

# TITLE 40

## Human services

### CHAPTER 40-11

#### Abused and Neglected Children

##### SECTION 40-11-1

**§ 40-11-1 Policy.** – The public policy of this state is: to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the mandatory reporting of known or suspected child abuse and neglect, investigation of those reports by a social agency, and provision of services, where needed, to the child and family.

##### SECTION 40-11-2

**§ 40-11-2 Definitions.** – When used in this chapter and unless the specific context indicates otherwise:

(1) "Abused and/or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

- (i) Inflicts, or allows to be inflicted upon the child physical or mental injury, including excessive corporal punishment; or
- (ii) Creates or allows to be created a substantial risk of physical or mental injury to the child, including excessive corporal punishment; or
- (iii) Commits or allows to be committed, against the child, an act of sexual abuse; or
- (iv) Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; or
- (v) Fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child; or
- (vi) Abandons or deserts the child; or
- (vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions of chapter 34 of title 11, entitled "Prostitution and Lewdness"; or
- (viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or
- (ix) Commits or allows to be committed any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 of title 11 entitled "Sexual Assault", as amended; or

(x) Commits or allows to be committed against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator knows or has reason to know that the victim is a severely impaired person as defined by the provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-6.

(2) "Child" means a person under the age of eighteen (18).

(3) "Child protective investigator" means an employee of the department charged with responsibility for investigating complaints and/or referrals of child abuse and/or neglect and institutional child abuse and/or neglect.

(4) "Department" means department of children, youth, and families.

(5) "Institution" means any private or public hospital or other facility providing medical and/or psychiatric diagnosis, treatment, and care.

(6) "Institutional child abuse and neglect" means situations of known or suspected child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent or the employee of a public or private residential child care institution or agency; or any staff person providing out-of-home care or situations where the suspected abuse or neglect occurs as a result of the institution's practices, policies, or conditions.

(7) "Law enforcement agency" means the police department in any city or town and/or the state police.

(8) "Mental injury" includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care toward the child.

(9) "Person responsible for child's welfare" means the child's parent, guardian, foster parent, an employee of a public or private residential home or facility, or any staff person providing out-of-home care (out-of-home care means child day care to include family day care, group day care, and center-based day care).

(10) "Physician" means any licensed doctor of medicine, licensed osteopathic physician, and any physician, intern, or resident of an institution as defined in subdivision (5).

(11) "Probable cause" means facts and circumstances based upon as accurate and reliable information as possible that would justify a reasonable person to suspect that a child is abused or neglected. The facts and circumstances may include evidence of an injury or injuries, and the statements of a person worthy of belief, even if there is no present evidence of injury.

### **SECTION 40-11-3**

**§ 40-11-3 Duty to report – Deprivation of nutrition or medical treatment.** – (a) Any person who has reasonable cause to know or suspect that any child has been abused or neglected as defined in § 40-11-2 or has been a victim of sexual abuse by another child shall, within twenty-four (24) hours, transfer that information to the department for children and their families or its agent who shall cause the report to be investigated immediately. As a result of those reports and referrals, protective social services shall be made available to those children in an effort to safeguard and enhance the welfare of those children and to provide a means to prevent further abuse or neglect. The department shall establish and implement a single, statewide, toll-free telephone to operate twenty-four (24) hours per day, seven (7) days per week for the receipt of reports concerning child abuse and neglect, which reports shall be electronically recorded and placed in the central registry established by § 42-72-7. The electronically recorded records, properly indexed by date and other essential identifying data, shall be maintained for a minimum of three (3) years; provided, however, any person who has been reported for child abuse and/or neglect and who has been determined not to have neglected and/or abused a child, shall have his or her record expunged as to that incident three (3) years after that determination. The department shall establish rules and regulations

requiring hospitals, health care centers, emergency rooms and other appropriate health facilities to report on a quarterly basis the number of cases reported by these institutions as suspected child abuse.

(b) The reporting shall include immediate notification of the department of any instance where parents of an infant have requested deprivation of nutrition that is necessary to sustain life and/or who have requested deprivation of medical or surgical intervention that is necessary to remedy or ameliorate a life threatening medical condition, if the nutrition or medical or surgical intervention is generally provided to similar nutritional, medical, or surgical conditioned infants, whether disabled or not.

(c) Nothing in this section shall be interpreted to prevent a child's parents and physician from discontinuing the use of life-support systems or nonpalliative treatment for a child who is terminally ill where, in the opinion of the child's physician exercising competent medical judgment, the child has no reasonable chance of recovery from the terminal illness despite every appropriate medical treatment to correct the condition.

### **SECTION 40-11-3.1**

**§ 40-11-3.1 Duty to report death of child due to child abuse or neglect.** – Any person required to report under the provisions of this title, who has reasonable cause to know or suspect that a child has died as a result of child abuse or neglect shall immediately transfer that information to the department or its agent who shall cause the report to be investigated immediately. Upon receipt of the report the department or its agent shall immediately transfer such information to the local law enforcement agency or the state police as well as to the office of the medical examiner. The office of the medical examiner shall investigate the report and communicate its preliminary findings, orally within seventy-two (72) hours, and in writing within seven (7) working days to the appropriate law enforcement agency, to the department and if the person who made the report is an employee or a member of the staff of a hospital, to the hospital. Office of the medical examiner shall also communicate its final findings and conclusions, with the basis therefore, to the same parties within sixty (60) days.

### **SECTION 40-11-3.2**

**§ 40-11-3.2 False reporting of child abuse and neglect.** – Any person who knowingly and wilfully makes or causes to be made to the department a false report of child abuse or neglect shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year or both

### **SECTION 40-11-4**

**§ 40-11-4 Immunity from liability.** – Any person participating in good faith in making a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

### **SECTION 40-11-6**

**§ 40-11-6 Report by physicians of abuse or neglect.** – (a) When any physician or duly certified registered nurse practitioner has cause to suspect that a child brought to him or her or coming to him or her for examination, care, or treatment, is an abused or neglected child as defined in this chapter, or when he or she determines that a child under the age

of twelve (12) years is suffering from any sexually transmitted disease, he or she shall report the incident or cause a report thereof to be made to the department as provided in subsection (b).

(b) An immediate oral report shall be made by telephone or otherwise, to both the department and law enforcement agency and shall be followed by a report in writing to the department and law enforcement agency explaining the extent and nature of the abuse or neglect the child is alleged to have suffered.

(c) The department, upon receipt of such a report by a person other than a physician or duly certified registered nurse practitioner alleging that a child has been physically abused, shall investigate the report, and if the investigation reveals evidence of physical or sexual abuse, the department shall have the child examined by a licensed physician or duly certified registered nurse practitioner. Any child protective investigator shall, with or without the consent of the parent or other person responsible for the child's welfare, have the right to remove the child from the place where the child may be to secure the examination required by this subsection. Upon completion of the examination, it shall be mandatory for the physician or duly certified registered nurse practitioner to make a written report of his or her findings to the department.

### **SECTION 40-11-6.1**

**§ 40-11-6.1 Penalty for failure to report or perform required act.** – Any person, official, physician, or institution required by this chapter to report known or suspected child abuse or neglect or to perform any other act who knowingly fails to do so or who knowingly prevents any person acting reasonably from doing so shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for not more than one year or both. In addition, any person, official, physician, or institution who knowingly fails to perform any act required by this chapter or who knowingly prevents another person from performing a required act shall be civilly liable for the damages proximately caused by that failure.