

APPENDIX D

LAW AND DEFINITIONS

Montana Code Annotated section 41-3-201 provides in part as follows:

41-3-201 Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

Subsection (2) lists the persons who are mandatory reporters of abuse, including health care providers, or mental health professionals, school officials and teachers, day care providers, social workers, law enforcement officials, and, in subsection **(2)(j)**, "an employee of an entity that contracts with the department to provide direct services to children."

All staff of domestic violence service providers who receive grants and contract with the Montana Department of Health and Human Services are obligated to comply with the reporting requirements set out under Section 41-3-201 (1).

Montana Code Annotated section 41-3-301 provides in part as follows:

41-3-301 Emergency protective service: (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing; and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the

child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

Montana Code Annotated section 41-3-102 provides in part the following definitions: 41-

3-102 Definitions. As used in this chapter, the following definitions apply:

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

- (i) actual physical or psychological harm to a child;
- (ii) substantial risk of physical or psychological harm to a child; or
- (iii) abandonment.

(b) (I) The term includes:

- (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
- (B) exposing a child to the criminal distribution, production or manufacture of dangerous drugs (45-9-101&45-9-110&45-9-132)

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

- (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;
- (ii) commits or allows sexual abuse or exploitation of the child;
- (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;
- (iv) Causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;
- (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk;
- (vi) abandons the child.

(23)(a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another residing in the child's home.

(b) The term "psychological abuse or neglect" may not be construed to hold a victim responsible for failing to prevent the crime against the victim. [Emphasis added]

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe the child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(27)(a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

MORE DETAILED GUIDANCE AS TO WHAT CONSTITUTES ABUSE/NEGLECT

I. Recognizing Indicators of Child Maltreatment

The following section is intended to provide more practical guidance to mandatory reporters, to know when to report child abuse or maltreatment.

Child maltreatment is a complex, insidious problem that cuts across all sectors of society. The economic and human costs of child maltreatment in American society are astronomical. It is likely that billions of dollars are spent in treatment and social service costs and in lessened productivity for a generation of maltreated children.

The human costs are a litany of psychological tragedies. Maltreated children suffer from poor peer relations, cognitive deficits and low self-esteem. They may be more aggressive as well as having behavioral problems and psychopathology. The emotional damage may last a lifetime.

The following are expanded definitions of psychological maltreatment, physical abuse, physical neglect, and sexual abuse in order to assist DV advocates and others in recognizing the indicators of child maltreatment and helping in the decision-making process in whether or not to report suspected child abuse and/or neglect to CPS.

To quickly assess the risk of harm to a child, advocates may want to ask a client questions like these: Have you ever been afraid to leave your child alone with your spouse or partner? Do you think your spouse or abuser will seriously injure you or your child? Tell me about the most frightening action by the abuser; how long ago did it occur? Where was the child when the incident happened?

A. PSYCHOLOGICAL MALTREATMENT

Psychological or emotional maltreatment is a pattern of psychologically destructive behavior involving: rejecting, terrorizing, isolating, ignoring and/or corrupting. In most cases, it is the psychological consequences of the act that define the act as being abusive.

While psychological maltreatment may occur alone, it is important to understand that it is the primary issue in the broader picture of abuse and neglect. It provides the unifying theme and is the critical aspect in the overwhelming majority of physical and sexual abuse and neglect cases.

Psychological abuse or neglect includes severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home. The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

Psychological abuse is the repeated action on the part of parents or others that belittles the child, makes the child fearful and stops the healthy developmental and or socio-emotional growth of a child.

Parents or others who are emotionally or psychologically abusing a child may:

- blame or belittle the child or threaten the child
- harshly criticize the child
- reject the child
- treat siblings unequally
- appear unconcerned about the child
- hold unrealistic expectations for the child
- verbally assault the child and create a climate of fear
- isolate by cutting the child off from normal social experiences
- corrupt the child by teaching socially deviant patterns of behavior

- commit acts of violence toward another person with a child present.

Physical Indicators of Psychological Maltreatment may include:

- speech disorders
- lags in physical development
- failure-to-thrive syndrome (progressive wasting away)

Behavioral Indicators of Psychological Maltreatment: Often, psychological maltreatment is observed through behavioral indicators, and even these indicators may not be immediately apparent. The maltreated child may demonstrate the following behavioral characteristics:

- habit disorders such as sucking, biting, rocking, enuresis, or eating disorders
- conduct disorders including withdrawal and anti-social behavior such as destructiveness, cruelty and stealing;
- neurotic traits such as sleep disorders and inhibition of play;
- psychoneurotic reactions including hysteria, obsession, compulsion, phobias and hypochondria;
- behavior extremes such as appearing overly compliant, extremely passive; or aggressive, very demanding or undemanding;
- overly adaptive behaviors which are either inappropriately adult (e.g., parenting other children) or inappropriately infantile (e.g. rocking, head banging, or thumb sucking);
- emotional and intellectual developmental delays;
- attempted suicide; and/or
- truancy, running away.

