumstances.~~

~~III. Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that a child is currently involved in or has been involved in substance misuse; and~~
- B. ~~Secured a preponderance of evidence that the substance misuse was the result of maltreatment as defined in Section I.~~
- C. ~~Applied the factors in Section II, C, above and determined that the substance misuse is significant enough to constitute child abuse and neglect.~~

SUFFOCATION (Priority I)

I. Definition

~~The parent or caretaker intentionally or knowingly uses any means to interfere with a child's ability to breathe. This includes, but is not limited to choking the child, compressing the child's chest, placing a binding material around the child's neck or covering the child's nose and mouth with a hand or other object that restricts breathing.~~

II. Taking a report

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child has been suffocated as a result of maltreatment.~~

B. Usage

~~The reporter has reason to believe suffocation resulted from one of the following:~~

- ~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~
- ~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another that resulted in suffocation (failure to protect).~~

III. Founding a report

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that a child has been suffocated.~~
- B. ~~Secured a preponderance of evidence that the suffocation occurred as a result of maltreatment as defined in Section I.~~

THREAT OF HARM (Priority I)

I. Definition

~~Conduct of the parent or caretaker creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ.~~

II. Taking a report

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a parent or caretaker's conduct has created a realistic and serious threat of harm.~~

B. Usage

~~The reporter has reason to believe that the parent or caretaker's conduct created a~~

realistic and serious threat of harm that resulted from one of the following:

- 1) ~~A non-accidental action of the parent or caretaker.~~
- 2) ~~An intentional or knowing act of the parent or caretaker.~~

III. ~~Founding a Report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that the incident occurred; and~~
- B. ~~Determined that the child is/was facing a realistic and serious threat of harm; and~~
- C. ~~Secured a preponderance of evidence that the parent or caretaker created a significant and realistic threat of harm as defined above in Section I.~~

THROWING A CHILD (Priority II)

I. ~~Definition~~

~~The parent or caretaker of the child has thrown, hurled, flung, pushed, or shoved the child into an object or across a space.~~

II. ~~Taking a Report~~

- A. ~~An acceptable reporter is any person who has reasonable cause to suspect that a child has been thrown, hurled, or flung by a parent or caretaker.~~

- B. ~~Usage~~

~~The reporter has reason to believe that the child has been thrown, hurled, or flung into an object or across space by his parent or caretaker.~~

III. ~~Founding a Report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Secured a preponderance of evidence that the child was thrown, hurled, or flung by a parent or caretaker into an object or across space and a physical injury occurred.~~

NOTE: ~~Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline should cause no more than transient pain or minor temporary marks.~~

NOTE: ~~The age, size, and condition of the child and the location of the injury and the frequency of recurrence of injuries shall be considered when determining whether the physical discipline is reasonable and moderate.~~

TYING/CLOSE CONFINEMENT: (Priority II)

I. ~~Definition~~

~~Tying a child to a fixed (or heavy) object, or binding or tying a child's limbs together. Examples include, but are not limited to:~~

A. ~~Tying one or more limbs to a bed, chair, or other object except as authorized by a licensed physician.~~

B. ~~Tying a child's hands or legs together.~~

II. ~~Taking a report~~

A. ~~An acceptable reporter is any person with reasonable cause to suspect that a child was tied or closely confined as the result of maltreatment.~~

B. ~~Usage~~

~~The reporter has reason to believe that the child was tied or closely confined as a result of one of the following:~~

~~1) A direct, non-accidental action of the parent or caretaker (abuse).~~

~~2) The failure of the parent or caretaker to make reasonable efforts to stop an action by another person that resulted in the child being tied or closely confined (failure to protect.)~~

III. ~~Founding a report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

A. ~~Verified that the child is/was tied or closely confined; and~~

B. ~~Secured a preponderance of evidence that the tying or close confinement was sustained as a result of maltreatment as defined in Section I. If the alleged offender contends that reasonable tying/close confinement was recommended by a physician or psychiatrist as a suggested means to ensure the child's safety or control the child's behavior, this must be verified by the physician or psychiatrist.~~

UNDERAGED JUVENILE OFFENDER (UNDER 14 YEARS OF AGE) (Priority I)

I. ~~Definition~~

~~Sexual abuse by a child younger than 14 years of age of another child younger than 18 years of age. The sexual abuse may be any of the following acts:~~

A. ~~Any contact or attempted contact between the sex organ of one child and the mouth of another child.~~

B. ~~Any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks or anus of another child or the breast of a female child.~~

C. ~~Any penetration, however slight, of the anus or mouth of another child by his penis.~~

D. ~~The penetration of the labia majora or anus of another child by any body member or foreign instrument manipulated by the child being assessed.~~

II. ~~Taking a Report~~

A. ~~An acceptable reporter is any person, who has reasonable cause to suspect that a child (under age 14 years) has sexually abused another child~~

~~B. Usage~~

~~The reported age of the child being investigated is under the age of 14.~~

~~III. Founding a Report~~

~~A determination may be made only after the Worker has:~~

- ~~A. Established the exact age of the child being assessed and whether or not he/she has sexually abused (such as the behaviors listed above) another child; and~~
- ~~B. Secured a preponderance of evidence that the sexual abuse or attempted sexual abuse either occurred or did not occur.~~

~~The overall finding or determination will be one of the following:~~

- ~~A. Unfounded (unsubstantiated) — If there is no preponderance of evidence that the sexual abuse occurred.~~
- ~~B. Exempt From Finding (less than 14 years of age) — There is a preponderance of evidence that the sexual abuse occurred AND the child being assessed is younger than 14.~~

~~NOTE: If there is a preponderance of evidence that the sexual abuse occurred AND the child being assessed is 14 years of age or older, then an overall finding or determination of "True" will fall under one of the following types of sexual child maltreatment, whichever is most appropriate:~~

- ~~1. Oral Sex~~
- ~~2. Pornography/Live Sex Act Exposure~~
- ~~3. Sexual Contact~~
- ~~4. Sexual Exploitation~~
- ~~5. Sexual Penetration~~

VOYEURISM

~~I. Definition~~

~~Looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.~~

~~II. Taking a Report~~

- ~~A. An acceptable reporter is any person with reasonable cause to suspect that a caregiver has looked, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.~~
- ~~B. The Child Abuse Hotline shall only accept reports of child maltreatment naming an adult as the victim if:
 - ~~1) The alleged offender is a caretaker of any child; and,~~
 - ~~2) The person making the report is one of the following:~~~~

- a. ~~The adult victim;~~
- b. ~~A law enforcement officer; or,~~
- c. ~~The alleged offender.~~

C. ~~Usage~~

~~The reporter has reason to believe that a caregiver has looked, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.~~

III. ~~Founding a Report~~

~~This allegation of maltreatment may be founded only after the Worker has:~~

- A. ~~Verified that a caregiver has looked, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude; and,~~
- B. ~~Secured a preponderance of evidence that occurred caregiver has looked, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.~~

Arkansas Department of Human Services
Division of Children and Family Services

Child Maltreatment Investigation Determination Guide

PUB-357 R. July 2020

Introduction

This publication outlines the legal elements required to make a true finding for child maltreatment at the conclusion of a child maltreatment investigation as per the Child Maltreatment Act. This publication is promulgated under the authority of § 12-18-105 of the Arkansas Code to carry out the Child Maltreatment Act. The information within this publication, therefore, has the force and effect of law.

This publication is designed to help investigators identify the elements that must be established before an allegation of child maltreatment can be determined true under the Child Maltreatment Act, which defines child maltreatment as conduct that falls under one (1) or more of five (5) categories: (1) Abandonment, (2) Abuse, (3) Neglect, (4) Sexual Abuse, and (5) Sexual Exploitation.

To do this, Section 1 sets out the statutory definition and exceptions for each category of child maltreatment. Section 1 then explains the elements required to make a true finding for each category of child maltreatment and each type of child maltreatment that may occur under each category of child maltreatment. Section 2 provides an index of all thirty-eight (38) types of child maltreatment.

An investigator can only make a true finding as to one (1) or more of the five (5) categories of child maltreatment and only then if the investigator finds that each of the elements for the applicable child maltreatment category type are established by a preponderance of the evidence. "Preponderance of the evidence" is a legal standard of proof that means that it is "more likely than not" that child maltreatment occurred based on the all the evidence that the investigator is able to collect during the given investigation.

A true finding cannot be made based solely on the examples given in this publication; a true finding must be based on the investigator's determination that each element of the given category type of child maltreatment is supported by a preponderance of the evidence. The examples do not change the elements required to constitute child maltreatment, but rather merely provide possible ways in which a given category type of child maltreatment could occur.

Glossary

A/O. Alleged Offender. The person alleged to have committed child maltreatment.

A/V. Alleged Victim. The person who is the alleged victim of child maltreatment.

Investigator. An employee of the Department of Human Services (DHS) or the Arkansas State

Police who investigates allegations of child maltreatment.

Proposed

Section 1: Categories and Types of Maltreatment

- 1.1 Abandonment.
- 1.2 Abuse.
- 1.3 Neglect.
- 1.4 Sexual Abuse.
- 1.5 Sexual Exploitation.

Proposed

1.1 Abandonment

Definition

Abandonment means the failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause. Abandonment also means an articulated intent to forego parental responsibility.

Exceptions

Married Minor Exception. Abandonment does not include acts or omissions of a parent towards a married minor.

Disrupted Adoption Exception. Abandonment does not include situations in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abandonment is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abandonment:

Abandonment for an indefinite period:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;
- 3) A/O did not provide reasonable support for the A/V and maintain regular contact with the A/V through statement or contact; and
- 4) A/O intends to continue the lack of reasonable support and regular contact for an indefinite period in the future.

Abandonment without just cause:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;
- 3) A/O did not provide support for the A/V or maintain regular contact with the A/V; and

- 4) A/O did not have just cause in failing to support or maintain regular contact with the A/V.

Abandonment by articulated intent:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred; and
- 3) A/O articulated an intent to forego parental responsibility of the A/V.

Proposed

1.2 Abuse

Definition

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

- Extreme or repeated cruelty to a child;
- Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;
- Any injury that is at variance with the history given;
- Any nonaccidental physical injury;
- Any of the following intentional or knowing acts, with physical injury and without justifiable cause: throwing, kicking, burning, biting, or cutting a child; striking a child with a closed fist; shaking a child; or striking a child on the face or head;
- Any of the following intentional or knowing acts, with or without physical injury: striking a child six (6) years of age or younger on the face or head; shaking a child three (3) years of age or younger; interfering with a child's breathing; pinching, biting, or striking a child in the genital area; tying a child to a fixed or heavy object or binding or tying a child's limbs together;
- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to marijuana, alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service), a narcotic, or an over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
- Any of the following intentional or knowing acts, with or without physical injury: exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine;
- Any of the following intentional or knowing acts, with or without physical injury: subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;
- Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or
- Female genital mutilation.

