

Analysis of
state definitions
of **child neglect**

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Background

Casey Family Programs conducted a 50-state review and analysis of definitions of child abuse and neglect found in state statutes. The purpose of the review was to identify definitions and explore whether they may contribute to an overly wide “front door” to Child Protective Services (CPS), leading to unnecessary intrusion into families’ lives and heightening the risk of unnecessary placement of children in foster care. Although we reviewed definitions of all forms of child maltreatment, including physical abuse, sexual abuse, emotional abuse and neglect, this summary focuses specifically on neglect due to the high number of neglect allegations reported to CPS agencies and the disproportionate impact of these definitions on poor families, families of color and single-parent families, among others.

Methodology

We conducted our review during the summer of 2021 based on statutes in effect at that time. We analyzed neglect definitions in comparison to the four elements of the definition of child maltreatment found in the Child Abuse Prevention and Treatment Act (CAPTA), namely, an act or failure to act on the part of a parent or caretaker that results in:

- death
- serious physical or emotional harm
- sexual abuse or exploitation, or
- that presents an imminent risk of serious harm

We utilized this federal definition as a common comparison point across all states to determine if statutes clearly define an act or omission by a parent or caretaker that causes serious harm or that presents an imminent risk of serious harm.

Findings

We found the following types of neglect in our review of state statutes:

Failure to provide necessities..... <i>(food, clothing, etc.)</i>	49 states
Abandonment.....	48 states
Medical neglect.....	48 states
Failure to supervise.....	45 states
Failure to protect.....	39 states
Exposure to drugs/chemicals..... <i>(prenatal exposure/exposure to drug activity)</i>	36 states
Educational neglect.....	35 states
Parental incapacity..... <i>(mental illness, disability, incarceration, hospitalization)</i>	21 states
Harmful environment.....	17 states
Parental substance abuse.....	15 states

The review found that many, if not most, state definitions differ from the CAPTA definition in one or more respects. This review found that in many cases, neglect definitions contain vague or subjective descriptions of parental acts or omissions and do not require evidence of serious harm or imminent risk of serious harm.

Act or Failure to Act: The following are some examples of state legislative language that is vague and open to interpretation based on one’s professional training, personal experiences, preferences or biases:

- Alabama: “withholding presence, care, love”
- Arkansas: failure to provide “proper or necessary support”
- Idaho: failure to provide “stable home environment”
- Maryland: failure to “give proper care and attention”
- New Jersey: failure to provide “clean and proper home”
- New Mexico: neglect due to parental “faults or habits”
- Ohio: “home is filthy and unsanitary”
- Wisconsin: neglect due to “habitual lack of self-control”

Also relevant to this CAPTA element are the following:

- Definitions that are not tied to any parental act or omission. Some states include in their child welfare statutes “dependent children” or “children in need of services,” including status offenders, children who are homeless through no fault of a parent, unruly children or those suffering from mental illness, runaways, and the like. Without a link to parental acts or omissions, it could be questioned whether these children are proper subjects of CPS interventions.
- Definitions that include “failure to protect” a child from abuse by a third party. Thirty-nine states make failure to protect a form of child maltreatment, but most do not account for circumstances that may adversely affect a parent’s ability to protect a child, such as in domestic violence situations. These provisions are controversial because they have been used to justify child removal and prosecution of victims of intra-familial violence.

Parent or Caregiver: Some definitions do not specify a perpetrator, although a parent or caregiver may be identified elsewhere in CPS statutes. Other definitions refer to “a person” or “any person,” although these references are more common in definitions of physical or sexual abuse.

Serious Physical or Emotional Harm: Our review found that it is common for many state neglect definitions to lack any reference to harm, let alone serious harm. We also found that many state definitions have vague descriptions of harm, such as “injurious to the well-being” and “impairment of morals” (Connecticut) or injury to a child’s “sound character development” (Massachusetts). Further, it can be questioned whether some types of neglect result in serious physical or emotional harm, such as educational neglect. However, a few states do specify serious harm in their neglect definitions. Some examples include:

- California: “The child has suffered ... serious physical harm or illness as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”
- Florida: “Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death.”

Imminent Risk of Serious Harm: Most states do not include a reference to risk of harm in their neglect definitions, and some that do fail to specify that such harm must be serious and/or imminent. However, a few states do speak to serious risk of harm, for example:

- California: “Substantial risk” of harm due to neglect.
- Indiana: Child’s physical or mental condition is “seriously endangered” due to failure of parent to provide necessities.

- Iowa: Child is “imminently likely to suffer harmful effects” due to lack of supervision.
- Maryland: Child’s health or welfare is “placed at substantial risk of harm” due to lack of supervision.
- New Jersey: Child is “in imminent danger of becoming impaired” as a result of neglect.
- Texas: Amended neglect definition in 2021 to replace “substantial risk” with “immediate danger” and to require a showing of “blatant disregard” for consequences of failure to act.

