Loyola of Los Angeles Law Review

Volume 56 | Number 3 Article 2

Summer 7-5-2023

California's Failure to Protect Families: Statutory Reform to Better Serve Families Experiencing Domestic Violence

Cecilia Bobbitt

CALIFORNIA'S FAILURE TO PROTECT FAMILIES: STATUTORY REFORM TO BETTER SERVE FAMILIES EXPERIENCING DOMESTIC VIOLENCE

*Cecilia Bobbitt**

Los Angeles County is home to the largest child dependency system in the world. A significant portion of the families involved in this system have experienced domestic violence. Because the system is ineffective in responding to domestic violence, families experiencing domestic violence are especially vulnerable to the harms of the family regulation system. The harm that results is the separation of families, leading to irreparable harm and trauma which hurts, rather than helps, families.

This Article's findings are based on qualitative legal and social science research, including deidentified data from a 2021 UCLA Pritzker Center for Strengthening Families study regarding domestic violence and the child welfare system., Drawing from this research, this Article argues that California's statutory definition of neglect and mandatory reporting scheme work together to encourage mandated reporters, social workers, and judges to find that exposure to domestic violence, without more, is child neglect. Consequently, despite the protective capacity of non-offending parents, families are ripped apart.

In conclusion, this Article proposes two reforms, (1) a revision of California's neglect statute and (2) the replacement of mandated reporting with mandated supporting of families that come to the attention of the family regulation system. These reforms seek to alleviate this problem and reduce the unnecessary surveillance of families experiencing domestic violence in the Los Angeles County family regulation system while advocates, scholars, and leaders in Los Angeles County continue to work towards abolition.

* David J. Epstein Program in Public Interest Law and Policy, UCLA School of Law, 2022; A.B., Vassar College, 2019. This Article would not have been possible without the generous support of the UCLA Pritzker Center for Strengthening Children and Families, Taylor Dudley, Dr. Laura Liévano-Karim, Taylor Thaxton, Nicole Yee, Mariam Khan, and Dr. Todd Franke. Thank you, Professor Cynthia Merrill for your support and thoughtful suggestions to this Article. Thanks also to the *Loyola of Los Angeles Law Review* editors. All mistakes are mine.

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INTRODUCTION

Los Angeles County is home to the largest dependency system in the world.[1] Thirty-eight percent of all children in foster care in California are in Los Angeles County.[2] In March 2023, there were 14,995 children in out-of-home placement in Los Angeles County.[3] There are several studies and some case law that recognize the short-term and long-term effects on the mental and physical health of children who are separated from their families.[4] Removal can also cause severe trauma to other members of the family.[5] Consequently, advocates for families who have been involved in this system of surveillance, policing, and regulation have taken to calling it the "family regulation system."[6] This is the term that this Article uses to refer to what is often called "the child welfare system."

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1. *See, e.g.*, Daniel Heimpel, *Shelia Kuehl Charts Path for Nation's Largest Child Welfare System*, IMPRINT (Jan. 25, 2018, 9:30 AM), https://imprintnews.org/featured/sheila-kuehl-charts-path-nations-largest-child-welfare-system/29574 [https://perma.cc/X2DU-B4A4].

2. *Who We Serve and Why*, ALL. FOR CHILD.'S RTS., https://allianceforchildrensrights.org/who-we-serve/ [https://perma.cc/WSB7-DM8R].

3. DEP'T OF CHILD. & FAM. SERVS., CNTY. OF L.A., CHILD WELFARE SERVICES DATA MONTHLY FACT SHEET: MARCH – 2023, https://dcfs.lacounty.gov/wp-content/uploads/2023/04/Monthly-DCFS-Data-Fact-Sheet-March-2023.pdf [https://perma.cc/58MM-L8K8].

4. *See generally* CHILD.'S RTS. LITIG. COMM., AM. BAR ASS'N SECTION OF LITIG., TRAUMA CAUSED BY SEPARATION OF CHILDREN FROM PARENTS: A TOOL TO HELP LAWYERS 6 (2020) [hereinafter TRAUMA CAUSED BY SEPARATION], https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf [https://perma.cc/AH64-PYDA] (citing several studies that focus on the effects of removing children from their parents). *See also* Nicholson v. Scoppetta, 820 N.E.2d 840, 854 (N.Y. 2004) (holding that "when a court orders removal, particularized evidence must exist to justify that determination, including, where appropriate, evidence of efforts made to prevent or eliminate the need for removal and the impact of removal on the child.").