This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. This means that other acts or omission can constitute abuse if the action is unreasonable and the A/O is a parent, guardian, custodian, person eighteen (18) years of age or older who lives in the home with the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare. However, if the act or omission could fall within the definition of one (1) of the types of abuse, then the act or omission must meet the elements of that type of abuse to constitute child maltreatment.

Exceptions

Physical Discipline Exception. Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate.

Appropriate Restraint Exception. Abuse does not include when a child suffers transient pain or minor temporary marks as a result of an appropriate restraint if: the person exercising the restraint is an employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the person exercising the restraint is acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the child welfare agency has policy and procedures regarding restraints; no other alternative exists to control the child except for a restraint; the child is in danger or hurting himself or herself or others; the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; the restraint is for a reasonable period of time; and the restraint is in conformity with training and child welfare agency's policies and procedures.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abuse:

Extreme or repeated cruelty.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) At least one (1) act or omission of the A/O towards the child was extremely cruel or more than (1) one act or omission of the A/O towards the child was cruel.

Threat of harm.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions created a realistic and serious threat to the A/V of death, permanent or temporary disfigurement, or impairment of a bodily organ.

NOTE: True findings for abuse involving the threat of harm can be made even if the A/V was not injured; this type only requires that the A/O created a realistic and serious threat to the A/V of death, disfigurement, or impairment of a bodily organ.

Mental injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions caused injury injured A/V's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the A/V's ability to function within the A/V's normal range of performance and behavior related to intellectual, emotional, or psychological development.

Injury at variance with explanation given.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a

parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/V's injury is not consistent with the history given by the A/O or given by anyone else related to the A/O's care of the A/V.

Nonaccidental physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's act or omission caused any nonaccidental physical injury to the A/V.

NOTE: True findings for nonaccidental physical injuries can be made regardless of whether the A/O intended to cause the physical injury that the A/V suffered; the relevant and culpable act or omission is the act or omission that caused the nonaccidental physical injury.

Abuse with physical injury and without justifiable cause.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;

- 3) A/O threw the A/V, kicked the A/V, burned the A/V, bit the A/V, cut the A/V, struck the A/V with a closed fist, shook the A/V, or struck the A/V's face or head;
- 4) A/O intentionally or knowingly committed the act in 3);
- 5) A/O did not have a justifiable cause in committing the act or omission; and
- 6) A/O's act or omission caused any physical injury to the A/V.

Abuse with or without physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O struck the A/V who was six (6) years of age or younger on the face or head, shook the A/V who was three (3) years of age or younger, interfered with the A/V's breathing, pinched the A/V in the genital area, bit the A/V in the genital area, struck the A/V in the genital area, tied the A/V to a fixed or heavy object, or bound or tied the A/V's limbs together; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;

- 3) A/O gave or permitted the A/V to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse involving substances that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance interfered with the A/V's normal physiological functions.

NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion. Staff are encouraged to consult with a physician as needed for any questions related to what may constitute normal physiological function.

Abuse involving substances that may alter the mood of a child.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V , or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O gave, or permitted the A/V to consume or inhale, a substance not prescribed by a physician that has the capacity to alter the mood of the child, including without limitation:
 - A. Marijuana;
 - B. Alcohol unless it is given to the A/V during a recognized and established religious ceremony or service;
 - C. A narcotic; or
 - D. An over-the-counter drug, but only if:
 1. A/O purposely administers an overdose to the A/V or purposely gives an inappropriate over-the-counter drug to the A/V; and
 2. A/V is detrimentally impacted by the overdose or the inappropriate over-the-counter drug; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving exposure to a chemical that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O exposed A/V to a chemical that has the capacity to interfere with normal physiological functions, including without limitation, a chemical used or generated during the manufacture of methamphetamine; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse involving exposure to a chemical that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance actually interfered with the A/V's physiological functions.

NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion.

Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy;

- 4) Medical personnel confirmed that A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy; and
- 5) A/O intentionally or knowingly committed Munchausen syndrome by proxy or a factitious illness by proxy.

NOTE: True findings for abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness can be made regardless of whether the act caused A/V any physical injuries.

NOTE: Munchausen syndrome by proxy and factitious illness by proxy are often diagnosed with newer terms such as factitious disorder imposed on another, pediatric condition falsification, or medical child abuse. If the A/O sought treatment for a fabricated medical condition, then these other diagnoses are each sufficient to establish Munchausen syndrome by proxy or factitious illness by proxy.

Human trafficking.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O recruited, harbored, transported, or obtained the A/V for labor or services;
- 4) A/O committed the act in 3) through force, fraud, or coercion;
- 5) A/O committed the act in 3) for the purpose of subjecting the A/V to involuntary servitude, peonage, debt bondage, or slavery.

Female genital mutilation

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's

parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was a female under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O removed all or part of the A/V's external female genitalia or otherwise harmed the A/V's female genitalia unless
 - A. The conduct is performed by a licensed medical professional;
 - B. The conduct occurs in the furtherance of a surgical or other lawful medical procedure; and
 - C. The procedure is:
 1. Necessary to preserve or protect the physical health of the A/V; or
 2. Part of a sex reassignment procedure requested by the A/V.

NOTE: Female genital mutilation includes without limitation procedures such as a clitoridectomy; the partial or total removal of the clitoris or the prepuce; the excision or the partial or total removal of the clitoris and the labia minora (with or without the excision of the labia majora); the infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting or appositioning the labia minora or the labia majora (with or without the excision of the clitoris); pricking, piercing, incising, scraping, or cauterizing the genital area; or any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

1.3 Neglect

Definition

Neglect means acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of a married minor, that constitute one (1) of the following:

- Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;
- Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;
- Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;
- Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;
- Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;
- Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm, or, in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

- Failure to appropriately supervise the child that results in the child's being placed in inappropriate circumstances creating a dangerous situation, or a situation that puts the child at risk of harm;
- Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled;
- An act or omission by the child's parent, custodian, or guardian resulting in the child being habitually and without justification absent from school;
- Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child; or
- At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of neglect is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of neglect:

Failure to prevent abuse.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed or refused to prevent the abuse of the A/V; and
- 4) A/O knew or had reasonable cause to know the A/V was being abused or had been abused.

NOTE: True findings for neglect involving the failure to prevent abuse can be made only if the A/V was abused. If the A/V did not suffer abuse, the separate type of neglect involving the failure to protect from maltreatment or parental unfitness may be applicable because that type does not require that the A/V be maltreated.

Failure to provide necessary food, clothing, shelter, or medical treatment.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed or refused to provide necessary food, clothing, shelter, or medical treatment necessary for the A/V's well-being unless
 - A. The failure or refusal is caused primarily by the financial inability of the person legally responsible for the A/V, and
 - B. No services for relief have been offered.

Failure to protect from maltreatment or parental unfitness.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, A/V care facility, public or private school, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness; and
- 4) A/O knew or should have known about the condition that posed a risk of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the A/V.

NOTE: True findings for neglect involving the failure to protect from child maltreatment or parental unfitness can be made even if the A/V was not maltreated or subjected to parental unfitness; this type only requires that

the A/O failed to take reasonable action to protect the A/V from the risk of child maltreatment or parental unfitness.

Failure to provide for essential and necessary needs.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide, or is irremediably unable to provide, for the essential physical, mental, or emotional needs of the A/V, including without limitation the failure to provide a shelter that does not pose a risk to the health or safety of the A/V.

Failure to provide for care, maintenance, or support.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide for the A/V's
 - A. Care and maintenance,
 - B. Proper and necessary support, or
 - C. Medical, surgical, or other necessary care.

Failure to assume responsibility for a child.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and

- 3) A/O failed to assume responsibility for the care and custody of the A/V even though the A/O was able to do so, or to participate in a plan to assume responsibility for the care and custody of the A/V even though the A/O was able to do so.

Inadequate supervision by leaving a child alone.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to appropriately supervise the A/V and left the A/V alone at an inappropriate age or in inappropriate circumstances; and
- 4) The A/O's act or omission created a dangerous situation or a situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two (2) factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V and the foreseeability of harm if the A/V was left alone in those circumstances.

Inadequate supervision by placing child in a dangerous situation.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to appropriately supervise the A/V and placed the A/V in:
 - A. Inappropriate circumstances that created a dangerous situation, or
 - B. A situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V.

Educational neglect by failing to enroll a child in school.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was between six (6) years of age and seventeen (17) years of age when the alleged neglect occurred; and
- 3) A/O failed to ensure that A/V was enrolled in school or was being legally homeschooled.

NOTE: A home school is a school provided by a parent or legal guardian for his or her own child.

NOTE: Staff must determine if a child is legally home-schooled as per A.C.A. 6-15-503. Please consult with local Office of Chief Counsel (OCC) attorney to determine if a child is legally home-schooled.

Educational neglect due to absence from school.

- 1) A/O is a parent, custodian, or guardian;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O's act or omission caused the A/V to be habitually absent from school; and
- 4) A/V's absences were not justified.

Presence of illegal substance in a child when a child is born.

- 1) A/O is the A/V's mother;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/V had the illegal substance in the A/V's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/V's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/V at birth.

Presence of illegal substance in a mother when a child is born.

- 1) A/O is the A/V's mother;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/O had the illegal substance in the A/O's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/O's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/O when the A/V is born.

1.4 Sexual Abuse

Definition

Sexual abuse means:

- By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; indecent exposure; or forcing the watching of pornography or live sexual activity;
- By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a caretaker to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact; forcing or encouraging the watching of pornography; forcing, permitting, or encouraging the watching of live sexual activity; forcing the listening to a phone sex line; an act of voyeurism; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
- By a person eighteen (18) years of age or older to a person who is younger than (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Exceptions

Defense and Affirmative Defense Exceptions.

Pursuant to 12-18-804, for any act or omission of child maltreatment that would be a criminal offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of: a statute of limitation; lack of capacity as a result of mental disease or defect under § 5-2-312; and affirmative defenses under §§ 5-1-112 — 5-1-114.

For example, if a teacher and a student have a sexual relationship, an affirmative defense may apply. If the teacher engages in sexual intercourse or deviate sexual activity with a student less than 21 years of age and the teacher uses his or her position of trust or authority over the victim, then the conduct would fall under the definition of sexual abuse. However, if the teacher was no more than 3 years older than the student, then the affirmative defense would apply.

