

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Children and Family Services

Contact Christin Harper E-mail Christin.Harper@dhs.arkansas.gov Phone (501) 682.8541

Statutory Authority for Promulgating Rules A.C.A. §§ 9-28-103 and 12-18-105.

Rule Title: Child Maltreatment Investigation Determinations

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other 07.01.2020
(Must be more than 10 days after filing date.)

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Adopted by State Agency

Date

04.03.2020

05.02.2020

06.19.2020

07.01.2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Toni Roy

Toni.Roy@dhs.arkansas.gov

06.19.2020

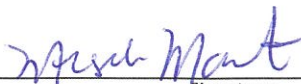
Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

(501) 320.6331

Mischa.Martin@dhs.arkansas.gov

Phone Number

E-mail Address

Director of the Division of Children and Family Services

Title

06.19.2020

Date



Arkansas Department of Human Services Division of Children and Family Services

REQUEST FOR NAME REMOVAL FROM THE CENTRAL REGISTRY

I. REQUESTOR'S PERSONAL DATA:

_____	_____	_____
Last Name	First Name (Include any Alias)	Middle Name
Address _____	Telephone Home: (_____) _____	
_____	Work: (_____) _____	

_____	Date of Birth _____	Gender _____
	Soc. Sec. Number _____	Race _____

II. CHILD MALTREATMENT REPORT INFORMATION:

1. Date of child maltreatment: _____
2. Type of child maltreatment: _____
3. Were you found guilty of, did you plead guilty to, or did you plead nolo contendere to an act that is the same as the type of child maltreatment listed above?

☐ Yes ☐ No

If you answered "Yes" to Question 3, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908. If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the registry unless the conviction is reversed or vacated.

If you answered "No" to Question 3, please go on to the next question.

4. Did this type of child maltreatment listed above also result in a child death due to your direct act(s) or omission(s)?

☐ Yes ☐ No

If you answered "Yes" to Question 4, do not proceed. You do not meet the criteria to have your request reviewed pursuant to DCFS Procedures XIII-A9.

If you answered "No" to Question 4, please go on to the next question.

5. Has the offender had a subsequent true report of this type for one year? ☐ Yes ☐ No

If you answered "Yes" to Question 5, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "No" to Question 5, please go on to the next question.

6. Has more than one year passed since the offender's name was placed on the Central Registry?

☐ Yes ☐ No

If you answered "No" to Question 6, do not proceed. You do not meet the criteria to have your request reviewed pursuant to A.C.A. § 12-18-908.

If you answered "Yes" to Question 6, please go on to the next question.

- 7. Are you still involved with an open DHS protective services or foster care case related to this type of maltreatment?** ☐ Yes ☐ No

If you answered "Yes" to Question 7, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure VIII-A9.

If you answered "No" to Question 7, please go on to the next question.

- 8. If you listed any of the following types of child maltreatment in the response to Question 2, were your parental rights terminated either voluntarily or involuntarily due to this type of child maltreatment?**

- Abuse with deadly weapon
- Bone fractures
- Brain Damage/Skull Fracture
- Burns/scalding
- Immersion
- Inadequate supervision – children less than 6 years of age
- Interfering with a child's breathing
- Internal injuries
- Malnutrition
- Oral sex
- Poison/noxious substances
- Presence of an illegal substance in a child or its mother at the time of birth resulting from the mother's knowing use of the substance
- Sexual exploitation
- Sexual penetration
- Shaking a child age 3 or younger
- Striking a child with a closed fist
- Subdural hematoma
- Suffocation

☐ Yes ☐ No ☐ N/A, I did not list any of these maltreatment types in response to Question 2.

If you answered "Yes" to Question 8, do not proceed. You do not meet the criteria to have your case reviewed pursuant to DCFS Procedure XIII-A9.

If you were instructed to proceed to Question 8 and then answered "No" or "N/A" to Question 8, you have met the criteria to have your request reviewed. A review of your request does not guarantee removal from the Arkansas Child Maltreatment Central Registry.

Arkansas Code Annotated § 12-18-908 requires the Department of Human Services to establish procedures to determine whether or not to remove an offender's name from the Arkansas Child Maltreatment Central Registry if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the Arkansas Child Maltreatment Central Registry.

A committee with expertise in the area of child maltreatment will review your case upon receipt of this request to determine if your name can be removed from the Central Registry. The law requires that you meet the criteria mentioned above for your case to be reviewed. The Review Committee meets on a monthly basis. Your request must be received forty-five (45) days prior to the monthly meeting in which it will be reviewed. You will be notified in writing of the committee's decision.

III. VICTIM AND CENTRAL REGISTRY DATA:

Victim's Name _____ Victim's Date of Birth _____

What is the CRID number listed on your Central Registry Report? CRID Number _____

IV. OTHER REQUIRED DOCUMENTATION:

If you meet the criteria to have your case reviewed please submit:

- This form (CFS-328-A);
- A personal letter describing:
 - Your reason for the removal request;
 - The events and circumstances surrounding the child maltreatment allegation and finding; and,
 - Your rehabilitation;
- Your Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
- Your Child Maltreatment Registry results from your current state of residence or any state in which you have resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
- Your Arkansas Crime Information Center (ACIC) current criminal background check results free from child maltreatment-related offenses for the preceding year;
- Your state criminal background check results from your current state of residence or from any state in which you have resided in the preceding year free from child-maltreatment related offenses for the preceding year;
- Evidence of your rehabilitation including, but not limited to:
 - Documentation proving participation in treatment, remediation, or rehabilitation programs as related to the specific offense. For removal requests related to types of sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) *(note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered)*;
 - Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - One (1) to three (3) letters of reference from professionals (not to include DCFS employees), employees, spiritual counselors, friends, or family describing your rehabilitation. No more than one (1) letter may be submitted from a family member.
- Are there currently any pending criminal charges related to an offense on the same set of facts of the child maltreatment report that resulted in placement on the Child Maltreatment Central Registry? ☐ Yes ☐ No

If you selected "Yes" to the question above, please provide the Review Committee with documentation describing the current status of these pending charges (e.g., court records, letter from your attorney, your probation officer, or the prosecuting attorney, etc.) in addition to the other information listed in this section.

