



ARIZONA DEPARTMENT of CHILD SAFETY

September 26, 2024

Preponderance of the Evidence: Preponderance of the Evidence means the information gathered during the investigation supports that it is more probable than not that:

- An incident of abuse or neglect occurred and was caused by the acts or omissions of an individual who has the care, custody and control of a child, including an employee of a child welfare agency where a child is placed that is licensed by and contracted with DCS; or
- An incident of neglect occurred and was committed by the parent, guardian or custodian

Unsubstantiated Finding: When the information gathered during the investigation does not support an incident of abuse and/or neglect occurred based upon a preponderance of evidence standard. This finding shall include a written explanation supporting this decision.

Proposed Substantiated Pending Dependency Adjudication (PDA): When a petition has been filed alleging dependency based on abuse and/or neglect.

Proposed substantiated (non-dependency): When DCS has concluded that the evidence supports an incident of abuse and/or neglect occurred based upon a preponderance of evidence standard.

Protective Services Review Team Investigation Findings Definitions

Establishing Abuse v. Neglect

Abuse as defined by A.R.S. § 8-201(2):

- The infliction or allowing of physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody, and control of a child.
- Inflicting or allowing sexual abuse pursuant to section A.R.S. § 13-1404, sexual conduct with a minor pursuant to section A.R.S. § 13-1405, sexual assault pursuant to section A.R.S. § 13-1406, molestation of a child pursuant to section A.R.S. § 13-1410, commercial sexual exploitation of a minor pursuant to section A.R.S. § 13-3552, sexual exploitation of a minor pursuant to section A.R.S. § 13-3553, incest pursuant to section A.R.S. § 13-3608 or child sex trafficking pursuant to section A.R.S. § 13-3212.
- Physical injury that results from allowing a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section A.R.S. § 13-3401.
- Substantial confinement of a child.

Definitions of Abuse

Physical Abuse: the infliction or allowing of physical injury, impairment of bodily function, or disfigurement. As defined in A.R.S. § 13-3623, physical injury includes:

- skin bruising including bruising to the corners of the mouth, which may indicate that the child was gagged;
- pressure sores;
- bleeding;
- failure to thrive or pediatric undernourishment (requires medical diagnosis);
- malnutrition (requires medical diagnosis);
- dehydration (requires medical diagnosis);
- burns, which may include water burns, rope burns, rug burns and other abrasions;
- fracture of any bone;
- subdural hematoma (requires medical diagnosis);
- soft tissue swelling, which may include bald patches where hair has been pulled out, bite demarcation, and welts such as from cords or other objects;
- injury to any internal organ (requires medical diagnosis); or
- any physical condition that imperils a child's health or welfare.

Do not use the term "mark" to describe a physical injury. Instead, describe the specific injury in terms of size, color, shape, and location on the child's body.

For more information on finding types, see [Investigation Allegation Findings, of the DCS policy manual and the Investigation Finding Definitions field resource guide.](#)

Proposed Substantiated - Perp unknown: When the information gathered during the investigation supports that an incident of abuse and/or neglect occurred based upon a preponderance of evidence standard and the alleged perpetrator's identity cannot be confirmed.

Proposed Substantiated - Perp deceased: When the evidence supports that an incident of abuse and/or neglect occurred based upon a preponderance of evidence standard; however, the perpetrator dies before the entry of the finding.

Unable to Locate: When there is insufficient evidence to conclude that the child was abused and/or neglected because, despite reasonable efforts, the child victim cannot be located.

For more information, see Investigation Allegation Findings in the DCS Program Policy Manual.

Definitions of Sex Related Forms of Abuse

Sexual abuse means knowingly or intentionally engaging in one or more of the following:

Child prostitution: A person commits child prostitution by knowingly:

- causing any minor to engage in prostitution or engaging in prostitution with a minor;
- using any minor for purposes of prostitution;
- permitting a minor under such person's custody or control to engage in prostitution;
- receiving any benefit for or on account of procuring or placing a minor in place or in charge or custody of any person for the purpose of prostitution;
- receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor;
- financing, managing, supervising, controlling or owning either alone or in association with others prostitution activity involving a minor; or
- transporting or financing the transportation of any minor through or across the state with the intent that such minor engage in prostitution.

Exploitative exhibition: the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

- *Commercial sexual exploitation* of a minor means knowingly:
 - ▶ Using, employing, persuading, enticing, inducing, or coercing a minor to engage in or assist others to engage in exploitative exhibition or other sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.
 - ▶ Using, employing, persuading, enticing, inducing, or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
 - ▶ Permitting a minor under such person's custody or control to engage in or assist others to engage in exploitative exhibition or other sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.
 - ▶ Transporting or financing the transportation of any minor through or across the state with the intent that such minor engage in prostitution, exploitative exhibition or other sexual conduct for the purpose of producing a visual or print medium or live act depicting such conduct.
- *Sexual exploitation* of a minor means knowingly:
 - ▶ Recording, filming, photographing, developing, or duplicating any visual or print medium in which minors are engaged in exploitative exhibition or other sexual conduct.
 - ▶ Distributing, transporting, exhibiting, receiving, selling, purchasing, possessing, or engaging in any visual or print medium in which minors are engaged in exploitative exhibition or other sexual conduct.

Fondling: direct or indirect touching or manipulating, whether above or under clothing, of any part of the genitals, anus or female breast, by any part of a person's body or by any object.

Incest: To knowingly marry or commit fornication with a person (in this case a child) who is within the degree of consanguinity, within which marriages are declared by law to be incestuous and void. Void marriages are those between:

- parents and their children,
- siblings of ½ or whole blood relation,
- grandparents and their grandchildren,
- uncles and their nieces or Aunts and their nephews, and first cousins.