Staff must consult with local OCC attorney regarding possible defense and affirmative defense exceptions.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual abuse:

Sexual intercourse.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 1. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 2. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred; and
 3. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred; and
 - C. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
- A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 - 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 - 4. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V;

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V; and
 - D. A/O used forcible compulsion to engage in the sexual intercourse or attempted sexual intercourse, which is where either A/V did not want to engage in the sexual intercourse or attempted sexual intercourse, or the A/O used physical force, intimidation, or a

threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual intercourse or attempted sexual intercourse.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: The exception to sexual abuse may apply to this type of sexual abuse.

Deviate sexual activity.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 - A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 - D. Where deviate sexual activity is:
 1. An act of sexual gratification; and
 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the

attendant circumstances surrounding the specific complaint of child maltreatment.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
 - A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 - D. Where deviate sexual activity is:
 1. An act of sexual gratification; and
 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;

2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
5. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however, slight of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private

- residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V;
 5. A/O used forcible compulsion to engage in the deviate sexual activity or attempted deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity; and
 6. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
- A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V; and
 - D. A/O used forcible compulsion to engage in the deviate sexual activity or deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity.
 - E. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: The exception to sexual abuse may apply to this form of sexual abuse.

Sexual contact.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 - A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 - D. Where sexual contact is:
 1. An act of sexual gratification; and
 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual contact described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
 - A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;

- C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
- D. Where sexual contact is:
 - 1. An act of sexual gratification; and
 - 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 5. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves
 - (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - (2) The encouraging of the A/V to touch the offender in a sexual manner; or
 - (3) The offender requesting to touch the A/V in a sexual manner; or

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;

3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V;
5. A/O used forcible compulsion to engage in the sexual contact or attempted sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact; and
6. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves
 - (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - (2) The encouraging of the A/V to touch the offender in a sexual manner; or
 - (3) The offender requesting to touch the A/V in a sexual manner; or

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
- A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V; and
 - D. A/O used forcible compulsion to engage in the sexual contact or sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact.
 - E. Where sexual contact is:
 - 1. An act of sexual gratification; and
 - 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

Indecent exposure.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O exposed his or her sexual organs to the A/V;
- 4) A/O intended to arouse or gratify the sexual desire of the A/O or some other person; and
- 5) A/O knew that exposing his or her sexual organs was likely to cause affront or alarm.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Pornography.

- 1) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 4. A/O forced or encouraged A/V to watch pornography, which is:
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

- b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
- c. Obscene or licentious material; or

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or directed the A/V to watch pornography.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O forced A/V to watch pornography, which is
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
 - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
 - c. Obscene or licentious material; and
5. A/O forced A/V where either A/V did not want to watch the pornography, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch pornography; or

NOTE: The age, developmental stage, and stature of the

A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Live Sexual Activity.

- 1) If the A/O was fourteen (14) years old or older and the A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:

A. The A/O was the A/V's caretaker where the following facts are established:

1. The A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
4. A/O forced, encouraged, or permitted the A/V to watch live sexual activity; or

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or even permitted the A/V to watch live sexual activity.

B. The A/O was not the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O forced A/V to watch live sexual activity; and
 5. A/O forced A/V where either A/V did not want to watch the live sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch live sexual activity; or

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Phone Sex Line.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 4) A/O forced A/V to listen to a phone sex line; and
- 5) A/O forced A/V where either A/V did not want to listen to the phone sex line, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to listen to the phone sex line; or

Voyeurism.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including

without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;

- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 4) A/O looked at the A/V in a private location or place in which a child may reasonably be expected to be nude or partially nude; and
- 5) A/O's purpose in looking was for sexual arousal or gratification; or

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Sex Trafficking.

- 1) A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O recruited, harbored, transported, obtained, patronized, or solicited A/V; and
- 4) A/O's purpose was to facilitate a commercial sex act.

1.5 Sexual Exploitation

Definition

Sexual exploitation means:

- By a person eighteen (18) years of age or older to a child who is not his or her spouse: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.
- By a caretaker to a child: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual exploitation:

Sexual exploitation

- 1) A/O was, when the alleged sexual abuse occurred:
 - A. Eighteen (18) years old or older and not A/V's spouse; or
 - B. A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and

- 3) A/O:
 - A. Allowed, permitted, or encouraged A/V to participate or be depicted in prostitution, obscene photography, or obscene filming; or
 - B. Obscenely depicted, obscenely posed, or obscenely postured the A/V for any use or purpose.

Section 2: Index of All Child Maltreatment Types Within Each Maltreatment Category (types listed alphabetically within each category)

ABANDONMENT

Abandonment for an indefinite period

Abandonment without just cause

Abandonment by articulated intent

ABUSE

Abuse involving exposure to a chemical that may interfere with normal physiological functions

Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness

Abuse involving substances that may alter the mood of a child

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions

Abuse with physical injury and without justifiable cause

Abuse with or without physical injury

Extreme or repeated cruelty

Female genital mutilation

Human trafficking

Injury at variance with explanation given

Mental injury

Nonaccidental physical injury

Threat of Harm

NEGLECT

Educational neglect by failing to enroll a child in school

Educational neglect due to absence from school

Failure to assume responsibility for a child

Failure to prevent abuse

Failure to protect from maltreatment or parental unfitness

Failure to provide necessary food, clothing, shelter, or medical treatment

Failure to provide for care, maintenance, or support

Failure to provide for essential and necessary needs

Inadequate supervision by leaving a child alone

Inadequate supervision by placing child in a dangerous situation

Presence of illegal substance in a child when a child is born

Presence of illegal substance in a mother when a child is born

SEXUAL ABUSE

Deviate sexual activity

Indecent exposure

Live sexual activity

Phone sex line

Pornography

Sex trafficking

Sexual contact

Sexual intercourse

Voyeurism

SEXUAL EXPLOITATION

Sexual exploitation

Proposed

Procedure II-B1: Child Abuse Hotline Referral to Differential Response

017/202013

The Child Abuse Hotline Worker will:

- A. Receive and document all child maltreatment allegation reports with sufficiently identifying information as defined by Arkansas law. Situations in which the hotline assesses as an immediate danger to the child's health and physical well-being based upon the severity of the allegations shall be excluded from the Differential Response pathway and referred to DCFS as an investigation.
- B. Receive fax transmission in non-emergency situations by identified reporters who provide their name, phone number, and email address (for online reporting). Confirm receipt of fax transmission via a return fax transmission.
- C. Conduct a history check on all reports unless call waiting to be answered by the hotline have been waiting for 15 minutes or longer. History checks will be conducted on serious maltreatment allegations or allegations involving children three (3) years of age and younger regardless of wait time.
- D. Attempt to secure all information requested in each screen within the Referral Section of CHRIS and elicit all information requested on the "Referral" and "Narrative" screens:
 - 1) Reason(s) the reporter suspects child maltreatment and how the reporter acquired the information;
 - 2) Current risk of harm to the child;
 - 3) Mental and physical condition of alleged offender;
 - 4) Potential danger to staff assessing the report;
 - 5) Identity and location of possible witnesses or persons knowledgeable about the alleged child maltreatment;
 - 6) Relevant addresses and directions;
 - 7) Licensing authority and facility involved (if applicable).
- E. Prioritize the report by keying the "Ref. Accept" screen. Central Registry Search results is a mandatory field on this screen. ~~Use the Child Maltreatment Assessment Protocol (PUB-357) as a guide.~~
- F. If the referral meets the Differential Response eligibility criteria noted above, forward the report to the Differential Response Coordinator or designee for assessment along with any pertinent Central Registry information.
- G. Inform the caller if the report does not constitute a report of child maltreatment and make appropriate referrals.
- H. Notify each mandated reporter who makes a call to the hotline if the mandated reporter's call is not accepted or is screened out on a subsequent hotline supervisor review. Said notification should be made within ~~48 hours excluding weekends and holidays~~ two business days.

Procedure II-B1: Child Abuse Hotline Referral to Differential Response

07/2020

The Child Abuse Hotline Worker will:

- A. Receive and document all child maltreatment allegation reports with sufficiently identifying information as defined by Arkansas law. Situations in which the hotline assesses as an immediate danger to the child's health and physical well-being based upon the severity of the allegations shall be excluded from the Differential Response pathway and referred to DCFS as an investigation.
- B. Receive fax transmission in non-emergency situations by identified reporters who provide their name, phone number, and email address (for online reporting). Confirm receipt of fax transmission via a return fax transmission.
- C. Conduct a history check on all reports unless call waiting to be answered by the hotline have been waiting for 15 minutes or longer. History checks will be conducted on serious maltreatment allegations or allegations involving children three (3) years of age and younger regardless of wait time.
- D. Attempt to secure all information requested in each screen within the Referral Section of CHRIS and elicit all information requested on the "Referral" and "Narrative" screens:
 - 1) Reason(s) the reporter suspects child maltreatment and how the reporter acquired the information;
 - 2) Current risk of harm to the child;
 - 3) Mental and physical condition of alleged offender;
 - 4) Potential danger to staff assessing the report;
 - 5) Identity and location of possible witnesses or persons knowledgeable about the alleged child maltreatment;
 - 6) Relevant addresses and directions;
 - 7) Licensing authority and facility involved (if applicable).
- E. Prioritize the report by keying the "Ref. Accept" screen. Central Registry Search results is a mandatory field on this screen.
- F. If the referral meets the Differential Response eligibility criteria noted above, forward the report to the Differential Response Coordinator or designee for assessment along with any pertinent Central Registry information.
- G. Inform the caller if the report does not constitute a report of child maltreatment and make appropriate referrals.
- H. Notify each mandated reporter who makes a call to the hotline if the mandated reporter's call is not accepted or is screened out on a subsequent hotline supervisor review. Said notification should be made within two business days.