Submit your documents to:

The Division of Children and Family Services

Central Registry

P.O. Box 1437, Slot S566

Little Rock, AR 72203

Arkansas Department of Human Services
Division of Children and Family Services

Child Maltreatment Investigation Determination Guide

PUB-357 R. July 2020

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Introduction

This publication outlines the legal elements required to make a true finding for child maltreatment at the conclusion of a child maltreatment investigation as per the Child Maltreatment Act. This publication is promulgated under the authority of § 12-18-105 of the Arkansas Code to carry out the Child Maltreatment Act. The information within this publication, therefore, has the force and effect of law.

This publication is designed to help investigators identify the elements that must be established before an allegation of child maltreatment can be determined true under the Child Maltreatment Act, which defines child maltreatment as conduct that falls under one (1) or more of five (5) categories: (1) Abandonment, (2) Abuse, (3) Neglect, (4) Sexual Abuse, and (5) Sexual Exploitation.

To do this, Section 1 sets out the statutory definition and exceptions for each category of child maltreatment. Section 1 then explains the elements required to make a true finding for each category of child maltreatment and each type of child maltreatment that may occur under each category of child maltreatment. Section 2 provides an index of all thirty-eight (38) types of child maltreatment.

An investigator can only make a true finding as to one (1) or more of the five (5) categories of child maltreatment and only then if the investigator finds that each of the elements for the applicable child maltreatment category type are established by a preponderance of the evidence. “Preponderance of the evidence” is a legal standard of proof that means that it is “more likely than not” that child maltreatment occurred based on all the evidence that the investigator is able to collect during the given investigation.

A true finding cannot be made based solely on the examples given in this publication; a true finding must be based on the investigator’s determination that each element of the given category type of child maltreatment is supported by a preponderance of the evidence. The examples do not change the elements required to constitute child maltreatment, but rather merely provide possible ways in which a given category type of child maltreatment could occur.

Glossary

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

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

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

Section 1: Categories and Types of Maltreatment

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

1.1 Abandonment

Definition

Abandonment means the failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause. Abandonment also means an articulated intent to forego parental responsibility.

Exceptions

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

Disrupted Adoption Exception. Abandonment does not include situations in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abandonment is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abandonment:

Abandonment for an indefinite period:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;
- 3) A/O did not provide reasonable support for the A/V and maintain regular contact with the A/V through statement or contact; and
- 4) A/O intends to continue the lack of reasonable support and regular contact for an indefinite period in the future.

Abandonment without just cause:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred;
- 3) A/O did not provide reasonable support for the A/V or maintain regular contact with the A/V through statement or contact; and

- 4) A/O did not have just cause in failing to support or maintain regular contact with the A/V.

Abandonment by articulated intent:

- 1) A/O is a parent of the A/V;
- 2) A/V was under eighteen (18) years old when the alleged abandonment occurred; and
- 3) A/O articulated an intent to forego parental responsibility of the A/V.

1.2 Abuse

Definition

Abuse means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the child's parent, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

- Extreme or repeated cruelty to a child;
- Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;
- Any injury that is at variance with the history given;
- Any nonaccidental physical injury;
- Any of the following intentional or knowing acts, with physical injury and without justifiable cause: throwing, kicking, burning, biting, or cutting a child; striking a child with a closed fist; shaking a child; or striking a child on the face or head;
- Any of the following intentional or knowing acts, with or without physical injury: striking a child six (6) years of age or younger on the face or head; shaking a child three (3) years of age or younger; interfering with a child's breathing; pinching, biting, or striking a child in the genital area; tying a child to a fixed or heavy object or binding or tying a child's limbs together;
- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to marijuana, alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service), a narcotic, or an over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
- Any of the following intentional or knowing acts, with or without physical injury: exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine;
- Any of the following intentional or knowing acts, with or without physical injury: subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;
- Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or
- Female genital mutilation.

This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. This means that other acts or omission can constitute abuse if the action is unreasonable and the A/O is a parent, guardian, custodian, person eighteen (18) years of age or older who lives in the home with the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare. However, if the act or omission could fall within the definition of one (1) of the types of abuse, then the act or omission must meet the elements of that type of abuse to constitute child maltreatment.

Exceptions

Physical Discipline Exception. Abuse does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or

correcting the child. Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate.

Appropriate Restraint Exception. Abuse does not include when a child suffers transient pain or minor temporary marks as a result of an appropriate restraint if: the person exercising the restraint is an employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the person exercising the restraint is acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the child welfare agency has policy and procedures regarding restraints; no other alternative exists to control the child except for a restraint; the child is in danger or hurting himself or herself or others; the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; the restraint is for a reasonable period of time; and the restraint is in conformity with training and child welfare agency's policies and procedures.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abuse:

Extreme or repeated cruelty.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) At least one (1) act or omission of the A/O towards the child was extremely cruel or more than (1) one act or omission of the A/O towards the child was cruel.

Threat of harm.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related

or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions created a realistic and serious threat to the A/V of death, permanent or temporary disfigurement, or impairment of a bodily organ.

NOTE: True findings for abuse involving the threat of harm can be made even if the A/V was not injured; this type only requires that the A/O created a realistic and serious threat to the A/V of death, disfigurement, or impairment of a bodily organ.

Mental injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's acts or omissions caused injury to A/V's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the A/V's ability to function within the A/V's normal range of performance and behavior related to intellectual, emotional, or psychological development.

Injury at variance with explanation given.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's

- parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/V's injury is not consistent with the history given by the A/O or given by anyone else related to the A/O's care of the A/V.

Nonaccidental physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's act or omission caused any nonaccidental physical injury to the A/V.

NOTE: True findings for nonaccidental physical injuries can be made regardless of whether the A/O intended to cause the physical injury that the A/V suffered; the relevant and culpable act or omission is the act or omission that caused the nonaccidental physical injury.

Abuse with physical injury and without justifiable cause.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O threw the A/V, kicked the A/V, burned the A/V, bit the A/V, cut the A/V, struck the A/V with a closed fist, shook the A/V, or struck the A/V's face or head;
- 4) A/O intentionally or knowingly committed the act in 3);
- 5) A/O did not have a justifiable cause in committing the act or omission; and

- 6) A/O's act or omission caused any physical injury to the A/V.

