



Definition of Child Abuse

Updated May 1, 2017

This is general legal information and is not intended as legal advice. The law can change and is subject to differing interpretations. Physicians should consult their attorney if they need legal guidance on a specific situation. Nothing in this information should be construed as defining a standard of care.

The below chart outlines the types of conduct that the Child Protective Services Law (CPSL) defines as child abuse, when done intentionally, knowingly, or recklessly to a child. The specific conduct and the related definitions listed in the chart are taken verbatim from the law, but reorganized into categories to aid understanding. The changes to the law referring to human trafficking are effective as of October 28, 2016.

Causing or creating reasonable likelihood of bodily injury or death	
<p>Specific conduct in category</p> <p>Causing bodily injury to a child through any recent act or failure to act.</p> <p>Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.</p> <p>Causing the death of the child through any act or failure to act.</p> <p>Related definitions</p> <p>“Bodily injury.” Impairment of physical condition or substantial pain.</p>	<p>Key issues and changes</p> <p>The new law lowers the threshold for physical injuries that trigger the causal conduct to be considered child abuse – replacing “serious physical injury” with “bodily injury.”</p> <ul style="list-style-type: none"> • The law defines “serious physical injury” as severe pain or significant impairment of physical functioning. • The new law’s definition of “bodily injury” substitutes <i>substantial</i> pain for <i>severe</i> pain • “Bodily injury” as defined by the new law also includes <i>any</i> impairment of physical condition regardless of the significance.

Causing or substantially contributing to serious mental injury	
<p>Specific conduct in category</p> <p>Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.</p> <p>Related definitions</p> <p>“Serious mental injury.” A psychological condition, as diagnosed by a physician or licensed</p>	<p>Key issues and changes</p> <p>The prior law limits this category to <i>direct causes</i> of serious mental injury. The new law expands this category to include an act or a series of acts over a course of time that <i>substantially contribute</i> to – though do not necessarily directly cause – a child to be fearful, agitated, depressed, anxious, etc.</p>

<p>psychologist, including the refusal of appropriate treatment, that:</p> <p>(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or</p> <p>(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.</p>	
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Causing or creating likelihood of sexual abuse or exploitation	
<p>Specific conduct in category</p> <p>Causing sexual abuse or exploitation of a child through any act or failure to act.</p> <p>Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.</p> <p>Related definitions</p> <p>“Sexual abuse or exploitation.” Any of the following:</p> <p>(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:</p> <p>(i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.</p> <p>(ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.</p> <p>(iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.</p>	<p>Key issues and changes</p> <p>The sexual abuse or exploitation definition is largely unchanged. It includes coaxing or forcing a child to engage in, or assist someone else to engage in, sexually explicit conduct, such as looking at intimate parts, sexually explicit conversation, and actual or simulated sexual activity. It also includes a list of crimes that are deemed <i>per se</i> child abuse when committed against a child, such as rape.</p> <p>One change involves the <i>per se</i> child abuse criminal offences. Statutory sexual assault is added. Sexual intercourse with a child under 13 was included previously as this constitutes rape. The law negates any consent by a child under 13 regardless of the offender’s age. Statutory sexual assault addresses sexual intercourse with a child under 16. This is “statutory rape” when the offender is more than four years older than the child and is not married to the child.</p> <p>The changes in the law also clarified that sexual abuse or exploitation does not encompass consensual activities between a child who is 14 or older and another individual whose age is 14 or older and within 4 years of the child’s age.</p>

(iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

This paragraph does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age.

(2) Any of the following offenses committed against a child:

(i) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(ii) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(iii) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(iv) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(v) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(vi) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(vii) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(viii) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(ix) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(x) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(xi) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

<p>(xii) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).</p> <p>(xiii) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).</p>	
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Putting a child at imminent risk via specified acts	
<p>Specific conduct in category</p> <p>Engaging in any of the following recent acts:</p> <p>(i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.</p> <p>(ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.</p> <p>(iii) Forcefully shaking a child under one year of age.</p> <p>(iv) Forcefully slapping or otherwise striking a child under one year of age.</p> <p>(v) Interfering with the breathing of a child.</p> <p>(vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.</p> <p>(vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:</p> <p>(A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.</p>	<p>Key issues and changes</p> <p>This new category essentially replaces more general language in the current law that covers conduct that puts the child at “imminent risk” of bodily injury or sexual abuse or exploitation. It identifies culpable conduct that is <i>per se</i> child abuse; that is, intentionally, knowingly, or recklessly engaging in the listed conduct – in and of itself – constitutes child abuse regardless of whether an injury results.</p> <p>The <i>per se</i> conduct is not limited to specified acts of physical force, such as kicking, biting, and forcefully shaking an infant. Keeping a child at an illegal methamphetamine lab can be <i>per se</i> child abuse. It also can include leaving a child with a non-parent who is required to register under Meghan’s Law or who has been determined under the law to be a sexually violent predator or delinquent child.</p>

(B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

Causing serious physical neglect

Specific conduct in category

Causing serious physical neglect of a child.

