

## **Introduction**

This publication is intended to provide guidelines for child maltreatment investigations on the legal elements required to make a true finding for child maltreatment under the Child Maltreatment Act. The guidelines were promulgated under the authority of section 12-18-105 of the Arkansas Code, which authorizes the Director to promulgate regulations to carry out the Child Maltreatment Act. The guidelines, therefore, have the force and effect of law so long as they are consistent with the Child Maltreatment Act.

The guidelines are 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 or more of five categories: (1) Abandonment, (2) Abuse, (3) Neglect, (4) Sexual Abuse, and (5) Sexual Exploitation.

To do this, the guidelines first set out the statutory definition and exceptions for each category of child maltreatment. The guidelines then explain 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. Finally, the guidelines provide examples of the acts, omissions, and injury characteristics that could constitute child maltreatment.

An investigator can only make a true finding as to one or more of the five 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 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 of child maltreatment could occur.

### *Glossary*

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

A/V. Alleged Victim. The person under 18 years of age who is the alleged victim of child maltreatment.

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

## **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

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

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 type of abandonment:

Abandonment for an indefinite period:

- 1) A/O is a parent of the A/V;
- 2) A/V was under 18 years old at the relevant time 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; and
- 4) A/O intends to continue the lack of reasonable support or 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 18 years old at the relevant time 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; 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 at the relevant time when the alleged abandonment occurred; and
- 3) A/O articulated an intent to forego parental responsibility of the A/V.

Examples:

**EXAMPLES.**

Typical Abandonment Example

Disrupted Adoption

## Abuse

### Definition

Abuse means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person 18 years of age or older living in the home with a child with 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;
- 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 6 years of age or younger on the face or head; shaking a child 3 years of age or younger; interfering with a child's breathing; pinching, biting, or striking a child in the genital area; tying a child to a fixed or heavy object; or binding or tying a child's limbs together;
- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but

not limited to, marijuana, alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service), a narcotic, or an over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

- Any of the following intentional or knowing acts, with or without physical injury: exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamines;
- Any of the following intentional or knowing acts, with or without physical injury: subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel; or
- 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.

This list is illustrative of unreasonable action and not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

### Exceptions

Abuse does not include physical discipline of a child when it is reasonable, moderate, and 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.

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 the child welfare agency policy's 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 type of abuse:

#### Extreme or repeated cruelty.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred; and
- 3) At least one act or omission of the A/O towards the child was extremely cruel or more than one act or omission of the A/O towards the child was cruel.

#### Threat of harm.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time 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.

#### Mental injury.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred; and

- 3) A/O's acts or omissions observably and substantially impaired the A/V's ability to function within the child's normal range of performance and behavior.

Injury at variance with explanation given.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time 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, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;
- 3) A/O's act or omission caused any physical injury to the A/V; and
- 4) A/O intended to do the act or omission that caused the physical injury to the A/V.

*N.B.* 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 physical injury.

Abuse with physical injury and without justifiable cause.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time 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, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;
- 3) A/O struck a child 6 years of age or younger on the face or head, shook a child 3 years of age or younger, interfered with a child's breathing, pinched a child in the genital area, bit a child in the genital area, struck a child in the genital area, tied a child to a fixed or heavy object, or bound or tied a child's limbs together; and
- 4) A/O intentionally or knowingly committed the act in 3).

*N.B.* 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 substances that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;
- 3) A/O gave or permitted 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; and
- 4) A/O intentionally or knowingly committed the act in 3).

*N.B.* 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 actually did interfere with the A/V's normal physiological functions.



N.B. 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 substances that may alter the mood of a child.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;
- 3) A/O gave, or permitted 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 without limitation
  - A. Marijuana,
  - B. Alcohol unless it is given to a child during a recognized and established religious ceremony or service,
  - C. Narcotics, or
  - D. Over-the-counter drugs, but only if
    1. A/O purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child, and
    2. A/V is detrimentally impacted by the overdose or the inappropriate over-the-county drug; and
- 4) A/O intentionally or knowingly committed the act in 3).

N.B. 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, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;

- 3) A/O exposed A/V to a chemical that has the capacity to interfere with normal physiological functions, including without limitation, a chemical used or generated during the manufacture of methamphetamines; and
- 4) A/O intentionally or knowingly committed the act in 3).

*N.B.* 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.

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

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

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;
- 3) A/O subjected a child to Munchausen syndrome by proxy or a factitious illness by proxy;
- 4) A/O intentionally or knowingly committed the act in 3); and
- 5) Medical personnel confirmed that A/O subjected a child to Munchausen syndrome by proxy or a factitious illness by proxy.

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

Human trafficking.

- 1) A/O is a parent, guardian, custodian, person 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;
- 2) A/V was under 18 years old at the relevant time when the alleged abuse occurred;

- 3) A/O recruited, harbored, transported, or obtained a child for labor or services;
- 4) A/O intentionally or knowingly committed the act in 3);
- 5) A/O committed the act in 3) through force, fraud, or coercion;
- 6) A/O committed the act in 3) for the purpose of subjecting the A/V to involuntary servitude, peonage, debt bondage, or slavery.