Abuse with or without physical injury.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O struck the A/V who was six (6) years of age or younger on the face or head, shook the A/V who was three (3) years of age or younger, interfered with the A/V's breathing, pinched the A/V in the genital area, bit the A/V in the genital area, struck the A/V in the genital area, tied the A/V to a fixed or heavy object, or bound or tied the A/V's limbs together; and
- 4) A/O intentionally or knowingly committed the act in 3.

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V , or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O gave or permitted the A/V to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse involving substances that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance

interfered with the A/V's normal physiological functions.

NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion. Staff are encouraged to consult with a physician as needed for any questions related to what may constitute normal physiological function.

Abuse involving substances that may alter the mood of a child.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V , or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O gave, or permitted the A/V to consume or inhale, a substance not prescribed by a physician that has the capacity to alter the mood of the child, including without limitation:
 - A. Marijuana;
 - B. Alcohol unless it is given to the A/V during a recognized and established religious ceremony or service;
 - C. A narcotic; or
 - D. An over-the-counter drug, but only if:
 1. A/O purposely administers an overdose to the A/V or purposely gives an inappropriate over-the-counter drug to the A/V; and
 2. A/V is detrimentally impacted by the overdose or the inappropriate over-the-counter drug; and
- 4) A/O intentionally or knowingly committed the act in 3).

NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.

Abuse involving exposure to a chemical that may interfere with normal physiological functions.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V , or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited

to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;

- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O exposed A/V to a chemical that has the capacity to interfere with normal physiological functions, including without limitation, a chemical used or generated during the manufacture of methamphetamine; and
- 4) A/O intentionally or knowingly committed the act in 3.

NOTE: True findings for abuse involving exposure to a chemical that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance actually interfered with the A/V's physiological functions.

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

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

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy;
- 4) Medical personnel confirmed that A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy; and
- 5) A/O intentionally or knowingly committed Munchausen syndrome by proxy or a factitious illness by proxy.

NOTE: True findings for abuse involving 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.

NOTE: Munchausen syndrome by proxy and factitious illness by proxy are often diagnosed with newer terms such as factitious disorder imposed on another, pediatric condition falsification, or medical child abuse. If the A/O sought treatment for a fabricated medical condition, then these other diagnoses are each sufficient to establish Munchausen syndrome by proxy or factitious illness by proxy.

Human trafficking.

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O recruited, harbored, transported, or obtained the A/V for labor or services;
- 4) A/O committed the act in 3) through force, fraud, or coercion;
- 5) A/O committed the act in 3) for the purpose of subjecting the A/V to involuntary servitude, peonage, debt bondage, or slavery.

Female genital mutilation

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was a female under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O removed all or part of the A/V's external female genitalia or otherwise harmed the A/V's female genitalia unless
 - A. The conduct is performed by a licensed medical professional;
 - B. The conduct occurs in the furtherance of a surgical or other lawful medical procedure; and
 - C. The procedure is:
 1. Necessary to preserve or protect the physical health of the A/V; or

2. Part of a sex reassignment procedure requested by the A/V.

NOTE: Female genital mutilation includes without limitation procedures such as a clitoridectomy; the partial or total removal of the clitoris or the prepuce; the excision or the partial or total removal of the clitoris and the labia minora (with or without the excision of the labia majora); the infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting or a positioning the labia minora or the labia majora (with or without the excision of the clitoris); pricking, piercing, incising, scraping, or cauterizing the genital area; or any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

1.3 Neglect

Definition

Neglect means acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of a married minor, that constitute one (1) of the following:

- Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;
- Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;
- Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;
- Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;
- Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;
- Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm, or, in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

- Failure to appropriately supervise the child that results in the child's being placed in inappropriate circumstances creating a dangerous situation, or a situation that puts the child at risk of harm;
- Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled;
- An act or omission by the child's parent, custodian, or guardian resulting in the child being habitually and without justification absent from school;
- Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child; or
- At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of neglect is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of neglect:

Failure to prevent abuse.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed or refused to prevent the abuse of the A/V; and
- 4) A/O knew or had reasonable cause to know the A/V was being abused or had been abused.

NOTE: True findings for neglect involving the failure to prevent abuse can be made only if the A/V was abused. If the A/V did not suffer abuse, the separate type of neglect involving the failure to protect from maltreatment or parental unfitness may be applicable because that type does not require that the A/V be maltreated.

Failure to provide necessary food, clothing, shelter, or medical treatment.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed or refused to provide necessary food, clothing, shelter, or medical treatment necessary for the A/V's well-being unless
 - A. The failure or refusal is caused primarily by the financial inability of the person legally responsible for the A/V, and
 - B. No services for relief have been offered.

Failure to protect from maltreatment or parental unfitness.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the A/V's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, A/V care facility, public or private school, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness; and
- 4) A/O knew or should have known about the condition that posed a risk of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the A/V.

NOTE: True findings for neglect involving the failure to protect from child maltreatment or parental unfitness can be made even if the A/V was not maltreated or subjected to parental unfitness; this type only requires that the A/O failed to take reasonable action to protect the A/V from the risk of child maltreatment or parental unfitness.

Failure to provide for essential and necessary needs.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide, or is irremediably unable to provide, for the essential physical, mental, or emotional needs of the A/V, including without limitation the failure to provide a shelter that does not pose a risk to the health or safety of the A/V.

Failure to provide for care, maintenance, or support.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to provide for the A/V's
 - A. Care and maintenance,
 - B. Proper and necessary support, or
 - C. Medical, surgical, or other necessary care.

Failure to assume responsibility for a child.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to assume responsibility for the care and custody of the A/V even though the A/O was able to do so, or to participate in a plan to assume responsibility for the care and custody of the A/V even though the A/O was able to do so.

Inadequate supervision by leaving a child alone.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to appropriately supervise the A/V and left the A/V alone at an inappropriate age or in inappropriate circumstances; and
- 4) The A/O's act or omission created a dangerous situation or a situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two (2) factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V and the foreseeability of harm if the A/V was left alone in those circumstances.

