

Chapter 18 Child Maltreatment Act

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Subchapter 1 — General Provisions

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12-18-101. Title.

This chapter shall be known and may be cited as the “Child Maltreatment Act”.

History. Acts 2009, No. 749, § 1.

12-18-102. Purpose.

The purpose of this chapter is to:

- (1) Provide a system for the reporting of known or suspected child maltreatment;
- (2) Ensure the immediate screening, safety assessment, and prompt investigation of reports of known or suspected child maltreatment;

(3) Ensure that immediate steps are taken to:

(A) Protect a maltreated child and any other child under the same care who may also be in danger of maltreatment; and

(B) Place a child whose health or physical well-being is in immediate danger in a safe environment;

(4) Provide immunity from criminal prosecution for an individual making a good faith report of suspected child maltreatment;

(5) Preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;

(6) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, prosecution, and treatment of child maltreatment; and

(7) Stabilize the home environment if a child's health and safety are not at risk.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 1.

Amendments.

The 2011 amendment substituted "whose health or physical well-being is in immediate danger" for "who is in immediate danger of severe maltreatment" in (3)(B).

12-18-103. Definitions.

As used in this chapter:

(1)(A) "Abandonment" means:

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

(ii) An articulated intent to forego parental responsibility.

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

(2)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable

pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

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

- (i)** Save the life or preserve the health of the unborn child;
- (ii)** Remove a dead unborn child caused by spontaneous abortion; or
- (iii)** Remove an ectopic pregnancy;

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

- (i)** Extreme or repeated cruelty to a child;
- (ii)** Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- (iii)** Injury to a child’s intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child’s ability to function within the child’s normal range of performance and behavior;
- (iv)** Any injury that is at variance with the history given;
- (v)** Any nonaccidental physical injury;
- (vi)** Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
 - (a)** Throwing, kicking, burning, biting, or cutting a child;
 - (b)** Striking a child with a closed fist;
 - (c)** Shaking a child; or
 - (d)** Striking a child on the face or head; or
- (vii)** Any of the following intentional or knowing acts, with or without physical injury:

head;

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

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

(c) Interfering with a child's breathing;

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

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

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

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

(1) Marijuana;

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

(3) A narcotic; or

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

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

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

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

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

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

correcting the child.

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

(a) The person exercising the restraint is:

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

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

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

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

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

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and agency policy and procedures.

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

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

(4) “Caretaker” means a parent, guardian, custodian, foster parent, or any person fourteen (14) years of age or older who is entrusted with a child’s care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child’s welfare, but excluding the spouse of a minor;

(5)(A) “Central intake”, otherwise referred to as the “Child Abuse Hotline”, means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(6) “Child” or “juvenile” means an individual who is from birth to eighteen (18) years of age;

(7) “Child maltreatment” means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(8) “Department” means the Department of Human Services;

(9) “Deviate sexual activity” means any act of sexual gratification involving:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Inappropriate circumstances creating a dangerous situation; or

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

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

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

(a) Causing a child to be born with an illegal substance present in

the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

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

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

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

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

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

(16) "Pornography" means:

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

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

(C) Obscene or licentious material;

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

(18) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

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

(20) “Sexual abuse” means:

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

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

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

(iii) Indecent exposure; or

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

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

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

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

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

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

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

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

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

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

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

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

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing the listening to a phone sex line; or

(vi) An act of voyeurism; or

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

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

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

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

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

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

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

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

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

(22) "Sexual exploitation" means:

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

(i) Prostitution;

(ii) Obscene photography; or

(iii) Obscene filming; or

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

(23) "Significant other" means a person:

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

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

(24) “Subject of the report” means:

(A) The offender;

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

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

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

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

History. Acts 2009, No. 749, § 1; 2011, No. 779, §§ 15–17; 2011, No. 1143, §§ 2–5; 2013, No. 725, §§ 2–4; 2013, No. 1006, §§ 1–6.

A.C.R.C. Notes.

Acts 2013, No. 725, § 1, provided: “Findings and purposes.

“(a) The General Assembly finds that:

“(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

“(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

“(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

“(4) The societal costs of these crimes are also significant and affect the entire populace;

“(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas’s interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

“(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right;

“(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents’ or guardians’ knowledge, consent, or involvement.

“(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas’s parental involvement requirements for abortion; and

“(8) Such actions violate both the sanctity of the familial relationship and Arkansas’s parental involvement law concerning abortion.

“(b) The General Assembly’s purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

“(1) Protecting children from sexually predatory adults;

“(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

“(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

“(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

“(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

“(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

“(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

“(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

“(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights.”

Amendments.

The 2011 amendment by No. 779 substituted "or the failure of a parent to support" for "and support" in (1)(A)(i); rewrote (19)(B); and added "or" at the end of (20)(A)(ii).