5. *See, e.g.*, Ms. L. v. U.S. Immigr. & Customs Enf't, 310 F. Supp. 3d 1133, 1146–47 (S.D. Cal. 2018) (relying on the scientific research and expert testimony, acknowledge that children's physical and mental health are seriously damaged by separation from primary caretakers); *see also* UCLA PRITZKER CTR. FOR STRENGTHENING CHILD. & FAMS., CHILD WELFARE AND DOMESTIC VIOLENCE: THE REPORT ON INTERSECTION AND ACTION 6–7 (2021) [hereinafter UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT], https://pritzkercenter.ucla.edu/wp-content/uploads/2021/05/Pritzker-Domestic-Violence-Report-Endnotes_final.pdf [https://perma.cc/5U4W-AEQ7] ("Despite its stated goal to reduce harm and protect victims, the child welfare system can produce intergenerational trauma in its separation of families.").

6. *See* Emma Williams, *'Family Regulation,' Not 'Child Welfare': Abolition Starts with Changing Our Language*, IMPRINT (July 28, 2020, 11:45 PM), https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586 [https://perma.cc/J42Z-EVWP] ("This system not only impacts children but also the entire ecosystem around them; thus any language must center the family, as the family is the site of the trauma that the system inflicts. . . . [W]e must focus on the action that is truly at the center of the modern system: regulation. . . . [W]e can find a word that encapsulates every outcome of the system, since not every

Black children, and thus Black families, are disproportionately[7] represented in the family regulation system.[8] Dorothy Roberts has extensively researched and written about how this system disproportionately tears apart Black families, explaining how "the skyrocketing foster care population [in the United States is] the result of a political decision to turn to child removal as the primary way of addressing the needs of Black families who were most devastated by the state's concurrent crime-control and welfare-restricting agendas."[9] A longitudinal study that followed California children born in 1999 until they reached age eighteen showed that approximately half of Black and Native American children in California were investigated for alleged maltreatment before their eighteenth birthday—twice the rate of investigations of white children that the study followed.[10] The family regulation system purposefully polices the same families that are disproportionately represented in the criminal justice system.[11] Consequently, many advocates view this system as an extension of the white

intervention results in punishment or destruction. Thinking about how to accurately describe this system also forces us to reckon with difficult questions: What of the families who were grateful for and felt benefitted by an intervention? What of the families who did not receive an intervention but wished they did? Whether the system was helpful to a family or not, it advanced a normative model of what a "healthy" and "happy" family looked like, and that process—pleasant or unpleasant, peaceful or violent—is regulatory.").

7. The term "racial disproportionality" was first used to describe the overrepresentation of Black children in the family regulation system by Billingsley and Giovannoni in 1972. *See* ANDREW BILLINGSLEY & JEANNE GIOVANNONI, CHILDREN OF THE STORM: BLACK CHILDREN AND AMERICAN CHILD WELFARE 12 (1972). Dorothy Roberts expanded on this concept in her 2008 study that examined the impact of concentrated child welfare agency involvement in Black neighborhoods. *See* Dorothy E. Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 87 CHILD WELFARE, no. 2, 2008, at 125, 125.

8. *See* Emily Putnam-Hornstein et al., *Cumulative Rates of Child Protection Involvement and Terminations of Parental Rights in a California Birth Cohort, 1999–2017*, 111 AM. J. PUB. HEALTH 1157, 1159 (2021) ("The cumulative percentage of Black and Native American children who had CPS encounters [in California] was significantly higher than that of other children. In the cohort overall, approximately half of Black (46.8%) and Native American (50.2%) children were investigated for alleged maltreatment before aged 18 years; both groups experienced all levels of CPS involvement at more than twice the rate of White children in the cohort.").

9. DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES – AND HOW ABOLITION CAN BUILD A SAFER WORLD 4–5 (2022).

10. *See* Putnam-Hornstein et al., *supra* note 8, at 1158–59.

11. *See, e.g.*, ROBERTS, *supra* note 9, at 191–92 ("[Child Protective Services] staff not only act like police officers; they also work hand-in-hand with police officers. Local child welfare and law enforcement authorities increasingly enter into contracts to create various types of collaborations—from sharing information to engaging in common trainings, cooperating in investigations, and jointly responding to reports.").

supremacist carceral system that exists in the United States.[12] Much like the prison system, the family regulation system, despite the stated goal to reduce harm and protect victims, can produce intergenerational trauma and can create further harm in its separation of families.[13] This system is ripe with dangerous problems that significantly impact the lives of families.

