

Arkansas Department of Human Services  
Division of Children and Family Services

# Child Maltreatment Investigation Determination Guide

PUB-357 R. July 2020

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## **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.

## **Section 1: Categories and Types and Maltreatment**

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

## **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 reasonable support for the A/V or maintain regular contact with the A/V through statement or contact; 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.

## 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 to 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 subsection 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 subsection 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.

*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.

*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.

*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.

*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.

***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.

*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

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