PROCEDURE II-C2: County Office Interaction with Child Abuse Hotline

07/2020

The County Supervisor or designee will:

- A. Take the information on child maltreatment as directed in Procedure II-C1 if a reporter contacts the county office and refuses to call or has been unable to contact the Child Abuse Hotline.
- B. Determine whether the report is a valid report of maltreatment by using PUB-357:the Child Maltreatment Determination Guide as a reference if necessaryAssessment Protocol (PUB-357).
- C. Tell the reporter if the report is not an allegation of child maltreatment.
- D. Call the Child Abuse Hotline if the report is accepted.
The Child Abuse Hotline will prioritize the report and refer for assessment by entering the report into the "Referral" section of ~~the Division's information system~~CHRIS. Once a report is entered ~~in CHRIS~~, workers with proper security will have access to referral, investigative, and case information. County Office staff are strictly prohibited from entering reports into ~~the Division's information system~~CHRIS. Any unauthorized use or altering of this information is also strictly prohibited. Please see DHS Policy 1084, "Employee Discipline" on information related offenses.
- E. Check the computer at least once in the ~~morningA.M.~~ and once in the ~~afternoonP.M.~~ for child maltreatment report transmissions.
- F. Acknowledge receipt of Priority I transmissions within two ~~(2)~~ working hours and receipt of Priority II transmissions within three (3) working hours.
- G. Advise the Child Abuse Hotline promptly of after-hours on-call Family Service Workers' names by entering information into the "Organization" screens in ~~the Division's information system~~CHRIS.
- H. Establish procedures to ensure the security and confidentiality of reports at the local level and the Child Maltreatment Assessment files when not in use.
- I. Notify Prosecuting Attorney by letter of any failure by a mandated reporter to report suspected child maltreatment.
- J. Notify Prosecuting Attorney by letter when a reporter makes a report without good cause.

PROCEDURE II-C2: County Office Interaction with Child Abuse Hotline

07/2020

The County Supervisor or designee will:

- A. Take the information on child maltreatment as directed in Procedure II-C1 if a reporter contacts the county office and refuses to call or has been unable to contact the Child Abuse Hotline.
- B. Determine whether the report is a valid report of maltreatment by using PUB-357: Child Maltreatment Determination Guide as a reference if necessary.
- C. Tell the reporter if the report is not an allegation of child maltreatment.
- D. Call the Child Abuse Hotline if the report is accepted.
The Child Abuse Hotline will prioritize the report and refer for assessment by entering the report into the "Referral" section of the Division's information system. Once a report is entered, workers with proper security will have access to referral, investigative, and case information. County Office staff are strictly prohibited from entering reports into the Division's information system. Any unauthorized use or altering of this information is also strictly prohibited.
- E. Check the computer at least once in the morning and once in the afternoon for child maltreatment report transmissions.
- F. Acknowledge receipt of Priority I transmissions within two (2) working hours and receipt of Priority II transmissions within three (3) working hours.
- G. Advise the Child Abuse Hotline promptly of after-hours on-call Family Service Workers' names by entering information into the "Organization" screens in the Division's information system.
- H. Establish procedures to ensure the security and confidentiality of reports at the local level and the Child Maltreatment Assessment files when not in use.
- I. Notify Prosecuting Attorney by letter of any failure by a mandated reporter to report suspected child maltreatment.
- J. Notify Prosecuting Attorney by letter when a reporter makes a report without good cause.

PROCEDURE II-D4: Child Maltreatment Report Investigation Interviews

074/2020

The FSW will:

- A. Prepare for interviews by reviewing intake report and any prior child maltreatment reports, etc. See "Gathering Information" practice guide series for more information.
- B. Conduct a separate interview with the alleged victim outside the presence of the alleged offender and the alleged offender's attorney in reports involving both in-home and out-of-home offenders. Exceptions must be approved by a supervisor.
 - 1) If not age appropriate for an interview, observe alleged victim outside the presence of the alleged offender and the alleged offender's attorney.
- C. Interview any siblings of the alleged victim and any other children under the care of the alleged offender (including during investigations with alleged out-of-home offenders) as the siblings and other children under the care of the alleged offender may have collateral information or have been within access of the alleged offender. Exceptions must be approved by a supervisor.
 - 1) Interview all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the alleged offender's attorney.
 - a) If not age appropriate for an interview, observe all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the offender's attorney.
 - 2) Considering the best interest of the child, limit, as appropriate, other persons allowed to be present when a child is interviewed concerning allegations of child maltreatment.
- D. Conduct a cursory physical examination of children in the least invasive manner possible during the interview. A cursory physical examination is the observation of a child's external, physical condition which may require that the child's clothing be removed or rearranged.
 - 1) If the child is under the age of five (5), conduct the exam with the assistance of the parent/caretaker.
- E. Complete CFS-327a: Physical Documentation--Body Diagram when applicable and if a medical provider has not already completed CFS-327-A or similar diagram specific to the current allegation.
- F. Photograph visible injuries; label and date photos.
- G. Interview the custodial and non-custodial parent of the alleged victim child and inform them of DCFS responsibility to assess.
- H. Interview alleged offender.
 - 1) In addition to gathering information about the alleged maltreatment, ascertain the alleged offender's:
 - a) Employer, including the physical address;
 - b) Job duties at place of employment; and,
 - c) Supervisor's name.
- I. Interview collateral sources, as appropriate, including teachers, neighbors, witnesses, and the person making the report.
- J. When interviewing a child at school, provide the principal or designee with a copy of CFS-213-A: School District Prohibition from Notifying Parent, Guardian, or Custodian of a Child Maltreatment Investigation.
- K. Enter interview notes within forty-eight (48) hours of completion of interviews.
- L. If it is discovered that any interviewee is an unlicensed child care provider (i.e., caring for more than five children including an individual's own pre-school children), notify the Division of Child Care and Early Childhood Education.
- M. Assist the investigative supervisor with the coordination of interviews when primary (i.e., where the child is currently located) and secondary counties are involved.
 - 1) The FSW of the primary county will:
 - a) Interview all applicable subjects in his or her county within required timeframes;
 - b) Complete the Health and Safety Assessment (including Health and Safety Checklist, Safety Planning, and Investigation Risk Assessment) in the Division information system CHRIS with

information obtained during primary investigator interviews and information obtained from secondary investigator from secondary's interviews.

2) The FSW of the secondary county will:

- a) Contact the primary county by phone no later than twenty-four (24) hours after interviews are conducted to discuss:
 - i. Any identified safety factors and supporting documentation (e.g., statements made by children, observations of children, caregiver statements, etc.);
 - ii. Determination of any additional children, elderly persons, or individuals with a disability or mental illness who may be at risk;
 - iii. Provisions of the protection plan if one has been implemented;
 - iv. Other persons interviewed, their relationship to the family and how information provided was obtained (e.g., first-hand, hearsay, investigator observations, etc.);
 - v. Verification of identity of persons interviewed;
 - vi. Projected completion date for secondary investigation if it is not completed at time of phone conference.
 - b) Forward any hard copy information to the primary investigator within seventy-two (72) hours after receipt.
- N. Reinitiate the investigation in the second county within 24-72 hours when an investigation is transferred from one county to another and the victim or any other children believed to reside in the home where the report originated have not been seen ~~(see PUB-357: Child Maltreatment Investigation Protocol for more information)~~.
- O. Complete and document all interviews within thirty (30) calendar days of the receipt of the child maltreatment report.

If any parties required to be interviewed (parents, children, alleged victim child, or alleged perpetrator) cannot be located or are unable to communicate, the FSW will, after exercising due diligence, document efforts to locate or communicate with required parties and proceed with the child maltreatment investigation.

The Investigative Supervisor will:

- A. Take the lead in coordinating the investigation when multiple counties are involved;
 - 1) If a secondary assignment is required, complete as soon as possible but no later than twenty-four (24) hours after receipt of referral the summary section in the CHRIS-Division information system's assignment screens describing:
 - a) the reason(s) for the request;
 - b) any special instructions;
 - c) updated locations and telephone numbers of subjects to be seen.
 - 2) Forward the request to the appropriate investigative team.
 - 3) Verbally alert the receiving team supervisor of the secondary investigation request to:
 - a) Verify receipt of report when a secondary team investigator will initiate the investigations;
 - b) Clarify any issues involving the secondary investigation request;
 - c) Coordinate team responsibilities with the Prosecuting Attorney, law enforcement, and hospital staff, as applicable.
- B. Participate in phone conferences with primary and secondary investigators and any other staff involved in the investigation, as applicable.
- C. Conference with the FSW investigator and any other staff involved from other counties as appropriate and document any consultations in the Division's information system CHRIS.
- D. Ensure that counties otherwise communicate and complete the investigation within forty-five (45) calendar days.

PROCEDURE II-D4: Child Maltreatment Report Investigation Interviews

07/2020

The FSW will:

- A. Prepare for interviews by reviewing intake report and any prior child maltreatment reports, etc. See "Gathering Information" practice guide series for more information.
- B. Conduct a separate interview with the alleged victim outside the presence of the alleged offender and the alleged offender's attorney in reports involving both in-home and out-of-home offenders. Exceptions must be approved by a supervisor.
 - 1) If not age appropriate for an interview, observe alleged victim outside the presence of the alleged offender and the alleged offender's attorney.
- C. Interview any siblings of the alleged victim and any other children under the care of the alleged offender (including during investigations with alleged out-of-home offenders) as the siblings and other children under the care of the alleged offender may have collateral information or have been within access of the alleged offender. Exceptions must be approved by a supervisor.
 - 1) Interview all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the alleged offender's attorney.
 - a) If not age appropriate for an interview, observe all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the offender's attorney.
 - 2) Considering the best interest of the child, limit, as appropriate, other persons allowed to be present when a child is interviewed concerning allegations of child maltreatment.
- D. Conduct a cursory physical examination of children in the least invasive manner possible during the interview. A cursory physical examination is the observation of a child's external, physical condition which may require that the child's clothing be removed or rearranged.
 - 1) If the child is under the age of five (5), conduct the exam with the assistance of the parent/caretaker.
- E. Complete CFS-327a: Physical Documentation--Body Diagram when applicable and if a medical provider has not already completed CFS-327-A or similar diagram specific to the current allegation.
- F. Photograph visible injuries; label and date photos.
- G. Interview the custodial and non-custodial parent of the alleged victim child and inform them of DCFS responsibility to assess.
- H. Interview alleged offender.
 - 1) In addition to gathering information about the alleged maltreatment, ascertain the alleged offender's:
 - a) Employer, including the physical address;
 - b) Job duties at place of employment; and,
 - c) Supervisor's name.
- I. Interview collateral sources, as appropriate, including teachers, neighbors, witnesses, and the person making the report.
- J. When interviewing a child at school, provide the principal or designee with a copy of CFS-213-A: School District Prohibition from Notifying Parent, Guardian, or Custodian of a Child Maltreatment Investigation.
- K. Enter interview notes within forty-eight (48) hours of completion of interviews.
- L. If it is discovered that any interviewee is an unlicensed child care provider (i.e., caring for more than five children including an individual's own pre-school children), notify the Division of Child Care and Early Childhood Education.
- M. Assist the investigative supervisor with the coordination of interviews when primary (i.e., where the child is currently located) and secondary counties are involved.
 - 1) The FSW of the primary county will:
 - a) Interview all applicable subjects in his or her county within required timeframes;
 - b) Complete the Health and Safety Assessment (including Health and Safety Checklist, Safety Planning, and Investigation Risk Assessment) in the Division information system with

information obtained during primary investigator interviews and information obtained from secondary investigator from secondary's interviews.