Related definitions

“Serious physical neglect.” Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(1) A repeated, prolonged or unconscionable egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(2) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

“Perpetrator.” A person who has committed child abuse as defined in this section. The following shall apply:

(1) The term includes only the following:

(i) A parent of the child.

(ii) A spouse or former spouse of the child's parent.

(iii) A paramour or former paramour of the child's parent.

(iv) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school, or through a program, activity or service.

Key issues and changes

The new law expands the definition of serious physical neglect to include egregious behavior that – although occurring only one time – is so blatant that the child's health or development has been impacted. This contrasts with prior law under which the neglect has to be prolonged or repeated behavior.

Also of note, *for this category only*, the conduct must be committed by a “perpetrator,” a defined term limited to persons with a specified family or other relationship with the child.

Children aged 14-18 can be held accountable for committing acts of child abuse. However, there are limited circumstances under which they are held accountable for omissions of neglect. For example, a 15-year-old parent of the child could be found to have committed serious physical neglect, but a

sibling under age 18 who is living in the same household will not be held accountable for failing to prevent neglect.

The definition of person responsible for the welfare of a child has been expanded to include certain persons who were previously excluded, including school employees.

<p>(v) An individual 14 years of age or older who resides in the same home as the child.</p> <p>(vi) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.</p> <p>(2) Only the following may be considered a perpetrator for failing to act, as provided in this section:</p> <p>(i) A parent of the child.</p> <p>(ii) A spouse or former spouse of the child's parent.</p> <p>(iii) A paramour or former paramour of the child's parent.</p> <p>(iv) A person 18 years of age or older and responsible for the child's welfare.</p> <p>(v) A person 18 years of age or older who resides in the same home as the child.</p> <p>"Parent." A biological parent, adoptive parent or legal guardian.</p> <p>"Person responsible for the child's welfare." A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term includes any such person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization.</p>	
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Engaging in Munchausen by proxy behavior	
<p>Specific conduct in category</p> <p>Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.</p>	<p>Key issues and changes</p> <p>This category is new. It makes explicit that Munchausen by proxy behavior is child abuse.</p>

As of October 26, 2016, Act 115 of 2016 added another definition of child abuse under the CPSL. The Act adds human trafficking of children as a type of child abuse. The chart below explains the new definition.

Engaging in severe forms of trafficking in persons or sex trafficking (i.e., human trafficking)	
<p>Specific conduct in category</p> <p>The recruitment, harboring, transportation, provision or obtaining of a child for labor or services through the use of force, fraud or coercion (i.e., human trafficking). Under federal law, sex trafficking (e.g., prostitution, pornography, exotic dancing, etc.) does not require there be force, fraud or coercion if the victim is under 18.</p> <p>Related definitions</p> <p>“Severe forms of trafficking in persons.”¹</p> <ul style="list-style-type: none"> a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. <p>“Sex trafficking.” The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial act.²</p> <p>Labor trafficking.” Labor obtained by use of threat of serious harm, physical restraint, or abuse of legal process.</p> <p>Examples of human trafficking include:</p> <ul style="list-style-type: none"> • Forcing a child to work for little or no pay for domestic servitude—this frequently occurs on factories or farms. It includes 	<p>Key issues and changes</p> <p>For purposes of this category of child abuse, a “perpetrator” is “an individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000” (see related definitions and examples in the first column).</p>

<p>providing services within a household from 10-16 hours per day such as but not limited to: child care, cooking, cleaning, yard work, or gardening.</p> <ul style="list-style-type: none">• Fraudulently engaging a child to pay off debt owed by the child, the child's family member, through work (i.e., peonage)• Forcing a child to work in a condition compared to that of a slave in respect to exhausting labor restricted freedom.• Recruiting, harboring or transporting a child to work in the commercial sex industry.	
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¹ 22 U.S.C. §7102(9).

² *Id.* at 7102(10).