

Appendix 1

Statutory Definitions of Abuse and Neglect

Physical Abuse

[Physical abuse] is defined in s. 48.02(1)(a), Stats., as "Physical injury inflicted on a child by other than accidental means." "'Physical injury' includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22(14)." [Ref. s. 48.02(14g), Stats.]

Neglect

Neglect is defined in s. 48.981(1)(d), Stats., as "failure, refusal or inability on the part of a caregiver [as defined in s. 48.981(1)(am), Stats.], for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child."

Sexual Abuse

[Sexual abuse] is defined in s. 48.02(1), Stats., as:

- 1) "Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025."
[Ref. s. 48.02(1)(b), Stats.]

Section 940.225, Stats., addresses sexual assault of any person, and therefore includes sexual assault of a child aged 16 or 17 years old or less.

Sexual assault under this section is defined as when a person

- "Has sexual contact or sexual intercourse with another person without consent of that person"
- "Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition."
- "Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition"
- "Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious"

"Consent" "means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact....The following persons are presumed incapable of consent but the presumption may be rebutted...

- A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.
- A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act" [Ref. s. 940.225 (4), Stats.]

Section 948.02, Stats., defines sexual assault to include sexual contact or intercourse with a child, aged 15 years or less. Section 948.025 addresses "engaging in repeated acts of sexual assault of the same child" aged 15 years or less.

"Sexual intercourse includes the meaning assigned under s. 939.22(36), vulvar penetration, as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required." [Ref. s. 940.225(5)(c), Stats.].

"Sexual contact" means any of the following:

- Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19(1), Stats.
 - a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
 - b. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.
- Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually arousing or gratifying the defendant.
- For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.
[Ref. s. 940.225(5)(b)1. and s. 948.01(5)(a), Stats.]

"Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being." [Ref. s. 939.22(19), Stats.]

[Ref. s. 940.225(5)(b)2. and s. 948.01(5)(b), Stats.]

A violation of s. 948.095, Stats., Sexual assault of a child by a school staff person or a person who works or volunteers with children.

s. 948.085, Stats., Sexual assault of a child placed in substitute care by a foster parent or treatment foster parent or by an employee or volunteer of a shelter facility,

group home, or other institution for care of certain children as identified in s. 940.295(2)(m), Stats.

- 2) "A violation of s. 948.05, Stats.," [Ref. s. 48.02(1)(c), Stats.] This section addresses "sexual exploitation of a child."

"Sexual exploitation of a child" is described as:

a. when someone "does any of the following with knowledge of the character and content of the sexual explicit conduct involving the child...:

- (1) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.
- (2) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct."

b. When someone:

"produces, performs in, profits from, promotes, imports in the state, reproduces, advertises, sells distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct if the person know the character and content of the sexually explicit conditions involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years."

- 3) "Permitting, allowing or encouraging a child to violate s. 944.30, Stats.," [Ref. s. 48.02(1)(d), Stats.] This section addresses prostitution.

A violation of s.944.30, Stats., includes when a person:

- (1) Has or offers to have or requests to have non-marital sexual intercourse for anything of value.
- (2) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.
- (3) Is an inmate of a place of prostitution.
- (4) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.
- (5) Commits or offers to commit or requests to commit an act of sexual contact for anything of value."

- 4) "A violation of s. 948.055, Stats.," [Ref. s. 48.02(1)(e), Stats.] This section addresses intentionally causing a child to view or listen to sexual activity.

This is defined as when a person "intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct ...if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child."

5) "A violation of s. 948.10, Stats.," [Ref. s. 48.02(1)(f), Stats.]. This section addresses exposing the genitals or pubic area to a child or causing a child to expose genitals or pubic area.

This is defined as when a person "for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child."

6) "A violation of s. 948.051, Stats." [Ref. 48.02(1)(cm), Stats.]. This section addresses the sex trafficking of a child.

This is defined as knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a)..

Emotional Damage

Emotional damage is defined as "emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms". [Ref. s. 48.02(1)(gm), Stats.] "Emotional damage' means harm to a child's psychological or intellectual functioning. 'Emotional damage' shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial or observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development." [Ref. s. 48.02(5j), Stats.]

DISCUSSION

Physical Abuse

"Physical abuse" is defined under s. 48.02(1)(a), Stats., as "Physical injury inflicted on a child by other than accidental means." "Physical injury" is defined under s. 48.02(14g), Stats., as "includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22(14)." "Great bodily harm" as defined under s. 939.22(14), Stats., means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

Injuries other than those specifically listed may be considered physical abuse if they are similar in degree or nature to the injuries listed. However, additional types of injuries do **not** need to rise to the level of great bodily harm since the listed types of injury do not rise to that level. Substantial bodily harm under s. 939.22(38), Stats., is a level of harm that falls between "bodily harm" and "great bodily harm". It is defined in the statutes as bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken

nose; a burn; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

This definition seems more similar to the types of injuries included in the definition of physical injuries that constitute child abuse under s. 48.02(14g), Stats. However, some of the injuries listed as physical injuries constituting physical abuse are less severe than substantial bodily harm. For example, physical injuries constituting abuse include any lacerations, but the definition of substantial bodily harm includes more severe lacerations requiring stitches.

Under this definition, physical injury of some sort is clearly an essential element of the abuse. However, physical injury need not necessarily be visible to the unaided eye for example, a broken bone constitutes physical injury, but its existence may not be proven until X-rays have been taken. Since conducting medical tests may be necessary before the existence of actual physical injury can be ascertained, incidents of violence directed against a child should be screened in even when physical injury, or physical injury of the degree described in statutes, is not immediately apparent.