2) The FSW of the secondary county will:

- a) Contact the primary county by phone no later than twenty-four (24) hours after interviews are conducted to discuss:
 - i. Any identified safety factors and supporting documentation (e.g., statements made by children, observations of children, caregiver statements, etc.);
 - ii. Determination of any additional children, elderly persons, or individuals with a disability or mental illness who may be at risk;
 - iii. Provisions of the protection plan if one has been implemented;
 - iv. Other persons interviewed, their relationship to the family and how information provided was obtained (e.g., first-hand, hearsay, investigator observations, etc.);
 - v. Verification of identity of persons interviewed;
 - vi. Projected completion date for secondary investigation if it is not completed at time of phone conference.
- b) Forward any hard copy information to the primary investigator within seventy-two (72) hours after receipt.

- N. Reinitiate the investigation in the second county within 24-72 hours when an investigation is transferred from one county to another and the victim or any other children believed to reside in the home where the report originated have not been seen.
- O. Complete and document all interviews within thirty (30) calendar days of the receipt of the child maltreatment report.

If any parties required to be interviewed (parents, children, alleged victim child, or alleged perpetrator) cannot be located or are unable to communicate, the FSW will, after exercising due diligence, document efforts to locate or communicate with required parties and proceed with the child maltreatment investigation.

The Investigative Supervisor will:

- A. Take the lead in coordinating the investigation when multiple counties are involved;
 - 1) If a secondary assignment is required, complete as soon as possible but no later than twenty-four (24) hours after receipt of referral the summary section in the Division information system's assignment screens describing:
 - a) the reason(s) for the request;
 - b) any special instructions;
 - c) updated locations and telephone numbers of subjects to be seen.
 - 2) Forward the request to the appropriate investigative team.
 - 3) Verbally alert the receiving team supervisor of the secondary investigation request to:
 - a) Verify receipt of report when a secondary team investigator will initiate the investigations;
 - b) Clarify any issues involving the secondary investigation request;
 - c) Coordinate team responsibilities with the Prosecuting Attorney, law enforcement, and hospital staff, as applicable.
- B. Participate in phone conferences with primary and secondary investigators and any other staff involved in the investigation, as applicable.
- C. Conference with the FSW investigator and any other staff involved from other counties as appropriate and document any consultations in the Division's information system.
- D. Ensure that counties otherwise communicate and complete the investigation within forty-five (45) calendar days.

PROCEDURE XIII-A6: Name Removal from Child Maltreatment Central Registry by an Adult Offender's Request

071/2020

REMOVAL CRITERIA

An adult offender is defined as a person age 18 years or older at the time of the act or omission that resulted in a true finding of child maltreatment.

An adult offender may request his or her name be removed from the Child Maltreatment Central Registry when:

- A. The individual has not had a subsequent true report of this type or type involving the specified injury characteristic or detail for one year; and,
- B. More than one year has passed since the adult offender's name was placed on the Child Maltreatment Central Registry.

However, the adult offender may not request removal from the Child Maltreatment Central Registry if any of the following apply:

- A. The adult offender was placed into the Child Maltreatment Central Registry for any type of child maltreatment that resulted in a child fatality as a direct result of the offender's act or omission.
- B. The adult offender is still involved in an open protective services or foster care case for the type of maltreatment for which he or she was placed into the Child Maltreatment Central Registry.
- C. The adult offender was placed into the Child Maltreatment Central Registry for any of the child maltreatment types or type involving any of the injury characteristics or details listed below and his or her parental rights were subsequently terminated either voluntarily or involuntarily:
 - Abuse with deadly weapon
 - Bone fractures
 - Brain Damage/Skull Fracture
 - Burns/scalding
 - Immersion
 - Inadequate supervision – children less than 6 years of age
 - Interfering with a child's breathing
 - Internal injuries
 - Malnutrition
 - Oral sex
 - Poison/noxious substances
 - Presence of illegal substance in child or its mother at time of birth resulting from mother's knowing use of the substance
 - Sexual exploitation
 - Sexual penetration
 - Shaking a child age 3 or younger
 - Striking a child with a closed fist
 - Subdural hematoma
 - Suffocation

(A.C.A. § 12-18-908 allows the types of maltreatment that may be considered for removal to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908]).

Finally, per A.C.A. § 12-18-908, If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the Child Maltreatment Central Registry unless the conviction is reversed or vacated.

APPLICATION FORMAT FOR AN ADULT OFFENDER

An application for name removal from the Child Maltreatment Central Registry shall conform to the following:

- A. The adult offender will submit his or her request to the DCFS Director via the CFS-328-A: Request for Name Removal from the Child Maltreatment Central Registry by Adult Offender and shall also submit:
 - 1) A personal letter describing:
 - a) The offender's reason for the removal request;
 - b) The events and circumstances surrounding the child maltreatment finding; and,
 - c) The offender's rehabilitation; and,
 - d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness;
 - 2) Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
 - 3) Child Maltreatment Registry results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
 - 4) Arkansas Crime Information Center (ACIC) background check results free from child maltreatment-related offense for the preceding one year;
 - 5) State background check results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from child maltreatment-related offense for the preceding one year;
 - 6) Description and documentation (e.g., court records, letter from the adult offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;
 - 7) Evidence of the offender's rehabilitation, including, but not limited to:
 - a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense if applicable.
 - i. For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - a) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - b) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - c) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*);
 - d) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - b) One to three letters of reference from professionals (not to include DCFS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
 - i. No more than one letter of reference can be submitted from a family member.

The Child Maltreatment Central Registry Review Team, as described in Procedure XIII-A6, may select additional, non-child maltreatment-related offenses which prevent name removal from the Child Maltreatment Central Registry.

DETERMINATION OF NAME REMOVAL REQUEST BY AN ADULT OFFENDER

The Child Maltreatment Central Registry Review Team will consider requests for removal of names from the Registry. In determining whether or not to remove an offender from the Child Maltreatment Central Registry the Review Team shall consider any relevant evidence, which may include, but is not limited to the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. And any other information that is relevant to the specific offense.

If the child maltreatment type is in the removal-by-request category, and the adult offender has not had a subsequent true report of this type for one year and more than one year has passed since the offender's name was placed on the Child Maltreatment Central Registry, he will have a right to a review of the case.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the Review Team shall send a denial letter to the adult offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. Any pending criminal charges surrounding the maltreatment;
- F. And any other information that is relevant to the specific offense.

The adult offender shall wait one year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Child Maltreatment Central Registry. However, if the Review Team needs additional information from the adult offender in order to make the determination as to whether to remove his or her name from the Child Maltreatment Central Registry, the Review Team may request that the adult offender provide the additional information without requiring the adult offender to wait an additional year to file a new petition. The Review Team shall inform the adult offender in writing of the specific additional information requested. The adult offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the adult offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the adult offender shall wait one year from the date of the request to file a new petition requesting his or her name be removed from the Child Maltreatment Central Registry.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the adult offender may request an administrative hearing within 30 days from the receipt of the Division's decision.

PROCEDURE XIII-A6: Name Removal from Child Maltreatment Central Registry by an Adult Offender's Request

07/2020

REMOVAL CRITERIA

An adult offender is defined as a person age 18 years or older at the time of the act or omission that resulted in a true finding of child maltreatment.

An adult offender may request his or her name be removed from the Child Maltreatment Central Registry when:

- A. The individual has not had a subsequent true report of this type or type involving the specified injury characteristic or detail for one year; and,
- B. More than one year has passed since the adult offender's name was placed on the Child Maltreatment Central Registry.

However, the adult offender may not request removal from the Child Maltreatment Central Registry if any of the following apply:

- A. The adult offender was placed into the Child Maltreatment Central Registry for any type of child maltreatment that resulted in a child fatality as a direct result of the offender's act or omission.
- B. The adult offender is still involved in an open protective services or foster care case for the type of maltreatment for which he or she was placed into the Child Maltreatment Central Registry.
- C. The adult offender was placed into the Child Maltreatment Central Registry for any of the child maltreatment types or type involving any of the injury characteristics or details listed below and his or her parental rights were subsequently terminated either voluntarily or involuntarily:
 - Abuse with deadly weapon
 - Bone fractures
 - Brain Damage/Skull Fracture
 - Burns/scalding
 - Immersion
 - Inadequate supervision – children less than 6 years of age
 - Interfering with a child's breathing
 - Internal injuries
 - Malnutrition
 - Oral sex
 - Poison/noxious substances
 - Presence of illegal substance in child or its mother at time of birth resulting from mother's knowing use of the substance
 - Sexual exploitation
 - Sexual penetration
 - Shaking a child age 3 or younger
 - Striking a child with a closed fist
 - Subdural hematoma
 - Suffocation

(A.C.A. § 12-18-908 allows the types of maltreatment that may be considered for removal to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908]).

Finally, per A.C.A. § 12-18-908, If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the Child Maltreatment Central Registry unless the conviction is reversed or vacated.

APPLICATION FORMAT FOR AN ADULT OFFENDER

An application for name removal from the Child Maltreatment Central Registry shall conform to the following:

- A. The adult offender will submit his or her request to the DCFS Director via the CFS-328-A: Request for Name Removal from the Child Maltreatment Central Registry by Adult Offender and shall also submit:

- 1) A personal letter describing:
 - a) The offender's reason for the removal request;
 - b) The events and circumstances surrounding the child maltreatment finding; and,
 - c) The offender's rehabilitation; and,
 - d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness;
- 2) Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
- 3) Child Maltreatment Registry results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
- 4) Arkansas Crime Information Center (ACIC) background check results free from child maltreatment-related offense for the preceding one year;
- 5) State background check results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from child maltreatment-related offense for the preceding one year;
- 6) Description and documentation (e.g., court records, letter from the adult offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;
- 7) Evidence of the offender's rehabilitation, including, but not limited to:
 - a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense if applicable.
 - i. For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - a) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - b) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - c) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*);
 - d) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - b) One to three letters of reference from professionals (not to include DCFS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
 - i. No more than one letter of reference can be submitted from a family member.