Masturbation: an act of self-stimulation with any part of the body or object.

Oral sexual contact: oral contact with the penis, vulva, or anus.

Producing: financing, directing, manufacturing, issuing, publishing, or advertising for pecuniary gain.

Prostitution: engaging in, agreeing or offering to engage in sexual conduct with any person under a fee arrangement with that person or any other person.

Sadomasochistic abuse: flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

Sexual conduct means actual or simulated:

- sexual intercourse including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same sex or opposite sex;
- penetration of the vagina or rectum by any object except as one does as part of a recognized medical procedure;
- sexual bestiality;
- masturbation for the purpose of the sexual stimulation of the viewer;
- sadomasochistic abuse for the purpose of sexual stimulation of the viewer; or
- defecation or urination for the purpose of sexual stimulation of the viewer.

Sexual conduct with a minor means intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age. This includes cases when a child consents to the activity and cases when the child does not consent. However, when the child does not consent it fits more appropriately under "sexual assault" listed below.

- *Sexual assault* means intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person (including a child) without consent of such person.
- *Molestation of a child* means intentionally or knowingly engaging in, or causing a person to engage in, sexual contact (except sexual contact with the female breast, which is covered in sexual abuse above) with a child under fifteen years of age.

Note: Substantial confinement such as locking a child in a bedroom, closet, or shed may be substantial confinement, taking into account the totality of the circumstances, such as the length of time, whether the child was deprived of food, water, access to a bathroom, or had no means to leave in the event of an emergency.

Sexual contact: any direct or indirect touching, fondling, or manipulating of any part of the genitals, anus, or female breast by any part of the body or by any object or causing a person to engage in such conduct.

- *Sexual contact* with a child 15 years of age or older without their consent (If a child over 15 years of age consents to the touching it does not meet the definition of sexual abuse. However, such activity may qualify as a form of neglect.)
- *Sexual contact* with the breast of any female child under 15 years of age regardless of consent (If a child is under 15 years of age, then sexual contact with any part of the child's body other than the female breast is "child molestation" which is listed below.)

Sexual intercourse: penetration into the penis, vulva, or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

- *Simulated:* any depicting of the genitals or rectal areas, which give the appearance of sexual contact or incipient sexual conduct.
- *Visual or print medium:* any film, photograph, video tape, negative, slide, compact or laser disk, computer diskette, or computer tape; or any book, magazine, or other form of publication or photographic reproduction containing or incorporating in any manner any film, photograph, video tape, negative, slide, or computer generated image of a minor.
- Without consent includes any of the following:
 - ▶ The victim is coerced by the immediate use or threatened use of force against a person or property.
 - ▶ The victim is incapable of consent by reason of mental disorder, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant.
 - ▶ The victim is intentionally deceived as to the nature of the act.
 - ▶ The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

Exposure to Manufacturing of Dangerous Drug

Exposure to manufacturing of a dangerous drug means to permit a child to enter or remain in any structure or vehicle in which volatile, toxic, or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug as defined in section A.R.S. § 13-3401.

Unreasonable Confinement

Unreasonable confinement is the restriction of movement or confining a child to an enclosed area and/or using a threat of harm or intimidation to force a child to remain in a location or position.

Examples of unreasonable confinement may include; however, are not limited to:

- tying a child's arms or legs together;
- binding (tying) a child to a chair, bed, tree, or other object; or
- locking a child in a cage.

Note: Deliberate exposure to explicit sexual material (pornography) does not include any depiction or description which, taken in context, possesses serious educational value for minors or which possesses serious literary, artistic, political, or scientific value. Exposure to sexual conduct and explicit sexual materials (pornography) applies to deliberate exposure only and not to reckless disregard.

Defining Neglect

Neglect as defined by A.R.S. § 8-201(25):

- The inability or unwillingness of a parent, guardian, or custodian to provide that child with supervision, food, clothing, shelter, or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare, except if the inability of a parent or guardian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.
- Substantial risk of harm requires an analysis of the totality of the circumstances specific to the incident, including the behavior and/or action or inaction of the parent, guardian, or custodian that placed the child at a level of risk of harm to which a reasonable (ordinarily cautious) parent, guardian, or custodian would not have subjected the child.

Deliberate Exposure

Deliberate exposure, as defined by A.R.S. § 8-201(25)(e), means that the parent, guardian, or custodian knowingly and willingly subjected the child to specified sexual activities, including having the child read or view explicit sexual materials (pornography), taking the child to a strip club, or having the child view others engaged in sexual activity.

Deliberate exposure includes the following:

- sexual conduct: as defined above See A.R.S § 13-3551.
- sexual contact: as defined above. See A.R.S § 13-1401.
- oral sexual contact: as defined above. see A.R.S § 13-1401.
- sexual intercourse: as defined above See A.R.S § 13-1401.
- bestiality: engaging in or causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal. See A.R.S § 13-1411.
- explicit sexual materials: any drawing, photograph, film negative, motion picture, figure, object, novelty device, recording, transcription or any book, leaflet, pamphlet, magazine, booklet or other item, the cover or contents of which depicts human genitalia or depicts or verbally describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is harmful to minors. See A.R.S § 13-3507.

Reckless Disregard

Reckless Disregard means that the parent, guardian, or custodian knew or should have known that the child was present or would likely be present when engaging in sexual activity, and failed to take actions to prevent the child from observing the activity. This would not include infants who sleep in the same room as their parent, guardian, or custodian.

Reckless disregard, as defined by A.R.S. § 8-201(25)(f) includes any of the following acts committed by the child's parent, guardian, or custodian regardless if they knew the child was physically present:

- sexual contact;
- oral sexual contact;
- sexual intercourse; or
- bestiality.