The failures and harm that the family regulation system produces can be seen acutely in its impact on families experiencing domestic violence.[14] This Article seeks to investigate the system's inability to respond to situations of domestic violence and serve families experiencing domestic violence.

Many survivors[15] of domestic violence and their families enter the family regulation system due to a call from a mandated reporter:

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12. *See*, *e.g.*, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, IMPRINT (June 16, 2020, 5:26 AM), https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480 [https://perma.cc/7WW4-LSJM] ("Like the prison industrial complex, the foster industrial complex is a multi-billion-dollar government apparatus that regulates millions of marginalized people through intrusive investigations, monitoring and forcible removal of children from their homes to be placed in foster care, group homes and 'therapeutic' detention facilities."); *see also* ROBERTS, *supra* note 9, at 3, 292–95 ("The fact that the family-policing system so disproportionately enmeshes Black families was the biggest clue that its aim wasn't child welfare.").

13. ROBERTS, *supra* note 9, at 3, 292–95; *see also* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 6–7 ("Most notably, individuals who were placed in out-of-home care as children had increased all-cause mortality risk across ages 20 to 56 compared to those who experienced child maltreatment but remained at home. Similarly, children placed in foster care were more likely to enter the criminal justice system as adults than maltreated children who stayed with their families.").

14. The term domestic violence is used to denote harmful behaviors involving power and control between intimate partners. This term is intended to encompass what is also known as domestic abuse, relationship abuse, and other forms of interpersonal violence. Domestic violence includes not only physical abuse but also other forms of abuse such as stalking, financial abuse, emotional abuse, isolation, controlling a survivor's immigration options, and verbal abuse. *See What Is Domestic Abuse?*, UNITED NATIONS, https://www.un.org/en/coronavirus/what-is-domestic-abuse [https://perma.cc/59GV-J258] ("Domestic abuse, also called 'domestic violence' or 'intimate partner violence,' can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone."). I use "domestic violence" instead of "intimate partner violence" because "domestic violence" can refer to violence within intimate spaces, including the home where children are present, not just involving intimate partners. However, other terms may be used in this Article when referencing a source that also uses that term.

15. The term "survivor" is used to denote victims and survivors of domestic violence. For some, the term victim can be empowering in legitimizing the harm done to them. For others, the term survivor is empowering in showing that the person has overcome abuse. Some may identify as both victims and survivors concurrently or at different points in their lifetimes/processes. Additionally, some may just identify as a victim or a survivor.

this can be a teacher, physician, or police officer who encounters a family through daily activities. Even if the child has not been the target of the domestic violence, domestic violence may be considered a ground for a mandated report because domestic violence occurring in the home is considered child neglect under several state laws,[16] including California law.[17] As a result of a mandated report, a social worker will consider whether an investigation into the conditions of the child's care is necessary, and thus the family then becomes subject to the scrutiny of the family regulation system.[18]

Child welfare practitioners are ill-equipped to navigate and respond to the complexity of many domestic violence situations.[19] This is partly due to the cultural stigma surrounding domestic violence and the fact that there are usually many co-occurring conditions that both survivors and perpetrators in these situations experience, which leads to inadequate training within child welfare departments.[20] Furthermore, research has shown that the Department of Children and Family Services' (DCFS) responses to domestic violence are not grounded in the lived experiences of victims/survivors and are ineffective at

16. *See, e.g.*, Suzanne Hirt, *Florida Blames Mothers When Men Batter Them – Then Takes Away Their Children*, USA TODAY (Dec. 17, 2020, 3:30 AM), https://www.usatoday.com/in-depth/story-series/2020/12/16/florida-blames-mothers-when-men-batter-them-then-takes-their-children/6507973002 [https://perma.cc/BAE7-X3A2] (In Florida, 25 percent of removals were due to domestic violence in 2018). *See also* discussion of 50-State Survey *infra* Section II.B.