Inadequate supervision by placing child in a dangerous situation.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to appropriately supervise the A/V and placed the A/V in:
 - A. Inappropriate circumstances that created a dangerous situation, or
 - B. A situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V.

Educational neglect by failing to enroll a child in school.

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was between six (6) years of age and seventeen (17) years of age when the alleged neglect occurred; and
- 3) A/O failed to ensure that A/V was enrolled in school or was being legally homeschooled.

NOTE: A home school is a school provided by a parent or legal guardian for his or her own child.

NOTE: Staff must determine if a child is legally home-schooled as per A.C.A. 6-15-503. Please consult with local Office of Chief Counsel (OCC) attorney to determine if a child is legally home-schooled.

Educational neglect due to absence from school.

- 1) A/O is a parent, custodian, or guardian;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O's act or omission caused the A/V to be habitually absent from school; and
- 4) A/V's absences were not justified.

Presence of illegal substance in a child when a child is born.

- 1) A/O is the A/V's mother;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/V had the illegal substance in the A/V's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/V's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the

A/V at birth.

Presence of illegal substance in a mother when a child is born.

- 1) A/O is the A/V's mother;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and
- 4) A/O had the illegal substance in the A/O's bodily fluids or bodily substances at the time of the A/V's birth.

NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.

NOTE: A test of the A/O's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/O when the A/V is born.

1.4 Sexual Abuse

Definition

Sexual abuse means:

- By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; indecent exposure; or forcing the watching of pornography or live sexual activity;
- By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a caretaker to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact; forcing or encouraging the watching of pornography; forcing, permitting, or encouraging the watching of live sexual activity; forcing the listening to a phone sex line; an act of voyeurism; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
- By a person eighteen (18) years of age or older to a person who is younger than (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Exceptions

Defense and Affirmative Defense Exceptions.

Pursuant to 12-18-804, for any act or omission of child maltreatment that would be a criminal

offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of: a statute of limitation; lack of capacity as a result of mental disease or defect under § 5-2-312; and affirmative defenses under §§ 5-1-112 — 5-1-114.

For example, if a teacher and a student have a sexual relationship, an affirmative defense may apply. If the teacher engages in sexual intercourse or deviate sexual activity with a student less than 21 years of age and the teacher uses his or her position of trust or authority over the victim, then the conduct would fall under the definition of sexual abuse. However, if the teacher was no more than 3 years older than the student, then the affirmative defense would apply.

Staff must consult with local OCC attorney regarding possible defense and affirmative defense exceptions.

Making a True Determination

Based on the definition above and unless an exception applies, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual abuse:

Sexual intercourse.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 1. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 2. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred; and
 3. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse.

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:

- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
- B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred; and
- C. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse.

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:

- A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 - 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 - 4. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse.

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

- B. The A/O was not the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;

2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V;

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V; and
 - D. A/O used forcible compulsion to engage in the sexual intercourse or attempted sexual intercourse, which is where either A/V did not want to engage in the sexual intercourse or attempted sexual intercourse, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual intercourse or attempted sexual intercourse.

NOTE: The age, developmental stage, and stature of the A/V and

the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: The exception to sexual abuse may apply to this type of sexual abuse.

Deviate sexual activity.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 - A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 - D. Where deviate sexual activity is:
 1. An act of sexual gratification; and
 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:

- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
- B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;
- C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
- D. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and
 5. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however, slight of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V;

5. A/O used forcible compulsion to engage in the deviate sexual activity or attempted deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity; and
6. Where deviate sexual activity is:
 - a. An act of sexual gratification; and
 - b. Involves either
 - (1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - (2) The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;

- C. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V; and
- D. A/O used forcible compulsion to engage in the deviate sexual activity or deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity.
- E. Where deviate sexual activity is:
 - 1. An act of sexual gratification; and
 - 2. Involves either
 - a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
 - b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: The exception to sexual abuse may apply to this form of sexual abuse.

Sexual contact.

- 1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:
 - A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and

- D. Where sexual contact is:
1. An act of sexual gratification; and
 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner.

NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual contact described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:
- A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
 - B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 - D. Where sexual contact is:
 1. An act of sexual gratification; and
 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or

- c. The offender requesting to touch the A/V in a sexual manner.

NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 - 1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 - 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
 - 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - 4. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and
 - 5. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves
 - (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

- (2) The encouraging of the A/V to touch the offender in a sexual manner; or
- (3) The offender requesting to touch the A/V in a sexual manner.

NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- B. The A/O was not the A/V's caretaker where the following facts are established:
1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
 3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V;
 5. A/O used forcible compulsion to engage in the sexual contact or attempted sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact; and
 6. Where sexual contact is:
 - a. An act of sexual gratification; and
 - b. Involves

- (1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
- (2) The encouraging of the A/V to touch the offender in a sexual manner; or
- (3) The offender requesting to touch the A/V in a sexual manner.

NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

- 4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;
 - B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 - C. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V; and
 - D. A/O used forcible compulsion to engage in the sexual contact or sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact.

- E. Where sexual contact is:
1. An act of sexual gratification; and
 2. Involves
 - a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
 - b. The encouraging of the A/V to touch the offender in a sexual manner; or
 - c. The offender requesting to touch the A/V in a sexual manner.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.

Indecent exposure.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O exposed his or her sexual organs to the A/V;
- 4) A/O intended to arouse or gratify the sexual desire of the A/O or some other person; and
- 5) A/O knew that exposing his or her sexual organs was likely to cause affront or alarm.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Pornography.

- 1) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:

A. The A/O was the A/V's caretaker where the following facts are established:

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
4. A/O forced or encouraged A/V to watch pornography, which is:
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
 - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
 - c. Obscene or licentious material.

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or directed the A/V to watch pornography.

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

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O forced A/V to watch pornography, which is
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
 - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
 - c. Obscene or licentious material; and
 5. A/O forced A/V where either A/V did not want to watch the pornography, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch pornography.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Live Sexual Activity.

- 1) If the A/O was fourteen (14) years old or older and the A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 1. The A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
 4. A/O forced, encouraged, or permitted the A/V to watch live sexual activity.

NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or even permitted the A/V to watch live sexual activity.

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

1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
4. A/O forced A/V to watch live sexual activity; and
5. A/O forced A/V where either A/V did not want to watch the live sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch live sexual activity.

NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.

Phone Sex Line.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;

- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 4) A/O forced A/V to listen to a phone sex line; and
- 5) A/O forced A/V where either A/V did not want to listen to the phone sex line, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to listen to the phone sex line.

Voyeurism.

- 1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
- 2) The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 3) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 4) A/O looked at the A/V in a private location or place in which a child may reasonably be expected to be nude or partially nude; and
- 5) A/O's purpose in looking was for sexual arousal or gratification.

NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

Sex Trafficking.

- 1) A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
- 3) A/O recruited, harbored, transported, obtained, patronized, or solicited A/V; and
- 4) A/O's purpose was to facilitate a commercial sex act.

1.5 Sexual Exploitation

Definition

Sexual exploitation means:

- By a person eighteen (18) years of age or older to a child who is not his or her spouse: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.
- By a caretaker to a child: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.

Exceptions

None.

Making a True Determination

Based on the definition above, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual exploitation:

Sexual exploitation

- 1) A/O was, when the alleged sexual abuse occurred:
 - A. Eighteen (18) years old or older and not A/V's spouse; or
 - B. A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;
- 2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and
- 3) A/O:

- A. Allowed, permitted, or encouraged A/V to participate or be depicted in prostitution, obscene photography, or obscene filming; or
- B. Obscenely depicted, obscenely posed, or obscenely postured the A/V for any use or purpose.

Section 2: Index of All Child Maltreatment Types Within Each Maltreatment Category (types listed alphabetically within each category)

ABANDONMENT

Abandonment for an indefinite period

Abandonment without just cause

Abandonment by articulated intent

ABUSE

Abuse involving exposure to a chemical that may interfere with normal physiological functions

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

Abuse involving substances that may alter the mood of a child

Abuse involving noxious or poisonous substances that may interfere with normal physiological functions

Abuse with physical injury and without justifiable cause

Abuse with or without physical injury

Extreme or repeated cruelty

Female genital mutilation

Human trafficking

Injury at variance with explanation given

Mental injury

Nonaccidental physical injury

Threat of Harm

NEGLECT

Educational neglect by failing to enroll a child in school

Educational neglect due to absence from school

Failure to assume responsibility for a child

Failure to prevent abuse

Failure to protect from maltreatment or parental unfitness

Failure to provide necessary food, clothing, shelter, or medical treatment

Failure to provide for care, maintenance, or support

Failure to provide for essential and necessary needs

Inadequate supervision by leaving a child alone

Inadequate supervision by placing child in a dangerous situation

Presence of illegal substance in a child when a child is born

Presence of illegal substance in a mother when a child is born

SEXUAL ABUSE

Deviate sexual activity

Indecent exposure

Live sexual activity

Phone sex line

Pornography

Sex trafficking

Sexual contact

Sexual intercourse

Voyeurism

SEXUAL EXPLOITATION

Sexual exploitation

|

PROCEDURE XIII-A4: Automatic Name Removal from Child Maltreatment Central Registry

07/2020

CRITERIA FOR REMOVAL

The offender's name will be automatically removed from the Child Maltreatment Central Registry for the following types of child maltreatment or types of maltreatment involving the following injury characteristics or other details, as designated by A.C.A. § 12-18-908, dependent upon the offender having not had a subsequent true report of this type for one year and more than one year having passed since the offender's name was placed on the Child Maltreatment Central Registry:

- A. Educational Neglect
- B. Environmental Neglect
- C. Inadequate Clothing
- D. Inadequate Food
- E. Inadequate Shelter
- F. Inadequate Supervision-Children six (6) years or older

(A.C.A. § 12-18-908 allows these to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908].)

Procedure II-B1: Child Abuse Hotline Referral to Differential Response

07/2020

The Child Abuse Hotline Worker will:

- A. Receive and document all child maltreatment allegation reports with sufficiently identifying information as defined by Arkansas law. Situations in which the hotline assesses as an immediate danger to the child's health and physical well-being based upon the severity of the allegations shall be excluded from the Differential Response pathway and referred to DCFS as an investigation.
- B. Receive fax transmission in non-emergency situations by identified reporters who provide their name, phone number, and email address (for online reporting). Confirm receipt of fax transmission via a return fax transmission.
- C. Conduct a history check on all reports unless call waiting to be answered by the hotline have been waiting for 15 minutes or longer. History checks will be conducted on serious maltreatment allegations or allegations involving children three (3) years of age and younger regardless of wait time.
- D. Attempt to secure all information requested in each screen within the Referral Section of CHRIS and elicit all information requested on the "Referral" and "Narrative" screens:
 - 1) Reason(s) the reporter suspects child maltreatment and how the reporter acquired the information;
 - 2) Current risk of harm to the child;
 - 3) Mental and physical condition of alleged offender;
 - 4) Potential danger to staff assessing the report;
 - 5) Identity and location of possible witnesses or persons knowledgeable about the alleged child maltreatment;
 - 6) Relevant addresses and directions;
 - 7) Licensing authority and facility involved (if applicable).
- E. Prioritize the report by keying the "Ref. Accept" screen. Central Registry Search results is a mandatory field on this screen.
- F. If the referral meets the Differential Response eligibility criteria noted above, forward the report to the Differential Response Coordinator or designee for assessment along with any pertinent Central Registry information.
- G. Inform the caller if the report does not constitute a report of child maltreatment and make appropriate referrals.
- H. Notify each mandated reporter who makes a call to the hotline if the mandated reporter's call is not accepted or is screened out on a subsequent hotline supervisor review. Said notification should be made within two business days.