The 2011 amendment by No. 1143 inserted (2)(C)(ii)(a)(2); substituted "thirteen (13) years of age" for "ten (10) years of age" in (3), the introductory language of (18)(A) and (18)(E), and (22); substituted "fifteen (15) years of age" for "sixteen (16) years of age" in the introductory language of (18)(B); inserted present (18)(B)(iii) and (18)(C) and redesignated the remaining subdivisions accordingly; and substituted "offender" for "aggressor" in (22).

The 2013 amendment by No. 725 added present (2) and (17); and substituted "fourteen (14)" for "thirteen (13)" in present (20)(E).

The 2013 amendment by No. 1006 added "a significant other of the child's parent" in (2)(A); substituted "fourteen (14) years of age" for "thirteen (13) years of age" in (3); deleted "and education required by law, excluding the failure to follow an individualized educational program" in present (14)(A)(ii); deleted "inappropriate circumstances" from present (14)(A)(vii)(a); added the present (14)(A)(vii)(a) designation; and added present (14)(A)(vii)(b), present (14)(A)(viii), and present (14)(A)(ix); substituted "fourteen (14) years of age" for "thirteen (13) years of age" in present (20)(A) and (20)(E); added the definition for "Significant other" and substituted "fourteen (14) years of age" for "thirteen (13) years of age" in present (25).

Case Notes

Application

Neglect.

Sexual Abuse.

Application

Child's testimony, by itself, that her stepmother picked her up by her neck, making it difficult to breathe, described treatment that fit within the definition of abuse under subdivision (2)(A)(vii)(c) of this section and was sufficient to support the Arkansas Department of Human Services' finding of maltreatment. *Duke v. Selig*, 2009 Ark. App. 843, 2009 Ark. App. LEXIS 1042 (2009).

Neglect.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. *Ark. Dep't of Human Servs. v. A.M.*, 2012 Ark. App. 240 (2012).

Sexual Abuse.

Petitioner was properly placed on the Arkansas Child Maltreatment Central Registry; the administrative hearing was not untimely because the petitioner requested a continuance and the ensuing delay was attributable to him; moreover, the ALJ did not err by failing to consider evidence of an affirmative defense because the petitioner, at the age of eighteen, engaged in sexual intercourse with a girl who was fourteen, and even though the child testified that she told the petitioner that she was sixteen years old, it was not sufficient to negate the finding of child maltreatment. *Marrufo v. Ark. Dep't of Human Servs.*, 2013 Ark. 323 (2013).

Substantial evidence supported the finding that a father sexually abused, as defined in subdivision (18)(A)(iv) of this section, his son, who was autistic and had cerebral palsy, by allowing him to view pornography; the child's mother testified that she observed the father showing the son pornography on television when the son was approximately seven or eight years old and the son was strapped in a wheelchair. Ark. Dep't of Human Servs. v. R.F., 2013 Ark. App. 694, — S.W.3d —, 2013 Ark. App. LEXIS 710 (2013).

12-18-104. Confidentiality.

(a) Any data, records, reports, or documents that are created, collected, or compiled by or on behalf of the Department of Human Services, the Department of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Any data, records, reports, or documents released under this chapter to law enforcement, a prosecuting attorney, or a court by the Department of Human Services are confidential and shall be sealed and not re-disclosed without a protective order to ensure the items of evidence for which there is a reasonable expectation of privacy are not distributed to a person or institution without a legitimate interest in the evidence, provided that nothing in this chapter is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or the law.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 7.

Amendments.

The 2013 amendment added (b).

12-18-105. Rules.

The Director of the Department of Human Services shall promulgate rules to implement this chapter.

History. Acts 2009, No. 749, § 1.

12-18-106. Cooperative agreements.

(a) The Director of the Department of Human Services shall implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all

reports requested by a prosecuting attorney pertaining to a law enforcement or prosecuting attorney's investigation by initiating formal cooperative agreements with:

- (1) Law enforcement agencies;
- (2) Prosecuting attorneys; and
- (3) Other appropriate agencies and individuals.

(b) The director may enter into cooperative agreements with other states to create a national child maltreatment registration system.

History. Acts 2009, No. 749, § 1.

12-18-107. Liability.

(a) A person or agency required by this chapter to report suspected child maltreatment who acts in good faith in making notification, the taking of a photograph or radiological test, or the removal of a child while exercising a seventy-two-hour hold is immune to suit and to civil and criminal liability.

(b) If acting in good faith, a person making notification not named in this section is immune from liability.

(c) A publicly supported school, facility, or institution acting in good faith by cooperating with the investigative agency under this chapter shall be immune from civil and criminal liability.

History. Acts 2009, No. 749, § 1.