The Child Maltreatment Central Registry Review Team, as described in Procedure XIII-A6, may select additional, non-child maltreatment-related offenses which prevent name removal from the Child Maltreatment Central Registry.

DETERMINATION OF NAME REMOVAL REQUEST BY AN ADULT OFFENDER

The Child Maltreatment Central Registry Review Team will consider requests for removal of names from the Registry. In determining whether or not to remove an offender from the Child Maltreatment Central Registry the Review Team shall consider any relevant evidence, which may include, but is not limited to the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. And any other information that is relevant to the specific offense.

If the child maltreatment type is in the removal-by-request category, and the adult offender has not had a subsequent true report of this type for one year and more than one year has passed since the offender's name was placed on the Child Maltreatment Central Registry, he will have a right to a review of the case.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the Review Team shall send a denial letter to the adult offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. Any pending criminal charges surrounding the maltreatment;
- F. And any other information that is relevant to the specific offense.

The adult offender shall wait one year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Child Maltreatment Central Registry. However, if the Review Team needs additional information from the adult offender in order to make the determination as to whether to remove his or her name from the Child Maltreatment Central Registry, the Review Team may request that the adult offender provide the additional information without requiring the adult offender to wait an additional year to file a new petition. The Review Team shall inform the adult offender in writing of the specific additional information requested. The adult offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the adult offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the adult offender shall wait one year from the date of the request to file a new petition requesting his or her name be removed from the Child Maltreatment Central Registry.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the adult offender may request an administrative hearing within 30 days from the receipt of the Division's decision.

EXCERPT: POLICY II-D: Investigation of Child Maltreatment Reports

07/2020

INVESTIGATION CLOSURES AND DETERMINATIONS AND RESULTING REFERRALS AND CASE OPENINGS

Within the appropriate timeframes outlined above and utilizing PUB-357: Child Maltreatment **Assessment Protocol as a guide** **Determination Guide as a reference** where applicable, the Department will either:

- A. Administratively close an investigation of a child maltreatment report pursuant to A.C.A. §12-18-601 without a determination of whether the allegation is unsubstantiated, true, true but exempted, or inactive (see Procedure II-D14 for administrative closure criteria and related requirements); or
- B. Close the investigation with a determination that the allegations of child maltreatment are either:
 - 1) Unsubstantiated; or
 - 2) True; or
 - 3) True but exempted for:
 - a) Neglect as defined by A.C.A. § 12-18-103(14)(B) (i.e., Garrett's Law)
 - b) Religious beliefs
 - c) Underaged juvenile offenders; or,
 - 4) Inactive.

Criteria for the administratively closed investigations and child maltreatment determinations are as follows:

Administratively Closed

A child maltreatment investigation will be administratively closed without further action or determination if:

- A. A preliminary investigation has been completed, to include:
 - 1) Interview with the alleged victim outside the presence of the alleged offender.
 - 2) Assessment of the alleged victim's home environment, as appropriate.
 - 3) Interview of a collateral witness;
 - 4) Review prior history of child maltreatment related to the family of the child and to the alleged offender.
- B. There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report; and,
- C. The health and safety of the child can be assured without further investigation by DCFS based on review of prior child maltreatment history;
- D. There is a determination that abuse or neglect of the child did not occur; and at least one of the following criteria are met:
 - 1) There are indications of malicious reporting; or,
 - 2) Details of the allegations are insufficient to investigate; or,
 - 3) Reporter was anonymous, and no evidence exists to corroborate the report; or,
 - 4) There is no available evidence to support or refute the allegation(s) due to the passage of time between the alleged occurrence of the maltreatment and the time the report was made; and,
- E. The DCFS Director or designee approves the administrative closure of an investigation conducted by DCFS.

Unsubstantiated Determination

A child maltreatment investigation will be determined unsubstantiated in the event that:

- A. The allegation of child maltreatment is not supported by a preponderance of the evidence following an investigation by Division staff.
- B. The investigation concludes the injuries were the result of reasonable and moderate physical discipline inflicted by a parent or guardian for the purpose of restraining or correcting the child.

True Determination

A child maltreatment investigation will be determined true in the event of:

- A. An admission of the fact of maltreatment by persons responsible;
- B. An adjudication of dependency-neglect;
- C. A determination of the existence of maltreatment by Division staff, based on a preponderance of the evidence;
- D. A medical diagnosis of failure to thrive. The Family Service Worker should, however, complete the Child Maltreatment Investigation in accordance with the procedures included to determine the identity of the caretaker and to conduct an investigation of the family for the purposes of determining appropriate service delivery;
- E. Any other medical or legal form of confirmation deemed valid by the Division.

If a report is determined to be true, the names and conditions of any minor children of the alleged offender, and whether these children have been maltreated, or are at risk of maltreatment, will also be determined unless the investigating agency has determined that there is no indication of risk to the children. If the report is determined to be true, and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under care of the alleged offender, to the extent practical, and whether these children have been maltreated, or are at risk of maltreatment, will be conducted unless the investigating agency has determined that there is no indication of risk to the children. The worker conducting the investigation shall also seek to ascertain all other relevant data.

If a report is determined to be true and involves any children under the age of three, those children must be referred to the Division of Developmental Disabilities Children's Services for an early intervention screening per the Child Abuse and Prevention Treatment Act (CAPTA) if the children were not already referred during the course of the investigation (see Policy II-I: Early Intervention Referrals and Services and related procedures for more information).

If a report of sexual abuse is determined to be true and the alleged offender is under the age of eighteen (18) at the time the act or omission occurred, the parents or legal guardians of the alleged juvenile or underaged juvenile offender and victim shall be provided with a list of mental health professionals or agencies available to evaluate and treat the alleged juvenile offender or underaged juvenile offender and victim, if necessary. Providing this information does not necessarily require the Division to pay for the mental health evaluation or any subsequent mental health treatment or services.

If a child maltreatment report is determined to be true, the Division will then also determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment, including without limitation children, the elderly, persons with a disability, and persons with a mental health illness. The following factors will be considered when determining whether an offender poses a risk of maltreatment to a vulnerable population:

- A. The severity of the child maltreatment;
- B. The nature and severity of an injury or other adverse impact caused by the child maltreatment;
- C. The current or future access the offender has or could have to a vulnerable population;
- D. Offender's previous child maltreatment history and whether there are similar fact patterns related to current offense and past child maltreatment history;
- E. Subsequent reports of child maltreatment against the offender;
- F. Criminal history of the offender; and,
- G. Risk assessment tool rating.

If the Division determines the offender poses a risk to a vulnerable population, the investigative determination will continue to be documented as True, and the offender's name will be placed in the Child Maltreatment Central Registry. If the Division determines the offender does not pose a risk to a vulnerable population, the investigation determination will be documented in the Division information system CHRIS as Exempted-No Risk. The DCFS Director or designee will approve determinations for true but exempted for no risk to vulnerable populations.

True but Exempted Determination

A determination of true but exempted, which means the offender's name will not be placed in the Child Maltreatment Central Registry, will be entered for the reasons listed below. The following circumstances do not require a consideration of the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment as these conditions warrant a determination of True But Exempted pursuant to A.C.A. § 12-18-702. The Division may open a protective services (i.e., in home or foster care as appropriate based on the dynamics of a particular family) for any investigative determination of true but exempted.

Garrett's Law Exemptions

A child maltreatment investigation that documents the presence of an illegal substance in either the bodily fluids or bodily substances in the mother or child at the time of birth resulting from the mother knowingly using any illegal substance (i.e., Garrett's Law case) will be found true but exempted and will not be placed on the child maltreatment registry. A protective services case shall be opened to establish a plan of safe care.

If the FSW determines on an individual basis the child's health or physical well-being is in immediate danger, he or she should take the newborn into protective custody. The FSW must also assess any siblings of the newborn or other children under the care of the alleged offender. If it is determined that there is an immediate danger to the siblings' (or any other children under the care of the alleged offender) health or physical well-being, then they must also be brought into emergency 72-hour protective custody.

"Acceptable" reporters include any one of the following mandated reporters, who have reasonable cause to suspect that a newborn has been subjected to an illegal substance before birth or the mother had an illegal substance in her bodily fluids or bodily substances at the time of the birth:

- licensed nurse;
- osteopath;
- physician;
- medical resident or intern;
- surgeon;
- hospital social worker;
- or, any medical personnel who may be engaged in the admission, examination, care or treatment of persons in hospitals or similar medical settings.

During the course of an investigation, or when DCFS has custody, if the mother or newborn has tested positive for the presence of an illegal substance in the bodily fluids or bodily substances, and the mother indicates that she wants to place the newborn for adoption through a private agency or private entity, the Family Service Worker must contact OCC immediately. If the infant is placed with a private adoption agency, then do not open a Protective Services case.

Religious Belief Exemptions

A child maltreatment investigation will be determined to be true but exempted due to religious beliefs exemption in the event that the Family Service Worker (FSW) determines that the parent's decision to withhold medical treatment was based solely upon a religious belief, choosing instead to furnish the child with prayer and spiritual treatment in accordance with a recognized religious method of healing by an accredited practitioner.

An FSW will place a child whose health or physical well-being is in immediate danger in a safe environment in DHS custody regardless of the beliefs of the parents. The religious exemption does not preclude the FSW's right and responsibility to take appropriate action, including petitions to the court, to obtain necessary medical services.

Underaged Juvenile Offender Exemptions

A child maltreatment investigation will have an individual finding of true but exempted for underaged juvenile offenders if there is an overall true finding of sexual abuse by a child under the age of 14 to another child.

Juvenile is Less than Fourteen Years of Age Exemption

A child maltreatment investigation will have an individual finding of true but exempted if an offender is a juvenile less than fourteen years of age.

Inactive Determination

Per A.C.A. § 12-18-619, a Child Maltreatment Investigation will be determined inactive if at any time before or during the investigation the Department is unable to locate or identify the alleged offender because the alleged child maltreatment occurred:

- A. More than five (5) years ago; or,
- B. In another state.

Failure to complete the investigation within the required 45 days is NOT a reason to place a case on inactive status. The report MUST document why the investigation could not be completed. A case will remain on inactive status for one year, at which time it will be expunged.