Exceptions: Many states have carved out exceptions to their neglect definitions. Most common are safe haven exception to abandonment, religious belief exception to medical neglect, and poverty exception for physical or medical neglect. A recent trend in a small number of states is creation of “free range parenting” exceptions that allow for age appropriate independent activities based on a child’s maturity level and physical condition.

Discussion

The following reflections are based on our review and comparison of the many statutory definitions of neglect that govern CPS intervention in families’ lives. Some of the issues described below are also the subject of academic research examining the challenges associated with defining child neglect and suggesting different approaches to the problem.¹

- **Focus on parental behavior versus impact on children:** In general, most state statutes define child neglect in terms of parental actions or omissions, rather than the effect of such actions and omissions on children, as reflected in the lack of references to harm or risk of harm in many of the statutes reviewed. Some states, for example, include in their neglect definitions the inability of a parent to fulfill his or her responsibilities due to incarceration, institutionalization, or mental or physical disability, without considering the possibility that the child is being cared for by a relative or friend and maintains strong emotional ties to the incapacitated parent.
- **Pattern of conduct versus single incident:** A single instance of parental neglect may not pose an imminent risk of serious harm to a child, but may reflect a pattern of conduct that, over time, could seriously endanger a child’s well-being. Some states have attempted to account for such circumstances in their neglect definitions. Washington, for example, defines “negligent treatment or maltreatment” to include “the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child’s health, welfare or safety.”² In another example, Oklahoma

defines “heinous and shocking neglect” to include “chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child which results in harm to the child.”³

- **Parental state of mind:** Most definitions of child neglect that govern the actions of CPS agencies do not consider a parent’s state of mind or intention, nor does CAPTA take parental intention into account in its definition of maltreatment. Intent is most commonly considered in cases of criminal child neglect, where intent is an element of the crime, and the purpose is to punish offenders rather than help them become better parents. CPS proceedings are civil in nature, and it may be unreasonable to require proof of intent in all such cases of child maltreatment. However, to the extent that CPS interventions are punitive, there should be some consideration of parental state of mind in appropriate cases. For example, Illinois⁴ and Texas⁵ have attempted to limit the reach of their neglect statutes by requiring evidence of a parent’s “blatant disregard” of his or her responsibilities in certain circumstances.
- **Lack of supervision as neglect:** According to one researcher, “[r]egardless of the system used to classify supervision problems, child protective services (CPS) appear to identify more supervision problems than any other type of child maltreatment.”⁶ Given how often lack of supervision is reported to child welfare agencies as neglect, the definition of this type of neglect deserves special consideration. Most neglect definitions categorize failure to supervise with failure to provide other necessities such as food, clothing, shelter and medical care, without considering the circumstances under which lack of supervision poses an imminent risk to children’s safety and well-being. CPS investigations of supervisory neglect allegations have prompted the “free-range parenting” movement and related exceptions to neglect described above. Other states have attempted to clarify supervisory neglect in their definitions by incorporating the “reasonable and prudent person” standard to distinguish, for example, between momentary inattentiveness and a willful failure to supervise that poses a grave risk to a child’s safety.⁷ For example, Delaware defines supervisory neglect to require consideration of “such factors as the child’s age, mental ability, physical condition, the length of the caretaker’s absence, and the context of the child’s environment.”⁸ Other factors that may be considered include a family’s culture, ethnicity and religion. Colorado law, for example, directs CPS investigators to consider “accepted child-rearing practices of the culture in which the child participates including, but not limited to, accepted work-related practices of agricultural communities.”⁹ Similarly, California excepts from maltreatment “cultural and religious child-rearing practices and beliefs which differ from general community standards” unless they “present a specific danger to the physical or emotional safety of the child.”¹⁰