PROCEDURE II-D4: Child Maltreatment Report Investigation Interviews

07/2020

The FSW will:

- A. Prepare for interviews by reviewing intake report and any prior child maltreatment reports, etc. See “Gathering Information” practice guide series for more information.
- B. Conduct a separate interview with the alleged victim outside the presence of the alleged offender and the alleged offender’s attorney in reports involving both in-home and out-of-home offenders. Exceptions must be approved by a supervisor.
 - 1) If not age appropriate for an interview, observe alleged victim outside the presence of the alleged offender and the alleged offender’s attorney.
- C. Interview any siblings of the alleged victim and any other children under the care of the alleged offender (including during investigations with alleged out-of-home offenders) as the siblings and other children under the care of the alleged offender may have collateral information or have been within access of the alleged offender. Exceptions must be approved by a supervisor.
 - 1) Interview all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the alleged offender’s attorney.
 - a) If not age appropriate for an interview, observe all siblings and other children under the care of the alleged offender outside the presence of the alleged offender and the offender’s attorney.
 - 2) Considering the best interest of the child, limit, as appropriate, other persons allowed to be present when a child is interviewed concerning allegations of child maltreatment.
- D. Conduct a cursory physical examination of children in the least invasive manner possible during the interview. A cursory physical examination is the observation of a child’s external, physical condition which may require that the child’s clothing be removed or rearranged.
 - 1) If the child is under the age of five (5), conduct the exam with the assistance of the parent/caretaker.
- E. Complete CFS-327a: Physical Documentation--Body Diagram when applicable and if a medical provider has not already completed CFS-327-A or similar diagram specific to the current allegation.
- F. Photograph visible injuries; label and date photos.
- G. Interview the custodial and non-custodial parent of the alleged victim child and inform them of DCFS responsibility to assess.
- H. Interview alleged offender.
 - 1) In addition to gathering information about the alleged maltreatment, ascertain the alleged offender’s:
 - a) Employer, including the physical address;
 - b) Job duties at place of employment; and,
 - c) Supervisor’s name.
- I. Interview collateral sources, as appropriate, including teachers, neighbors, witnesses, and the person making the report.
- J. When interviewing a child at school, provide the principal or designee with a copy of CFS-213-A: School District Prohibition from Notifying Parent, Guardian, or Custodian of a Child Maltreatment Investigation.
- K. Enter interview notes within forty-eight (48) hours of completion of interviews.
- L. If it is discovered that any interviewee is an unlicensed child care provider (i.e., caring for more than five children including an individual’s own pre-school children), notify the Division of Child Care and Early Childhood Education.
- M. Assist the investigative supervisor with the coordination of interviews when primary (i.e., where the child is currently located) and secondary counties are involved.
 - 1) The FSW of the primary county will:
 - a) Interview all applicable subjects in his or her county within required timeframes;
 - b) Complete the Health and Safety Assessment (including Health and Safety Checklist, Safety Planning, and Investigation Risk Assessment) in the Division information system with

information obtained during primary investigator interviews and information obtained from secondary investigator from secondary's interviews.

- 2) The FSW of the secondary county will:
 - a) Contact the primary county by phone no later than twenty-four (24) hours after interviews are conducted to discuss:
 - i. Any identified safety factors and supporting documentation (e.g., statements made by children, observations of children, caregiver statements, etc.);
 - ii. Determination of any additional children, elderly persons, or individuals with a disability or mental illness who may be at risk;
 - iii. Provisions of the protection plan if one has been implemented;
 - iv. Other persons interviewed, their relationship to the family and how information provided was obtained (e.g., first-hand, hearsay, investigator observations, etc.);
 - v. Verification of identity of persons interviewed;
 - vi. Projected completion date for secondary investigation if it is not completed at time of phone conference.
 - b) Forward any hard copy information to the primary investigator within seventy-two (72) hours after receipt.
- N. Reinitiate the investigation in the second county within 24-72 hours when an investigation is transferred from one county to another and the victim or any other children believed to reside in the home where the report originated have not been seen.
- O. Complete and document all interviews within thirty (30) calendar days of the receipt of the child maltreatment report.

If any parties required to be interviewed (parents, children, alleged victim child, or alleged perpetrator) cannot be located or are unable to communicate, the FSW will, after exercising due diligence, document efforts to locate or communicate with required parties and proceed with the child maltreatment investigation.

The Investigative Supervisor will:

- A. Take the lead in coordinating the investigation when multiple counties are involved;
 - 1) If a secondary assignment is required, complete as soon as possible but no later than twenty-four (24) hours after receipt of referral the summary section in the Division information system's assignment screens describing:
 - a) the reason(s) for the request;
 - b) any special instructions;
 - c) updated locations and telephone numbers of subjects to be seen.
 - 2) Forward the request to the appropriate investigative team.
 - 3) Verbally alert the receiving team supervisor of the secondary investigation request to:
 - a) Verify receipt of report when a secondary team investigator will initiate the investigations;
 - b) Clarify any issues involving the secondary investigation request;
 - c) Coordinate team responsibilities with the Prosecuting Attorney, law enforcement, and hospital staff, as applicable.
- B. Participate in phone conferences with primary and secondary investigators and any other staff involved in the investigation, as applicable.
- C. Conference with the FSW investigator and any other staff involved from other counties as appropriate and document any consultations in the Division's information system.
- D. Ensure that counties otherwise communicate and complete the investigation within forty-five (45) calendar days.

PROCEDURE XIII-A6: Name Removal from Child Maltreatment Central Registry by an Adult Offender's Request

07/2020

REMOVAL CRITERIA

An adult offender is defined as a person age 18 years or older at the time of the act or omission that resulted in a true finding of child maltreatment.

An adult offender may request his or her name be removed from the Child Maltreatment Central Registry when:

- A. The individual has not had a subsequent true report of this type or type involving the specified injury characteristic or detail for one year; and,
- B. More than one year has passed since the adult offender's name was placed on the Child Maltreatment Central Registry.