EXCERPT: POLICY II-D: Investigation of Child Maltreatment Reports

07/2020

INVESTIGATION CLOSURES AND DETERMINATIONS AND RESULTING REFERRALS AND CASE OPENINGS

Within the appropriate timeframes outlined above and utilizing PUB-357: Child Maltreatment Determination Guide as a reference where applicable, the Department will either:

- A. Administratively close an investigation of a child maltreatment report pursuant to A.C.A. §12-18-601 without a determination of whether the allegation is unsubstantiated, true, true but exempted, or inactive (see Procedure II-D14 for administrative closure criteria and related requirements); or
- B. Close the investigation with a determination that the allegations of child maltreatment are either:
 - 1) Unsubstantiated; or
 - 2) True; or
 - 3) True but exempted for:
 - a) Neglect as defined by A.C.A. § 12-18-103(14)(B) (i.e., Garrett's Law)
 - b) Religious beliefs
 - c) Underaged juvenile offenders; or,
 - 4) Inactive.

Criteria for the administratively closed investigations and child maltreatment determinations are as follows:

Administratively Closed

A child maltreatment investigation will be administratively closed without further action or determination if:

- A. A preliminary investigation has been completed, to include:
 - 1) Interview with the alleged victim outside the presence of the alleged offender.
 - 2) Assessment of the alleged victim's home environment, as appropriate.
 - 3) Interview of a collateral witness;
 - 4) Review prior history of child maltreatment related to the family of the child and to the alleged offender.
- B. There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report; and,
- C. The health and safety of the child can be assured without further investigation by DCFS based on review of prior child maltreatment history;
- D. There is a determination that abuse or neglect of the child did not occur; and at least one of the following criteria are met:
 - 1) There are indications of malicious reporting; or,
 - 2) Details of the allegations are insufficient to investigate; or,
 - 3) Reporter was anonymous, and no evidence exists to corroborate the report; or,
 - 4) There is no available evidence to support or refute the allegation(s) due to the passage of time between the alleged occurrence of the maltreatment and the time the report was made; and,
- E. The DCFS Director or designee approves the administrative closure of an investigation conducted by DCFS.

Unsubstantiated Determination

A child maltreatment investigation will be determined unsubstantiated in the event that:

- A. The allegation of child maltreatment is not supported by a preponderance of the evidence following an investigation by Division staff.
- B. The investigation concludes the injuries were the result of reasonable and moderate physical discipline inflicted by a parent or guardian for the purpose of restraining or correcting the child.

True Determination

A child maltreatment investigation will be determined true in the event of:

- A. An admission of the fact of maltreatment by persons responsible;
- B. An adjudication of dependency-neglect;
- C. A determination of the existence of maltreatment by Division staff, based on a preponderance of the evidence;
- D. A medical diagnosis of failure to thrive. The Family Service Worker should, however, complete the Child Maltreatment Investigation in accordance with the procedures included to determine the identity of the caretaker and to conduct an investigation of the family for the purposes of determining appropriate service delivery;
- E. Any other medical or legal form of confirmation deemed valid by the Division.

If a report is determined to be true, the names and conditions of any minor children of the alleged offender, and whether these children have been maltreated, or are at risk of maltreatment, will also be determined unless the investigating agency has determined that there is no indication of risk to the children. If the report is determined to be true, and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under care of the alleged offender, to the extent practical, and whether these children have been maltreated, or are at risk of maltreatment, will be conducted unless the investigating agency has determined that there is no indication of risk to the children. The worker conducting the investigation shall also seek to ascertain all other relevant data.

If a report is determined to be true and involves any children under the age of three, those children must be referred to the Division of Developmental Disabilities Children's Services for an early intervention screening per the Child Abuse and Prevention Treatment Act (CAPTA) if the children were not already referred during the course of the investigation (see Policy II-I: Early Intervention Referrals and Services and related procedures for more information).

If a report of sexual abuse is determined to be true and the alleged offender is under the age of eighteen (18) at the time the act or omission occurred, the parents or legal guardians of the alleged juvenile or underaged juvenile offender and victim shall be provided with a list of mental health professionals or agencies available to evaluate and treat the alleged juvenile offender or underaged juvenile offender and victim, if necessary. Providing this information does not necessarily require the Division to pay for the mental health evaluation or any subsequent mental health treatment or services.

If a child maltreatment report is determined to be true, the Division will then also determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment, including without limitation children, the elderly, persons with a disability, and persons with a mental health illness. The following factors will be considered when determining whether an offender poses a risk of maltreatment to a vulnerable population:

- A. The severity of the child maltreatment;
- B. The nature and severity of an injury or other adverse impact caused by the child maltreatment;
- C. The current or future access the offender has or could have to a vulnerable population;
- D. Offender's previous child maltreatment history and whether there are similar fact patterns related to current offense and past child maltreatment history;
- E. Subsequent reports of child maltreatment against the offender;
- F. Criminal history of the offender; and,
- G. Risk assessment tool rating.

If the Division determines the offender poses a risk to a vulnerable population, the investigative determination will continue to be documented as True, and the offender's name will be placed in the Child Maltreatment Central Registry. If the Division determines the offender does not pose a risk to a vulnerable population, the investigation determination will be documented in the Division information system as Exempted-No Risk. The DCFS Director or designee will approve determinations for true but exempted for no risk to vulnerable populations.

True but Exempted Determination

A determination of true but exempted, which means the offender's name will not be placed in the Child Maltreatment Central Registry, will be entered for the reasons listed below. The following circumstances do not require a consideration of the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment as these conditions warrant a determination of True But Exempted pursuant to A.C.A. § 12-18-702. The Division may open a protective services (i.e., in home or foster care as appropriate based on the dynamics of a particular family) for any investigative determination of true but exempted.

Garrett's Law Exemptions

A child maltreatment investigation that documents the presence of an illegal substance in either the bodily fluids or bodily substances in the mother or child at the time of birth resulting from the mother knowingly using any illegal substance (i.e., Garrett's Law case) will be found true but exempted and will not be placed on the child maltreatment registry. A protective services case shall be opened to establish a plan of safe care.

If the FSW determines on an individual basis the child's health or physical well-being is in immediate danger, he or she should take the newborn into protective custody. The FSW must also assess any siblings of the newborn or other children under the care of the alleged offender. If it is determined that there is an immediate danger to the siblings' (or any other children under the care of the alleged offender) health or physical well-being, then they must also be brought into emergency 72-hour protective custody.

"Acceptable" reporters include any one of the following mandated reporters, who have reasonable cause to suspect that a newborn has been subjected to an illegal substance before birth or the mother had an illegal substance in her bodily fluids or bodily substances at the time of the birth:

- licensed nurse;
- osteopath;
- physician;
- medical resident or intern;
- surgeon;
- hospital social worker;
- or, any medical personnel who may be engaged in the admission, examination, care or treatment of persons in hospitals or similar medical settings.

During the course of an investigation, or when DCFS has custody, if the mother or newborn has tested positive for the presence of an illegal substance in the bodily fluids or bodily substances, and the mother indicates that she wants to place the newborn for adoption through a private agency or private entity, the Family Service Worker must contact OCC immediately. If the infant is placed with a private adoption agency, then do not open a Protective Services case.

Religious Belief Exemptions

A child maltreatment investigation will be determined to be true but exempted due to religious beliefs exemption in the event that the Family Service Worker (FSW) determines that the parent's decision to withhold medical treatment was based solely upon a religious belief, choosing instead to furnish the child with prayer and spiritual treatment in accordance with a recognized religious method of healing by an accredited practitioner.

An FSW will place a child whose health or physical well-being is in immediate danger in a safe environment in DHS custody regardless of the beliefs of the parents. The religious exemption does not preclude the FSW's right and responsibility to take appropriate action, including petitions to the court, to obtain necessary medical services.

Underaged Juvenile Offender Exemptions

A child maltreatment investigation will have an individual finding of true but exempted for underaged juvenile offenders if there is an overall true finding of sexual abuse by a child under the age of 14 to another child.

Juvenile is Less than Fourteen Years of Age Exemption

A child maltreatment investigation will have an individual finding of true but exempted if an offender is a juvenile less than fourteen years of age.

Inactive Determination

Per A.C.A. § 12-18-619, a Child Maltreatment Investigation will be determined inactive if at any time before or during the investigation the Department is unable to locate or identify the alleged offender because the alleged child maltreatment occurred:

- A. More than five (5) years ago; or,
- B. In another state.

Failure to complete the investigation within the required 45 days is NOT a reason to place a case on inactive status. The report MUST document why the investigation could not be completed. A case will remain on inactive status for one year, at which time it will be expunged.

PROCEDURE XIII-A4: Automatic Name Removal from Child Maltreatment Central Registry

071/2020

CRITERIA FOR REMOVAL

The offender's name will be automatically removed from the Child Maltreatment Central Registry for the following types of child maltreatment ~~or types of maltreatment involving the following injury characteristics or other details~~, as designated by A.C.A. § 12-18-908, dependent upon the offender having not had a subsequent true report of this type for one year and more than one year having passed since the offender's name was placed on the Child Maltreatment Central Registry:

- A. Educational Neglect ~~Priority II~~
- B. Environmental Neglect ~~Priority II~~
- C. Inadequate Clothing ~~Priority II~~
- D. Inadequate Food ~~Priority II~~
- E. Inadequate Shelter ~~Priority II~~
- F. Inadequate Supervision-Children six (6) years or older ~~Priority II~~

(A.C.A. § 12-18-908 allows these to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908].)

NOTIFICATION OF REMOVAL

~~The County Supervisor or designee is responsible for notifying offenders of the automatic removal of their name from the Child Maltreatment Central Registry, and will:~~

- ~~A. Check monthly report of Automatic Removals from the Central Registry in CHRIS.~~
- ~~B. Send CFS 327: Notification of Name Removal from the Child Maltreatment Central Registry to offenders identified for his/her respective county within ten (10) days of receiving the CHRIS report.~~

PROCEDURE XIII-A4: Automatic Name Removal from Child Maltreatment Central Registry

07/2020

CRITERIA FOR REMOVAL

The offender's name will be automatically removed from the Child Maltreatment Central Registry for the following types of child maltreatment or types of maltreatment involving the following injury characteristics or other details, as designated by A.C.A. § 12-18-908, dependent upon the offender having not had a subsequent true report of this type for one year and more than one year having passed since the offender's name was placed on the Child Maltreatment Central Registry:

- A. Educational Neglect
- B. Environmental Neglect
- C. Inadequate Clothing
- D. Inadequate Food
- E. Inadequate Shelter
- F. Inadequate Supervision-Children six (6) years or older

(A.C.A. § 12-18-908 allows these to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908].)