17. *See* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 14–15 (citing CAL. WELF. & INST. CODE § 300(b)(1) (2022)) ("For survivors of domestic violence in particular, there are several parts of this section that can lead to a survivor to temporarily lose custody of their child due to the conditions of their victimization. The term 'substantial risk' means that in order to invoke this statute, harm does not have to occur. Additionally, a child can be removed under § 300(b) due to 'the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.' In domestic violence cases, these provisions enable the agency to argue that a domestic violence survivor suffers from mental illness as a result of the trauma of domestic violence and thus unable to provide sufficient care for their child. This argument pathologizes domestic violence in a manner that is harmful to survivors when compounded with the other stigma surrounding domestic violence." (internal citations omitted)); *see also* discussion of 50-State Survey *infra* Section II.B.

18. *See infra* Part II.

19. *See* Laura Liévano-Karim et al., *A Balancing Act: How Professionals in the Foster Care System Balance the Harm of Intimate Partner Violence as Compared to the Harm of Child Removal*, INT. J. CHILD MALTREATMENT (forthcoming 2023) (manuscript at 16–17), https://link.springer.com/content/pdf/10.1007/s42448-023-00153-0.pdf [https://perma.cc/F7T9-ND2Z] (finding that social workers feel "unprepared to support families experiencing situations of [intimate partner violence]").

20. *Id.*

addressing the root causes of domestic violence.[21] Consequently, the research for this Article, which consisted of a secondary, deidentified analysis of qualitative interviews, an online, quantitative survey, a 50-State Survey of statutory definitions of neglect, and legal research, sought to uncover the nexus between domestic violence and the family regulation system. This research revealed that survivors of domestic violence lose custody of their children due to their status as survivors of domestic violence, despite strong showings of protective capacity that the system ignores.[22]

The harm that results is the separation of families, which is a result of the system's ineffective response to domestic violence, leading to irreparable harm and trauma which hurts, rather than helps, families. This Article argues that California's statutory definition of neglect and mandatory reporting scheme work together to encourage mandated reporters, social workers, and judges to find that exposure to domestic violence, without more, is child neglect. Consequently, despite the protective capacity of non-offending parents, families are ripped apart.

This Article would not have been possible without the tremendous work of abolitionist activists and scholars to bring attention to and end the atrocities that result from the family regulation system in the United States. This Article aims to supplement that work by articulating how the statutory framework is one part of the complex family regulation system that endangers survivors of domestic violence and their families.

Part I reviews qualitative legal and social science research, conducted by a team of researchers, as part of the 2021 UCLA Pritzker Center for Strengthening Families Domestic Violence and Child Welfare study, that illuminates the nexus between domestic violence and the family regulation system. This research was published by the UCLA Pritzker Center in a 2021 report. Among other things, this research identified statutory definitions of neglect as a contributing factor to the unnecessary removal of children from non-offending parents and victim-blaming of domestic violence survivors in dependency court. The second section of Part I summarizes the results of a 50-State

21. The qualitative interviews conducted as part of the research for this Article revealed these problems with DCFS's response to families experiencing domestic violence. *See* discussion *infra* Part II.

22. *See infra* Section II.C.

Survey of statutory definitions of child neglect. Drawing from this research, Part II analyzes why the family regulation system fails to respond to situations of domestic violence and serve families experiencing domestic violence, with a specific focus on California. Part III proposes two reforms: (1) a revision of California's neglect statute and (2) the replacement of mandated reporting with mandated *supporting* of families that come to the attention of the family regulation system. These reforms seek to alleviate this problem and reduce the unnecessary surveillance of families experiencing domestic violence in the Los Angeles County family regulation system while advocates, scholars, and leaders work towards more substantial changes to the United States' approach to protecting children.

I. METHODS: DESCRIPTION OF RESEARCH

In 2020, the UCLA Pritzker Center for Strengthening Children and Families (the "UCLA Pritzker Center") undertook a project to study the intersections between child welfare and domestic violence. The goal of this project was to understand the nature and extent of the risk to children living in homes where domestic violence is present.[23] In pursuit of the goal, the UCLA Pritzker Center's study sought to explore whether removing a child or threatening to remove them from a non-offending parent and victim of domestic violence is protective or if it creates a long-term risk of harm.[24] The UCLA Pritzker Center's study also aimed to assess what options, beyond removal, exist. Public and private stakeholders, researchers and experts, and individuals with lived experience were interviewed and consulted for this study.[25] The UCLA Pritzker Center approached this issue as a public health problem, analyzed past and current policies and practices, and developed systemic recommendations to promote well-being and healing for families.[26] A report on this research is available on the UCLA Pritzker Center's website.[27] This Article expands on the report's analysis of neglect laws and expands on two recommendations proposed in the

23. *See* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 3.