### Examples

#### **EXAMPLES.**

Physical discipline as non-accidental physical injury.

Appropriate vs. inappropriate restraint.

## **Neglect**

### Definition

Neglect means any 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 for the child's welfare, but excluding the spouse of a minor and the parents of a married minor, that constitute one 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 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 6 years of age and 17 years of age is enrolled in school or is being legally home schooled, or as a result of an act or omission by the child's parent or guardian, the child is habitually and without justification absent from school;
- 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 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 18 years old at the relevant time 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 child was being abused or had been abused.

*N.B.* 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 18 years old at the relevant time when the alleged neglect occurred; and
- 3) A/O failed or refused to provide necessary food, clothing, shelter, or medical treatment necessary for the child'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 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 18 years old at the relevant time 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.

*N.B.* 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 18 years old at the relevant time 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 child.

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 18 years old at the relevant time 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 18 years old at the relevant time 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 at least 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 18 years old at the relevant time 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 child at risk of harm.

*N.B.* 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 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 18 years old at the relevant time 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 child at risk of harm.

*N.B.* 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 6 years of age and 17 years of age at the relevant time when the alleged neglect occurred; and
- 3) A/O failed to ensure that A/V was enrolled in school or was being legally homeschooled.



*N.B.* A home school is a school provided by a parent or legal guardian for his or her own child.

*N.B.* A child is legally homeschooled if the child's parent or legal guardian provides the notice to the local school district required by Ark. Code Ann. 6-15-103(a) and the student is not a public school student who is currently subject to disciplinary action unless the superintendent or local school board allows, the discipline has been completed or the semester has ended, or the student has been expelled. A child may not be legally homeschooled if a sex offender who is required to register under the Sex Offender Act of 1997 resides in the home unless the child is that sex offender or the court who sentenced the sex offender waives the prohibition.

Educational neglect due to absence from school.

- 1) A/O is a parent or guardian;
- 2) A/V was under eighteen at the relevant time 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 at the relevant time 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.

*N.B.* An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code and the A/O does not have a prescription for the drug.

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 at the relevant time 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.

*N.B.* An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code and the A/O does not have a prescription for the drug.

Examples

EXAMPLES.

## Sexual Abuse

### Definition

Sexual abuse means:

- By a person 14 years of age or older to a person younger than 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 18 years of age or older to a person not his or her spouse who is younger than 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 20 years of age or older to a person not his or her spouse who is younger than 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 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 14 years of age to a person younger than 18 years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
- By a person 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

Sexual abuse does not include sexual intercourse or deviate sexual activity with a minor if the A/O is less than four years older than the A/V and the A/O is an employee of the A/O's school or school district, a temporary caretaker of the A/V, or a person who is in a position of trust or authority over the A/V, unless the A/O is a teacher, principal, athletic coach or counselor in the A/V's school, is in a position of trust or authority over the A/V, and uses that authority to engage

in sexual intercourse or deviate sexual activity with the A/V. A temporary caretaker is a person who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor.

*N.B.* This exception is based on the affirmative defense to sexual assault involving sexual intercourse or deviate sexual activity that also applies to sexual abuse allegations under the Child Maltreatment Act. Ark. Code Ann. §§ 5-14-124, 12-18-804.

### 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 type of sexual abuse:

Sexual intercourse.

- 1) If the A/O was 20 years old or older and the A/V was less than 16 years old, a true finding for sexual abuse can be made if:
  1. A/O was 20 years old or older at the relevant time when the alleged sexual abuse occurred;
  2. A/V was less than 16 years old at the relevant time 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

*N.B.* This type of sexual abuse provides that if the A/O is 20 years old or older and the A/V is 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 18 years old or older and the A/V was less than 15 years old, a true finding for sexual abuse can be made if:
  - A. A/O was 18 years old or older at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 15 years old at the relevant time 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

*N.B.* This type of sexual abuse provides that if the A/O is 18 to 19 years old and the A/V is 15 or 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 14 years old or older and A/V was less than 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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

*N.B.* No forcible compulsion is required to establish sexual abuse by a caretaker if the other elements are met.

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

1. A/O was 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred;

4. A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V; and
5. 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; or

*N.B.* This type of sexual abuse provides that if the A/O is 14 years old to 17 years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

*N.B.* 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 14 years old and the A/V was 18 years old or younger.
  - A. A/O was less than 14 years old at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 18 years old at the relevant time 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.

*N.B.* 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.

*N.B.* The exception to sexual abuse may apply to this type of sexual abuse.

Deviate sexual activity.

- 1) If the A/O was 20 years old or older and the A/V was less than 16 years old, a true finding for sexual abuse can be made if:
  - A. A/O was 20 years old or older at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 16 years old at the relevant time 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 person by the penis of another person; or
      - b. The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person; or

*N.B.* This type of sexual abuse provides that if the A/O is 20 years old or older and the A/V is 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 2) If the A/O was 18 years old or older and the A/V was less than 15 years old, a true finding for sexual abuse can be made if:
  - A. A/O was 18 years old or older at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 15 years old at the relevant time 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 person by the penis of another person; or
  - b. The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person; or

*N.B.* This type of sexual abuse provides that if the A/O is 18 to 19 years old and the A/V is 15 or 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 3) If the A/O was 14 years old or older and A/V was less than 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
    2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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 person by the penis of another person; or
- (2) The penetration, however slight of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person; or

*N.B.* No forcible compulsion is required to establish sexual abuse by a caretaker if the other elements are met.