Arkansas Department of Human Services
Division of Children and Family Services

REQUEST FOR NAME REMOVAL FROM THE CENTRAL REGISTRY

I. REQUESTOR'S PERSONAL DATA:

_____	_____	_____
Last Name	First Name (Include any Alias)	Middle Name
Address _____	Telephone Home: (____) _____	
_____	Work: (____) _____	
_____	Date of Birth _____	Gender _____
_____	Soc. Sec. Number _____	Race _____

II. CHILD MALTREATMENT REPORT INFORMATION:

1. Date of child maltreatment: _____

2. Type of ~~child~~ **Child maltreatment** ~~Maltreatment~~:

3. **Were you found guilty of, did you plead guilty to, or did you plead nolo contendere to an act that is the same as the type of child maltreatment listed above?**

☐ Yes ☐ No

If you answered "Yes" to Question 3, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908. If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offence from the offender's criminal record, the offender shall always remain in the registry unless the conviction is reversed or vacated.

If you answered "No" to Question 3, please go on to the next question.

3.4. Did this type of child maltreatment listed above also result in a child death due to your direct act(s) or omission(s)?

☐ Yes ☐ No

If you answered "Yes" to Question 3.4 above, do not proceed. You do not meet the criteria to have your request reviewed pursuant to DCFS Procedures ~~VX~~ III-A9.

If you answered "No" to Question 3.4, please go on to the next question.

4.5. Has the offender had a subsequent true report of this type for one year? ☐ Yes ☐ No

If you answered "Yes" to Question 4.5 above, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "No" to Question 4.5, please go on to the next question.

5.6. Has more than one year passed since the offender's name was placed on the Central Registry?

☐ Yes ☐ No

If you answered "No" to Question ~~65~~ ^{above}, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "Yes" to Question ~~65~~, please go on to the next question.

Mark-Up

6.7. Are you still involved with an open DHS protective services or foster care case related to this type of maltreatment? ☐ Yes ☐ No

If you answered "Yes" to Question ~~76~~ above, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure VIII-A9.

If you answered "No" to Question ~~76~~, please go on to the next question.

7.8. If you listed any of the following types of child maltreatment in the response to Question 2, were your parental rights terminated either voluntarily or involuntarily due to this type of child maltreatment?

- Abuse with deadly weapon
- Bone fractures
- Brain Damage/Skull Fracture
- Burns/scalding
- Immersion
- Inadequate supervision – children less than 6 years of age
- Interfering with a child's breathing
- Internal injuries
- Malnutrition
- Oral sex
-
- Poison/noxious substances
- Presence of an illegal substance in a child or its mother at the time of birth resulting from the mother's knowing use of the substance
- Sexual exploitation
- Sexual penetration
- Shaking a child age 3 or younger
- Striking a child with a closed fist
- Subdural hematoma
- Suffocation

☐ Yes ☐ No ☐ N/A, I did not list any of these maltreatment types in response to Question 2.

If you answered "Yes" to Question ~~87~~ above, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure ~~XVIII~~-A9.

If you were instructed to proceed to Question ~~87~~ and then answered "No" or "N/A" to Question ~~78~~, you have met the criteria to have your request reviewed. A review of your request does not guarantee removal from the Arkansas Child Maltreatment Central Registry.

Arkansas Code Annotated § 12-18-908 requires the Department of Human Services to establish procedures to determine whether or not to remove an offender's name from the Arkansas Child Maltreatment Central Registry if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the Arkansas Child Maltreatment Central Registry.

A committee with expertise in the area of child maltreatment will review your case upon receipt of this request to determine if your name can be removed from the Central Registry. The law requires that you meet the criteria mentioned above for your case to be reviewed. The Review Committee meets on a monthly basis. Your request must be received forty-five (45) days prior to the monthly meeting in which it will be reviewed. You will be notified in writing of the committee's decision.

III. VICTIM AND CENTRAL REGISTRY DATA:

Victim's Name _____ Victim's Date of Birth _____

What is the CRID number listed on your Central Registry Report? CRID Number _____

IV. OTHER REQUIRED DOCUMENTATION:

If you meet the criteria to have your case reviewed please submit:

- This form (CFS-328-A);
- A personal letter describing:
 - Your reason for the removal request;
 - The events and circumstances surrounding the child maltreatment allegation and finding; and,
 - Your rehabilitation;
- Your Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
- Your Child Maltreatment Registry results from your current state of residence ~~and~~/or any state in which you have resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
- Your Arkansas Crime Information Center (ACIC) current criminal background check results free from child maltreatment-related offenses for the preceding year;
- Your state criminal background check results from your current state of residence ~~and~~/or from any state in which you have resided in the preceding year free from child-maltreatment related offenses for the preceding year;
- Evidence of your rehabilitation including, but not limited to:
 - Documentation proving participation in treatment, remediation, or rehabilitation programs as related to the specific offense. For removal requests related to types of sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*);
 - Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - One (1) to three (3) letters of reference from professionals (not to include DCFS employees), employees, spiritual counselors, friends, or family describing your rehabilitation. No more than one (1) letter may be submitted from a family member.
- Are there currently any pending criminal charges related to an offense on the same set of facts of the child maltreatment report that resulted in placement on the Child Maltreatment Central Registry?
☐ Yes ☐ No

If you selected "Yes" to the question above, please provide the Review Committee with documentation describing the current status of these pending charges (e.g., court records, letter from your attorney, your probation officer, or the prosecuting attorney, etc.) in addition to the other information listed in this section.

Submit your documents to:

**The Division of Children and Family Services
Central Registry**

P.O. Box 1437, Slot S566
Little Rock, AR 72203

Mark-Up



**Arkansas Department of Human Services
Division of Children and Family Services**

REQUEST FOR NAME REMOVAL FROM THE CENTRAL REGISTRY

I. REQUESTOR'S PERSONAL DATA:

_____	_____	_____
Last Name	First Name (Include any Alias)	Middle Name
Address _____	Telephone Home: (____) _____	
_____	Work: (____) _____	

_____	Date of Birth _____	Gender _____
	Soc. Sec. Number _____	Race _____

II. CHILD MALTREATMENT REPORT INFORMATION:

1. Date of child maltreatment: _____
2. Type of child maltreatment: _____
3. Were you found guilty of, did you plead guilty to, or did you plead nolo contendere to an act that is the same as the type of child maltreatment listed above?
☐ Yes ☐ No

If you answered "Yes" to Question 3, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908. If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the registry unless the conviction is reversed or vacated.

If you answered "No" to Question 3, please go on to the next question.

4. Did this type of child maltreatment listed above also result in a child death due to your direct act(s) or omission(s)?
☐ Yes ☐ No

If you answered "Yes" to Question 4, do not proceed. You do not meet the criteria to have your request reviewed pursuant to DCFS Procedures XIII-A9.

If you answered "No" to Question 4, please go on to the next question.

5. Has the offender had a subsequent true report of this type for one year? ☐ Yes ☐ No

If you answered "Yes" to Question 5, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "No" to Question 5, please go on to the next question.

6. Has more than one year passed since the offender's name was placed on the Central Registry?
☐ Yes ☐ No

If you answered "No" to Question 6, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "Yes" to Question 6, please go on to the next question.

7. Are you still involved with an open DHS protective services or foster care case related to this type of maltreatment? ☐ Yes ☐ No

If you answered "Yes" to Question 7, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure VIII-A9.

If you answered "No" to Question 7, please go on to the next question.

8. If you listed any of the following types of child maltreatment in the response to Question 2, were your parental rights terminated either voluntarily or involuntarily due to this type of child maltreatment?

- Abuse with deadly weapon
- Bone fractures
- Brain Damage/Skull Fracture
- Burns/scalding
- Immersion
- Inadequate supervision – children less than 6 years of age
- Interfering with a child's breathing
- Internal injuries
- Malnutrition
- Oral sex
- Poison/noxious substances
- Presence of an illegal substance in a child or its mother at the time of birth resulting from the mother's knowing use of the substance
- Sexual exploitation
- Sexual penetration
- Shaking a child age 3 or younger
- Striking a child with a closed fist
- Subdural hematoma
- Suffocation

☐ Yes ☐ No ☐ N/A, I did not list any of these maltreatment types in response to Question 2.

If you answered "Yes" to Question 8, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure XIII-A9.

If you were instructed to proceed to Question 8 and then answered "No" or "N/A" to Question 8, you have met the criteria to have your request reviewed. A review of your request does not guarantee removal from the Arkansas Child Maltreatment Central Registry.

Arkansas Code Annotated § 12-18-908 requires the Department of Human Services to establish procedures to determine whether or not to remove an offender's name from the Arkansas Child Maltreatment Central Registry if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the Arkansas Child Maltreatment Central Registry.

A committee with expertise in the area of child maltreatment will review your case upon receipt of this request to determine if your name can be removed from the Central Registry. The law requires that you meet the criteria mentioned above for your case to be reviewed. The Review Committee meets on a monthly basis. Your request must be received forty-five (45) days prior to the monthly meeting in which it will be reviewed. You will be notified in writing of the committee's decision.

III. VICTIM AND CENTRAL REGISTRY DATA:

Victim's Name _____ Victim's Date of Birth _____

What is the CRID number listed on your Central Registry Report? CRID Number _____

IV. OTHER REQUIRED DOCUMENTATION:

If you meet the criteria to have your case reviewed please submit:

- This form (CFS-328-A);
- A personal letter describing:
 - Your reason for the removal request;
 - The events and circumstances surrounding the child maltreatment allegation and finding; and,
 - Your rehabilitation;
- Your Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
- Your Child Maltreatment Registry results from your current state of residence or any state in which you have resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
- Your Arkansas Crime Information Center (ACIC) current criminal background check results free from child maltreatment-related offenses for the preceding year;
- Your state criminal background check results from your current state of residence or from any state in which you have resided in the preceding year free from child-maltreatment related offenses for the preceding year;
- Evidence of your rehabilitation including, but not limited to:
 - Documentation proving participation in treatment, remediation, or rehabilitation programs as related to the specific offense. For removal requests related to types of sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*);
 - Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - One (1) to three (3) letters of reference from professionals (not to include DCFS employees), employees, spiritual counselors, friends, or family describing your rehabilitation. No more than one (1) letter may be submitted from a family member.
- Are there currently any pending criminal charges related to an offense on the same set of facts of the child maltreatment report that resulted in placement on the Child Maltreatment Central Registry?
☐ Yes ☐ No

If you selected "Yes" to the question above, please provide the Review Committee with documentation describing the current status of these pending charges (e.g., court records, letter from your attorney, your probation officer, or the prosecuting attorney, etc.) in addition to the other information listed in this section.

Submit your documents to:

**The Division of Children and Family Services
Central Registry
P.O. Box 1437, Slot S566
Little Rock, AR 72203**

Proposed