- **Exceptions to neglect:** Many states have adopted exceptions to neglect as a way of narrowing the CPS front door. In addition to the common exceptions for financial hardship, delivery of babies to designated safe haven sites, and religious belief exception to medical neglect, some states have attempted to clarify in statute other types of behavior and circumstances that should not be considered to constitute neglect. California, for example, has declared legislative intent that CPS agencies “not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable parental discipline, or prescribe a particular method of parenting.”¹¹ In addition to excepting “cultural and religious child-rearing practices” referred to above, California law further provides that “the fact that a child is homeless ... is not, in and of itself, a sufficient basis for reporting child abuse or neglect” and that “physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court’s determination pursuant to this section shall center upon whether a parent’s disability prevents him or her from exercising care and control.”¹² Another section of California statute provides that “the physical or mental incapacity, or both, in itself, of a parent or a child, shall not result in a presumption of need for child welfare services.”¹³
- **Emotional neglect:** Many state neglect definitions include general references to a child’s emotional needs along with other needs for food, clothing, shelter, education and health care.¹⁴ These definitions, however, provide little to no guidance regarding the types of parental behavior that constitute emotional neglect, with the possible exception of Alabama, which includes in its definition of abandonment “a withholding from the child, without good cause or excuse, by the parent, of his or her presence, care, love, protection, maintenance, or the opportunity for the display of filial affection.”¹⁵ Emotional neglect presents a particularly difficult issue for policymakers. On the one hand, inadequate nurturance and affection have been linked by researchers to externalizing problems, high-risk behavior and poor academic performance.¹⁶ Recent research into early brain development has demonstrated the critical importance of emotional attachment and bonding in the first months and years of a child’s life. Given the severe harm caused by emotional neglect, it would appear to be a type of maltreatment that warrants a response from child protection agencies. On the other hand, it is far from clear the extent to which a “suboptimal level of emotional support or affection constitutes neglect.”¹⁷ Defining emotional neglect in a way that provides clear guidance to mandatory reporters and child protection agencies but that avoids unnecessary intrusion into a family’s life remains a challenge.

Conclusion

Based on our review, it is apparent that state definitions of neglect vary widely from one another and from the federal CAPTA definition. Many state neglect definitions suffer from a lack of specificity and do not require a showing of serious harm or imminent risk of harm, which may result in decision-making that is influenced by the personal preferences and biases of individual caseworkers. Accordingly, there is cause for concern that neglect definitions may be contributing to unnecessary CPS interventions. Casey Family Programs' Public Policy team is continuing to examine these and other state laws that could affect reporting, screening, investigations and child removals.

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Endnotes

- 1 See, e.g., Rebbe, R. (2018) What is neglect? state definitions in the United States. *Child Maltreatment* 23, 303-315; DeGuerre, K. et. al, (2021) Child neglect: statutes, rates and a neglect diversion model. *Greenwich Social Work Review* 2, 208-218; Dubowitz, H. et. al (2005) Examination of a conceptual model of child neglect. *Child Maltreatment* 10, 173-189; Coohy, C. (2003) Defining and classifying supervisory neglect. *Child Maltreatment* 8, 145-156; Dubowitz, H. et.al (2005) Defining child neglect based on child protective services data. *Child Abuse and Neglect* 5, 493-511; Turner, H. et al. (2019) Child neglect and the broader context of child victimization. *Child Maltreatment* 24, 265-274.
- 2 Rev. Code Wash. 26.44.020
- 3 Okla. Stat. Title 10A, sec. 1-1-105
- 4 325 ILCS 5/2
- 5 Tex. Family Code, sec. 261.001(4)
- 6 Coohy, C. (2003) Defining and classifying supervisory neglect. *Child Maltreatment*, 8, 145-156.
- 7 See, e.g., Iowa Code sec. 232.68; Okla. Stat. Title 10A, sec. 1-1-105, subsec. 48
- 8 Del. Code Title 10, sec. 901(18)
- 9 Colo. Rev. Stat. 19-1-103
- 10 Cal. Welfare and Institutions Code, sec. 16509.
- 11 Cal. Welfare and Institutions Code, sec. 300.
- 12 Ibid.
- 13 Cal. Welfare and Institutions Code, sec. 16509.2.
- 14 See, e.g., Ark. Code 9-27-303 (failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile); Conn. Gen Stat. 46b-120 (child denied proper care and attention, physically, educationally, emotionally or morally); Del. Code Title 10, sec. (fails to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being); Fla. Stat. 39.01 (deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired); Md. Fam. Law Code 5-701 (failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . mental injury to the child or a substantial risk of mental injury); Minn. Stat. 260E.03, Subd. 15 (emotional harm from a pattern of behavior that contributes to impaired emotional functioning of the child); Mont. Code Ann. 41-3-102 (psychological abuse or neglect causing injury to emotional capacity to function); N.H. Rev. Stat. Ann. 169-C:3 XIX (lack of care or control necessary for the child's physical, mental, or emotional health).
- 15 Ala. Code 12-15-301.
- 16 Dubowitz, H. et. al (2005) Examination of a conceptual model of child neglect. *Child Maltreatment* 10, 173-189
- 17 Ibid., p. 174.

Casey Family Programs is the nation's largest operating foundation focused on safely reducing the need for foster care in the United States. By working together, we can create a nation where Communities of Hope provide the support and opportunities that children and families need to thrive. Founded in 1966, Casey Family Programs works in all 50 states, Washington, D.C., Puerto Rico, the U.S. Virgin Islands and with tribal nations across North America to influence long-lasting improvements to the well-being of children, families and the communities where they live.

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