The parents of a psychologically maltreated child may blame the child for the problem (or ignore its existence), may refuse offers of help, and may be generally unconcerned about the child's welfare.

B. PHYSICAL ABUSE Physical Indicators of Physical Abuse

- Bruises and welts - located on face, mouth, torso, buttocks - in various stages of healing, choke marks, human hand marks
- Burns - scalding and cigarette burns, rope and carpet burns
- Broken bones and fractures
- Lacerations or abrasions
- Unexplained abdominal injuries - swelling, constant vomiting
- Human bite marks
- Head injuries
- Missing hair, any unexplained injuries, marks or redness
- Injuries at different stages of healing
- Injuries or medical conditions that haven't been properly treated
- Wary - flinching or ducking when adults make sudden movement
- Tearfulness of physical closeness

- Anxious and apprehensive - nightmares and flashbacks

Behavioral Indicators of Physical Abuse

A child's behavior may also provide a clue that the child is being physically abused. A child's behavior may in fact be the only clue, especially in adolescents. These behavioral indicators may exist independently of, or in conjunction with physical signs, and include the child who:

- is wary of physical contact with adults. The abused child may shrink at the touch or approach of an adult.
- becomes apprehensive when other children cry;
- demonstrates extremes in behavior (e.g., aggressiveness or withdrawal) or behavior which lies outside the range expected for the child's age group;
- seems frightened of the parents (e.g., states he/she is afraid to go home, cries when it is time to leave, or is frightened when parents are mentioned); and/or
- reports injury by a parent

C. PHYSICAL NEGLECT Physical Indicators of Neglect

- constant hunger, poor hygiene, or inappropriate clothing;
- consistent lack of supervision, especially when engaged in dangerous activities or over extended periods of time;
- constant fatigue or listlessness (constantly falling asleep);
- unattended physical problems or medical needs, such as untreated or infected wounds; and/or
- abandonment.

Other Signs of Neglect:

- Extreme behavior - often children go to extreme measures to get attention or to withdraw from attention;
- "Uncared-for" appearance - dirty, tattered, torn clothes;
- Inappropriate clothing for weather conditions or child's age;
- Inadequate or no shelter;
- Lack cleanliness and personal hygiene habits;
- Chronic diaper rash;
- Matted hair;
- Inadequate food - undernourished and tired appearance;
- Pale and listless;
- Lack of supervision;
- Chronic truancy or failure to enroll children in school;
- Untreated medical conditions or injuries;
- Poor dental health;
- Failure to thrive;
- Delayed growth or maturation;
- Delayed speech; and/or

- Begging, stealing, or hoarding food.

Questions to consider in determining whether neglect occurs:

- Do signs of neglect appear frequently?
- Are signs chronic (there most of the time)?
- In a given community or subpopulation, do all the children display these indicators, or only a few of the children?
- Is this culturally acceptable child-rearing, or is it true neglect?

D. SEXUAL ABUSE

Child sexual abuse refers to the use of a child by an adult for sexual purposes whether or not the child is alleged to have given consent. Any form of direct or indirect sexual contact between a child and an adult is abusive because it is motivated solely by adult needs and involves a child, who, by virtue of age and position in life, is unable to give consent.

Sexual activity between children can constitute sexual abuse when there are differences in age or developmental levels, coercion and/or lack of mutuality, or when one child takes advantage of another. Sexual abuse involves forcing, tricking, bribing, threatening or pressuring a child into sexual awareness or activity and occurs when an older or more knowledgeable child or adult uses a child for sexual pleasure. The abuse often begins gradually and increases over time.

Sexual abuse by family members or acquaintances is most likely to occur in the home of the victim or the perpetrator and is usually repeated over a period of time.

Physical Indicators of Sexual Abuse:

- difficulty in walking or sitting;
- torn, stained, or bloody underclothing;
- complaints of pain or itching in the genital area;
- bruises or bleeding in external genitalia, vaginal or anal area;
- venereal disease, particularly in a child under 13; and/or
- pregnancy, especially in early adolescence.

Behavioral Indicators of Sexual Abuse:

- appears withdrawn; engages in fantasy or infantile behavior; even appears developmentally delayed;
- has poor peer relationships (e.g., fighting, no friends);
- engages in delinquent acts, or runs away;
- displays bizarre, sophisticated, or unusual sexual knowledge or behavior;
- states he/she has been sexually assaulted by a caretaker;
- depression or withdrawal from friends, family or usual activities;
- seductiveness, provocative behavior;
- severe behavior changes;

- excessive bathing or poor hygiene;
- eating disorders;
- wearing many layers of clothing; and/or
- excessive masturbation.
- Caretaker provides no supervision to developmentally disabled or special needs child.
- Caretaker does not respond to or ignores child's basic needs.
- Caretaker denies food or water for an extended period of time. Child is not fed food consistently.
- Child appears to be unhealthy (seek appropriate professional confirmation when necessary).
- Child lacks adequate clothing for any environmental situation.
- Child has strong smell and suffers from skin condition or loss of hair or teeth due to poor hygiene.
- Infant has bleeding and/or painful rash that is not being treated as a result of being left for extended periods of time in soiled diapers.
- Family lacks shelter and they do not have or cannot access any resources to provide shelter.
- There is no heat in the home during winter.