However, the adult offender may not request removal from the Child Maltreatment Central Registry if any of the following apply:

- A. The adult offender was placed into the Child Maltreatment Central Registry for any type of child maltreatment that resulted in a child fatality as a direct result of the offender's act or omission.
- B. The adult offender is still involved in an open protective services or foster care case for the type of maltreatment for which he or she was placed into the Child Maltreatment Central Registry.
- C. The adult offender was placed into the Child Maltreatment Central Registry for any of the child maltreatment types or type involving any of the injury characteristics or details listed below and his or her parental rights were subsequently terminated either voluntarily or involuntarily:
 - Abuse with deadly weapon
 - Bone fractures
 - Brain Damage/Skull Fracture
 - Burns/scalding
 - Immersion
 - Inadequate supervision – children less than 6 years of age
 - Interfering with a child's breathing
 - Internal injuries
 - Malnutrition
 - Oral sex
 - Poison/noxious substances
 - Presence of illegal substance in child or its mother at time of birth resulting from mother's knowing use of the substance
 - Sexual exploitation
 - Sexual penetration
 - Shaking a child age 3 or younger
 - Striking a child with a closed fist
 - Subdural hematoma
 - Suffocation

(A.C.A. § 12-18-908 allows the types of maltreatment that may be considered for removal to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908]).

Finally, per A.C.A. § 12-18-908, If an adult offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the Child Maltreatment Central Registry unless the conviction is reversed or vacated.

APPLICATION FORMAT FOR AN ADULT OFFENDER

An application for name removal from the Child Maltreatment Central Registry shall conform to the following:

- A. The adult offender will submit his or her request to the DCFS Director via the CFS-328-A: Request for Name Removal from the Child Maltreatment Central Registry by Adult Offender and shall also submit:
 - 1) A personal letter describing:
 - a) The offender's reason for the removal request;
 - b) The events and circumstances surrounding the child maltreatment finding; and,
 - c) The offender's rehabilitation; and,
 - d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness;
 - 2) Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding year;
 - 3) Child Maltreatment Registry results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
 - 4) Arkansas Crime Information Center (ACIC) background check results free from child maltreatment-related offense for the preceding one year;
 - 5) State background check results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from child maltreatment-related offense for the preceding one year;
 - 6) Description and documentation (e.g., court records, letter from the adult offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;
 - 7) Evidence of the offender's rehabilitation, including, but not limited to:
 - a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense if applicable.
 - i. For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
 - a) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
 - b) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
 - c) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*);
 - d) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
 - b) One to three letters of reference from professionals (not to include DCFS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
 - i. No more than one letter of reference can be submitted from a family member.

The Child Maltreatment Central Registry Review Team, as described in Procedure XIII-A6, may select additional, non-child maltreatment-related offenses which prevent name removal from the Child Maltreatment Central Registry.

DETERMINATION OF NAME REMOVAL REQUEST BY AN ADULT OFFENDER

The Child Maltreatment Central Registry Review Team will consider requests for removal of names from the Registry. In determining whether or not to remove an offender from the Child Maltreatment Central Registry the Review Team shall consider any relevant evidence, which may include, but is not limited to the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. And any other information that is relevant to the specific offense.

If the child maltreatment type is in the removal-by-request category, and the adult offender has not had a subsequent true report of this type for one year and more than one year has passed since the offender's name was placed on the Child Maltreatment Central Registry, he will have a right to a review of the case.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the Review Team shall send a denial letter to the adult offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. Any pending criminal charges surrounding the maltreatment;
- F. And any other information that is relevant to the specific offense.

The adult offender shall wait one year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Child Maltreatment Central Registry. However, if the Review Team needs additional information from the adult offender in order to make the determination as to whether to remove his or her name from the Child Maltreatment Central Registry, the Review Team may request that the adult offender provide the additional information without requiring the adult offender to wait an additional year to file a new petition. The Review Team shall inform the adult offender in writing of the specific additional information requested. The adult offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the adult offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the adult offender shall wait one year from the date of the request to file a new petition requesting his or her name be removed from the Child Maltreatment Central Registry.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the adult offender may request an administrative hearing within 30 days from the receipt of the Division's decision.

EXCERPT: POLICY II-D: Investigation of Child Maltreatment Reports

07/2020

INVESTIGATION CLOSURES AND DETERMINATIONS AND RESULTING REFERRALS AND CASE OPENINGS

Within the appropriate timeframes outlined above and utilizing PUB-357: Child Maltreatment Determination Guide as a reference where applicable, the Department will either:

- A. Administratively close an investigation of a child maltreatment report pursuant to A.C.A. §12-18-601 without a determination of whether the allegation is unsubstantiated, true, true but exempted, or inactive (see Procedure II-D14 for administrative closure criteria and related requirements); or
- B. Close the investigation with a determination that the allegations of child maltreatment are either:
 - 1) Unsubstantiated; or
 - 2) True; or
 - 3) True but exempted for:
 - a) Neglect as defined by A.C.A. § 12-18-103(14)(B) (i.e., Garrett's Law)
 - b) Religious beliefs
 - c) Underaged juvenile offenders; or,
 - 4) Inactive.

Criteria for the administratively closed investigations and child maltreatment determinations are as follows:

Administratively Closed

A child maltreatment investigation will be administratively closed without further action or determination if:

- A. A preliminary investigation has been completed, to include:
 - 1) Interview with the alleged victim outside the presence of the alleged offender.
 - 2) Assessment of the alleged victim's home environment, as appropriate.
 - 3) Interview of a collateral witness;
 - 4) Review prior history of child maltreatment related to the family of the child and to the alleged offender.
- B. There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report; and,
- C. The health and safety of the child can be assured without further investigation by DCFS based on review of prior child maltreatment history;
- D. There is a determination that abuse or neglect of the child did not occur; and at least one of the following criteria are met:
 - 1) There are indications of malicious reporting; or,
 - 2) Details of the allegations are insufficient to investigate; or,
 - 3) Reporter was anonymous, and no evidence exists to corroborate the report; or,
 - 4) There is no available evidence to support or refute the allegation(s) due to the passage of time between the alleged occurrence of the maltreatment and the time the report was made; and,
- E. The DCFS Director or designee approves the administrative closure of an investigation conducted by DCFS.

Unsubstantiated Determination

A child maltreatment investigation will be determined unsubstantiated in the event that:

- A. The allegation of child maltreatment is not supported by a preponderance of the evidence following an investigation by Division staff.
- B. The investigation concludes the injuries were the result of reasonable and moderate physical discipline inflicted by a parent or guardian for the purpose of restraining or correcting the child.