*N.B.* 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
  2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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 person by the penis of another person; or
- (2) The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person; or

*N.B.* This type of sexual abuse provides that if the A/O is 14 years old to 17 years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

*N.B.* 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 4) A/O was less than 14 years old and the A/V was 18 years old or younger.
  - A. A/O was less than 14 years old at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 18 years old at the relevant time 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 person by the penis of another person; or

- b. The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person; or

*N.B.* 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* The exception to sexual abuse may apply to this form of sexual abuse.

Sexual contact.

- 1) If the A/O was 20 years old or older and the A/V was less than 16 years old, a true finding for sexual abuse can be made if:
  - A. A/O was 20 years old or older at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less 16 years old at the relevant time 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 a child to touch the offender in a sexual manner; or
      - c. The offender requesting to touch a child in a sexual manner; or

*N.B.* This type of sexual abuse provides that if the A/O is 20 years old or older and the A/V is 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* Sexual contact does not include contact incidental to normal affectionate hugging.

- 2) If the A/O was 18 years old or older and the A/V was less than 15 years old, a true finding for sexual abuse can be made if:
- A. A/O was 18 years old or older at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 15 years old at the relevant time 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 a child to touch the offender in a sexual manner; or
      - c. The offender requesting to touch a child in a sexual manner; or

*N.B.* This type of sexual abuse provides that if the A/O is 18 to 19 years old and the A/V is 15 or 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* Sexual contact does not include contact incidental to normal affectionate hugging.

- 3) If the A/O was 14 years old or older and A/V was less than 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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 a child to touch the offender in a sexual manner; or
    - (3) The offender requesting to touch a child in a sexual manner; or

*N.B.* No forcible compulsion is required to establish sexual abuse by a caretaker if the other elements are met.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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 a child to touch the offender in a sexual manner; or
    - (3) The offender requesting to touch a child in a sexual manner; or

*N.B.* This type of sexual abuse provides that if the A/O is 14 years old to 17 years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

*N.B.* 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* Sexual contact does not include contact incidental to normal affectionate hugging.

- 4) A/O was less than 14 years old and the A/V was 18 years old or younger.
- A. A/O was less than 14 years old at the relevant time when the alleged sexual abuse occurred;
  - B. A/V was less than 18 years old at the relevant time 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 a child to touch the offender in a sexual manner; or
      - c. The offender requesting to touch a child in a sexual manner; or

*N.B.* 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.

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

*N.B.* Sexual contact does not include contact incidental to normal affectionate hugging.

Indecent exposure.

- 1) A/O was 14 years old or older at the relevant time when the alleged sexual abuse occurred;
- 2) A/V was less than 18 years old at the relevant time 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.

*N.B.* 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 14 years old or older and A/V was less than 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
    2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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

*N.B.* No force is required to establish sexual abuse by a caretaker if the other elements are met; 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
  2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred;
  4. A/O forced A/V to watch pornography, which is
    - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
    - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
    - c. Obscene or licentious material; and
  5. A/O forced A/V where either A/V did not want to watch the pornography, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch pornography; or

*N.B.* 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 14 years old or older and A/V was less than 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred; and
4. A/O forced, encouraged, or permitted A/V to watch live sexual activity; or

*N.B.* No force is required to establish sexual abuse by a caretaker if the other elements are met; 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred;
4. A/O forced A/V to watch live sexual activity; and
5. A/O forced A/V where either A/V did not want to watch the live sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch live sexual activity; or

*N.B.* 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 14 years old or older at the relevant time when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred;
- 4) A/O forced A/V to listen to a phone sex line; and
- 5) A/O forced A/V where either A/V did not want to listen to the phone sex line, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to listen to the phone sex line; or

Voyeurism.

- 1) A/O was 14 years old or older at the relevant time when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time when the alleged sexual abuse occurred;
- 4) A/O looked at the A/V in a private location or place in which a child may reasonably be expected to be nude or partially nude; and
- 5) A/O's purpose in looking was for sexual arousal or gratification; or

*N.B.* Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Sex Trafficking.

- 1) A/O was 18 years old or older at the relevant time when the alleged sexual abuse occurred;
- 2) A/V was less than 18 years old at the relevant time 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.

Examples

**EXAMPLES.**

## Sexual Exploitation

### Definition

Sexual exploitation means:

- By a person 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 type of sexual exploitation:

Sexual exploitation

- 1) A/O was, at the relevant time when the alleged sexual abuse occurred:
  - A. 18 years old or older and not A/V's spouse; or
  - B. A/V's parent, guardian, custodian, foster parent, or any person 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 18 years old at the relevant time 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 child for any use or purpose.

Examples

EXAMPLES.