V. PROTECTIVE CAPACITIES

Assessing Protective Capacities

Protective capacities are family strengths or resources that reduce, control and/or prevent threats of serious harm from arising or having an unsafe impact on a child.

Not all strengths are protective capacities. Strengths must have a particular element to be a protective capacity; an element relevant to mitigating the safety threat.

Protective capacities are strengths that are specifically relevant to child safety. They may include intellectual skills; physical care skills; motivation to protect; positive attachments; social connections; resources such as income, employment or housing.

Protective capacities need to be both accessible and actionable. Actionable means that the caretaker will use these protective capacities on their own without external provocation.

The following chart provides a variety of strengths that may exist as protective capacities based upon their ability to be used to mitigate case specific safety threats.

Intellectual Skills:

- KNOWLEDGE OF CHILD DEVELOPMENT AS IT RELATES TO SAFETY AND WELL-BEING.
- Capacity and willingness to demonstrate empathy for child's needs/condition.
- Ability and willingness to recognize and respond to child's needs.

- Ability and willingness to defer one's own need (gratification) to meet child's needs.
- Ability and willingness to control potentially harmful impulses related to child safety.
- Ability to understand the impact of his/her own actions, which may result in maltreatment or active safety threats.

Motivation to Protect:

- Caretaker is accepting in his/her role as caregiver to nurture and protect the child (ren).
- Caretaker identifies and accepts care-giving role.

Positive Attachments:

- CAREGIVER IS NOT IN CO-DEPENDENT RELATIONSHIP.
- Caregiver is not in a violent familial or social relationship.
- Caretaker is emotionally tied to healthy family members.

Social Connections:

- Caretaker interacts appropriately with neighbors in a manner that assures child safety and well-being.
- Caretaker interacts appropriately and cooperates with the child's school.
- Caretaker demonstrates appropriate boundaries with friends, family, and others.
- Caretaker behaves in a manner with others that ensures child safety and well-being.
- Caretaker behaves in a manner that does not frighten child or other family members.
- Caretaker has friends that serve as a social support to ensure child safety and well-being.
- Caretaker has close relationships with family members who support child safety and well-being.
- Personal or familial supports exist and are available to share care-giving tasks and responsibilities.
- Personal or familial supports are available to provide material and interpersonal resources.
- Caretaker can demonstrate reciprocity in their social network.
- Caretaker belongs to a church that provides spiritual and emotional support.
- Caretaker lives in a neighborhood where neighbors regularly socialize and share care-giving and other tasks.
- Caretaker is geographically close to supportive family members.

IV. DECIDING THE SAFETY RESPONSE

- A safety response is determined by evaluating the safety factors in combination with history, the child's level of vulnerability, and the protective capacities of the family. **If any safety factor is checked 'yes', a serious threat exists.** A safety factor that is determined to be at the level of

substantial risk of harm as defined in statute, requires agency action. This may be aggravated or mitigated by the family's history, child's level of vulnerability and/or the family's protective capacities. It is possible to determine a child to be unsafe due to history, child vulnerability, and lack of protective capacity without any safety factors checked 'yes'. The obvious example is when it is reported that a child has been born to parents who were responsible for the death of another child.

- The safety response can range from child safe, report closed; to child unsafe, removal required. The point in the continuum that is selected must be made by consideration of everything that impacts safety. The social worker must indicate how the identified safety threat is negated. The protective capacity and or lack of vulnerability must be directly related to negating a threat. For instance, the age and functioning level of a child may negate the threat of a caretaker's unwillingness or inability to meet the child's immediate needs for sufficient supervision, food, clothing, and/or shelter to protect the child from immediate danger of serious harm. Age and functioning level would not necessarily mitigate the threat of serious harm of sexual abuse.

Action options that may occur when a child is safe:

- If there are no immediate safety threats or substantial risks of harm AND no CPS history, it is reasonable to say that the child is safe and no services are needed.
- If there are no immediate safety threats but the worker believes the family could benefit from community services, referral to those services should be made and the report closed.
- None of these actions require safety plans.

Action options that may occur when child is unsafe or at substantial risk:

- The child is unsafe and remains in the care, custody and control of the parent because a safety plan is put in place that controls the immediate threat. The plan will require monitoring and could lead to a voluntary protective services agreement.
- The child is unsafe and court action is filed. If court action is filed and the child remains in the home, the worker should not request a determination that remaining in the home is contrary to the child's welfare. A safety plan should be evident in the affidavit to the court.
- The child is unsafe, the child is removed, and a petition is filed.