True Determination

A child maltreatment investigation will be determined true in the event of:

- A. An admission of the fact of maltreatment by persons responsible;
- B. An adjudication of dependency-neglect;
- C. A determination of the existence of maltreatment by Division staff, based on a preponderance of the evidence;
- D. A medical diagnosis of failure to thrive. The Family Service Worker should, however, complete the Child Maltreatment Investigation in accordance with the procedures included to determine the identity of the caretaker and to conduct an investigation of the family for the purposes of determining appropriate service delivery;
- E. Any other medical or legal form of confirmation deemed valid by the Division.

If a report is determined to be true, the names and conditions of any minor children of the alleged offender, and whether these children have been maltreated, or are at risk of maltreatment, will also be determined unless the investigating agency has determined that there is no indication of risk to the children. If the report is determined to be true, and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under care of the alleged offender, to the extent practical, and whether these children have been maltreated, or are at risk of maltreatment, will be conducted unless the investigating agency has determined that there is no indication of risk to the children. The worker conducting the investigation shall also seek to ascertain all other relevant data.

If a report is determined to be true and involves any children under the age of three, those children must be referred to the Division of Developmental Disabilities Children's Services for an early intervention screening per the Child Abuse and Prevention Treatment Act (CAPTA) if the children were not already referred during the course of the investigation (see Policy II-I: Early Intervention Referrals and Services and related procedures for more information).

If a report of sexual abuse is determined to be true and the alleged offender is under the age of eighteen (18) at the time the act or omission occurred, the parents or legal guardians of the alleged juvenile or underaged juvenile offender and victim shall be provided with a list of mental health professionals or agencies available to evaluate and treat the alleged juvenile offender or underaged juvenile offender and victim, if necessary. Providing this information does not necessarily require the Division to pay for the mental health evaluation or any subsequent mental health treatment or services.

If a child maltreatment report is determined to be true, the Division will then also determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment, including without limitation children, the elderly, persons with a disability, and persons with a mental health illness. The following factors will be considered when determining whether an offender poses a risk of maltreatment to a vulnerable population:

- A. The severity of the child maltreatment;
- B. The nature and severity of an injury or other adverse impact caused by the child maltreatment;
- C. The current or future access the offender has or could have to a vulnerable population;
- D. Offender's previous child maltreatment history and whether there are similar fact patterns related to current offense and past child maltreatment history;
- E. Subsequent reports of child maltreatment against the offender;
- F. Criminal history of the offender; and,
- G. Risk assessment tool rating.

If the Division determines the offender poses a risk to a vulnerable population, the investigative determination will continue to be documented as True, and the offender's name will be placed in the Child Maltreatment Central Registry. If the Division determines the offender does not pose a risk to a vulnerable population, the investigation determination will be documented in the Division information system as Exempted-No Risk. The DCFS Director or designee will approve determinations for true but exempted for no risk to vulnerable populations.

True but Exempted Determination

A determination of true but exempted, which means the offender's name will not be placed in the Child Maltreatment Central Registry, will be entered for the reasons listed below. The following circumstances do not require a consideration of the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment as these conditions warrant a determination of True But Exempted pursuant to A.C.A. § 12-18-702. The Division may open a protective services (i.e., in home or foster care as appropriate based on the dynamics of a particular family) for any investigative determination of true but exempted.

Garrett's Law Exemptions

A child maltreatment investigation that documents the presence of an illegal substance in either the bodily fluids or bodily substances in the mother or child at the time of birth resulting from the mother knowingly using any illegal substance (i.e., Garrett's Law case) will be found true but exempted and will not be placed on the child maltreatment registry. A protective services case shall be opened to establish a plan of safe care.

If the FSW determines on an individual basis the child's health or physical well-being is in immediate danger, he or she should take the newborn into protective custody. The FSW must also assess any siblings of the newborn or other children under the care of the alleged offender. If it is determined that there is an immediate danger to the siblings' (or any other children under the care of the alleged offender) health or physical well-being, then they must also be brought into emergency 72-hour protective custody.

"Acceptable" reporters include any one of the following mandated reporters, who have reasonable cause to suspect that a newborn has been subjected to an illegal substance before birth or the mother had an illegal substance in her bodily fluids or bodily substances at the time of the birth:

- licensed nurse;
- osteopath;
- physician;
- medical resident or intern;
- surgeon;
- hospital social worker;
- or, any medical personnel who may be engaged in the admission, examination, care or treatment of persons in hospitals or similar medical settings.

During the course of an investigation, or when DCFS has custody, if the mother or newborn has tested positive for the presence of an illegal substance in the bodily fluids or bodily substances, and the mother indicates that she wants to place the newborn for adoption through a private agency or private entity, the Family Service Worker must contact OCC immediately. If the infant is placed with a private adoption agency, then do not open a Protective Services case.

Religious Belief Exemptions

A child maltreatment investigation will be determined to be true but exempted due to religious beliefs exemption in the event that the Family Service Worker (FSW) determines that the parent's decision to withhold medical treatment was based solely upon a religious belief, choosing instead to furnish the child with prayer and spiritual treatment in accordance with a recognized religious method of healing by an accredited practitioner.

An FSW will place a child whose health or physical well-being is in immediate danger in a safe environment in DHS custody regardless of the beliefs of the parents. The religious exemption does not preclude the FSW's right and responsibility to take appropriate action, including petitions to the court, to obtain necessary medical services.

Underaged Juvenile Offender Exemptions

A child maltreatment investigation will have an individual finding of true but exempted for underaged juvenile offenders if there is an overall true finding of sexual abuse by a child under the age of 14 to another child.

Juvenile is Less than Fourteen Years of Age Exemption

A child maltreatment investigation will have an individual finding of true but exempted if an offender is a juvenile less than fourteen years of age.

Inactive Determination

Per A.C.A. § 12-18-619, a Child Maltreatment Investigation will be determined inactive if at any time before or during the investigation the Department is unable to locate or identify the alleged offender because the alleged child maltreatment occurred:

- A. More than five (5) years ago; or,
- B. In another state.

Failure to complete the investigation within the required 45 days is NOT a reason to place a case on inactive status. The report MUST document why the investigation could not be completed. A case will remain on inactive status for one year, at which time it will be expunged.