Physical abuse does **not** include self-injury by a child. See the section under Neglect below for a discussion of self-injurious behavior.

For screening purposes, the information in the complaint must be assessed under the totality of circumstances, including information from any previous CPS reports. Therefore, a reporter cannot be expected to provide sufficient information to support a decision that abuse or neglect has occurred or may occur. Gathering additional information and making a final determination as to whether the child is safe/unsafe and whether the child is in need of protection or services related to maltreatment is the purpose of the initial assessment.

For an injury to be considered not accidental, it must meet one of the following criteria:

- the person who inflicted the injury had a conscious intent to harm or injure the child, **or**
- the person knowingly, recklessly, or carelessly engaged in behavior that resulted in the child being injured, regardless of whether he or she intended to cause the injuries.

The following are examples of *non-accidental* injuries:

- bruises or welts as described in s. 48.02(14g), Stats., that are a result of corporal punishment, even if injuring the child was not the parent's conscious intent
- brain injuries that are a result of Shaken Baby Syndrome
- a dislocated elbow that is the result of a parent roughly jerking a child about
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when one parent/caregiver attacks the other parent
- an injury as described in s. 48.02(14g), Stats., that is sustained when a parent angrily shoves or throws a child aside, even if injuring the child was not the parent's conscious intent

The following are examples of *accidental* injuries:

- a dislocated elbow that is the result of a parent catching a child to keep him or her from falling

- bruises that result from a child falling as part of normal play
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when the parent slips and falls while carrying the child
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when hit by a softball while playing with a parent

Neglect

The statutory definition of neglect includes the following concepts:

- a caregiver is not providing care, food, clothing, shelter, medical or dental care to a child, **and**
- the care the child is not receiving is necessary, **and**
- the lack of care seriously endangers the physical health of the child.

The unmodified term “care” in the definition can be assumed to include, at a minimum, a level of supervision consistent with the child’s needs as well as protection from dangers that a caregiver can reasonably be expected to foresee and prevent.

The conditions or behaviors that seriously endanger the physical health of the child may include the child’s own behaviors. For example, allegations that a child suffers from anorexia, slashes himself or herself, or plans to commit suicide and the parents, though aware of the situation, neglect, refuse, or are unable to provide the necessary care to protect the child from harm is an allegation of neglect. Depending on the circumstances, such cases might also be alleged emotional damage.

The worker should consider whether a forensic interview at a children’s advocacy center would be valuable in the initial assessment. The risk of physical harm should be considered in any case of neglect when the physical well-being of the child is at risk. Many cases of environmental neglect (mold, etc.) seriously impact or are at risk of seriously impacting the physical well-being of the children in the home. If the worker is unsure of the risk, consider consulting with the health care provider resources. Also, consider obtaining the child’s medical records. When one type of neglect or abuse is present, there is a strong possibility that other forms of abuse or neglect are present, including medical neglect.

Sexual Abuse

The statutory definitions of sexual abuse include abuse by any other person. Although reports of children being sexually victimized within their own families are of special concern to CPS, reports of children being assaulted or exploited by other persons outside of the family, particularly other caregivers, may also be accepted.

Section 948.02, Stats., has the effect of potentially defining developmentally normal sexual curiosity and behavior of children as abusive. Sexual behavior is part of normal growth and development and can be seen from birth on. There are no protection or service needs in cases of sexual *contact* that is mutual and generally within the bounds of normal sexual development. In fact, a CPS response to instances of developmentally normal child behavior where there is

no potential for protection or service needs might have the effect of being emotionally and developmentally harmful to the child.

In cases of children under the age of 16 engaging in sexual *intercourse*, however, there may be protection or service needs even if that involvement is mutual, with a peer and devoid of any elements of assault, exploitation, or coercion. The needs are primarily health-related (e.g., contraception and avoidance of sexually transmitted diseases). Any CPS response to these cases must focus on offering information and services or community referral to families, rather than on determining who is sexually active with whom.

Reports may be received of one child coercing another child, where the coercive child's behavior indicates an unusual knowledge of sexual behavior inappropriate to the child's age and development. In such reports, both children should be viewed as a possible victim of sexual abuse. The coercive child's behavior may indicate that he or she has been the victim of another person and is acting out that victimization on another child. The protection and service needs of both children are paramount and are the focus of CPS intervention.

Behaviors or Conditions Likely to Result in Abuse or Neglect/ Threatened Harm

Section 48.981(2)(a), Stats., requires certain persons to report if they have "reason to believe that a child...has been threatened with abuse or neglect and that abuse or neglect of the child will occur." The intent is for CPS to intervene before a child is seriously harmed, if that harm can be reasonably predicted or foreseen to occur, based on reported information and, when applicable, previous CPS reports.

The Present Danger and Impending Danger Threats to child safety describe behaviors and conditions that indicate a child might be seriously harmed in the immediate to very near future. Threatened abuse or neglect, then, can be said to be the same as the presence of safety threats, since both involve a judgment or concern that the child is likely to be seriously harmed. Reports that, taken together with other information available to CPS, support a suspicion that a child may be unsafe must be screened in.

Young children with alleged non-accidental injuries are of particular concern to CPS Access. Often times these injuries may not, on the surface, meet the definitions of child abuse or neglect but the child's age and the nature and the type of the injury necessitate a response from child protective services. Reports of this type meet the definition of threatened abuse or neglect, i.e. an unsafe child. Therefore, a report of a small bruise on the face, head, or neck of an infant should not only be screened in, but generally requires an immediate to same-day response.