24. *See id.*

25. *See id.* at 4.

26. *See id*. at 3.

27. *See id.* The author of this Article contributed to this report.

report: amending California's definition of neglect and reforming the mandated reporting system in California.

To write this Article, the author reviewed deidentified data collected by the UCLA Pritzker Center team. This data consisted of (1) qualitative interviews with survivors, parent-perpetrators of domestic violence, former foster youth, and domestic violence or child welfare professionals including social workers, judges, lawyers, and mental health professionals; (2) a follow-up online survey reflecting the opinions of 122 participants; and (3) a 50-State Survey of statutory definitions of child neglect with the purpose of comparing statutory responses to domestic violence within the family regulation systems of all U.S. jurisdictions.

Several interviews identified the vague statutory definitions of neglect as a contributing factor to the unnecessary removal of children from non-offending parents and victim blaming in dependency court. The author reviewed, added to, and updated the 50-State Survey, which the UCLA Pritzker Center team started in 2020, before publication.

The following subparts briefly describe each part of the research that form the foundation for this Article's analysis.

A. Qualitative Research Process

Between August and November 2020, researchers associated with the UCLA Pritzker Center conducted eleven individual interviews and ten focus group discussions via Zoom with professionals (including attorneys, licensed therapists, nurses, and social workers) in the family regulation system, parents whose families were investigated by the family regulation system, and a few former foster youths whose families experienced domestic violence.

In total, seventy-two people were interviewed. Most of the participants were located in Los Angeles County, but others were located in Las Vegas, Nevada; Sacramento, California; New York, New York; and Lincoln, Nebraska.[28]

Before beginning the study, Institutional Review Board (IRB) approval was obtained from the IRB committee of the University of California, Los Angeles. Three questions were asked to each interviewee,

28. *See* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 4; s*ee also infra* Appendix A.

and researchers asked follow-up questions based on the interviewee's responses. These questions were (1) describe your role in your organization; (2) how do foster care and domestic violence intersect in your experience; and (3) what needs to change for survivors of domestic violence and their children? The interviews' length ranged from twenty-five to seventy-five minutes, the majority lasting over thirty minutes.

B. Online Survey

To supplement the qualitative interviews and reach more people, an online survey was conducted. One hundred twenty-two people responded to the survey. This survey was emailed to all qualitative interview participants right after the interview. All participants were asked to share the survey with their organizations so that responses could be gathered from a broad group of people. The survey was administered in both Spanish and English.

The survey asked participants to respond to eight statements by selecting whether they strongly disagreed, disagreed, felt neutral, agreed, or strongly agreed with the statement in the question. Those statements were:

1. Mothers experiencing domestic violence can face difficulty receiving help for domestic violence.
2. Domestic violence is a common cause for a child's entry into foster care.
3. Once in foster care due to domestic violence, it is difficult for families to reunify due to an absence of effective services.
4. Economic issues relating to housing and employment make it difficult for domestic violence victims to leave their batterers and build a new life for themselves and their children.
5. Victims who stay with their abusers may risk losing custody of their children due to "failure to protect."
6. Shelter and housing options for mothers experiencing domestic violence are limited.
7. Exposure to domestic violence is harmful for children.
8. Child abuse and neglect laws penalize domestic violence survivors unfairly.

The survey also had three questions that participants could write their own responses to, which asked participants to share:

1. Recommendations or suggestions for services to support domestic violence victims and their children;
2. Recommendations or suggestions to changes in the law for domestic violence victims and their children; and
3. Any other insights you wish to share.

C. 50-State Survey

The UCLA Pritzker Center conducted a 50-State Survey of statutory definitions of child neglect with the purpose of comparing statutory responses to domestic violence within the family regulation systems of all U.S. jurisdictions. This research resulted in a 50-State Survey (Appendix A) which lists the definition of child neglect for each state (or child abuse if there is no separate neglect definition) and any additional juvenile statutes that address domestic violence in the context of child neglect. The author assisted in the creation of the initial survey, and then updated and revised it in preparation for the publication of this Article.

To create this survey, the author first looked for each state's definition of child neglect in LexisNexis. To find this, the author looked under each state's juvenile or child welfare code to find the definition of neglect. Next, the author selected the entire juvenile or child welfare code section and searched "domestic violence" for child welfare statutory sections that mentioned this term. This search also showed case annotations of child welfare code sections that involve domestic violence, which helped us interpret the statutory definitions of neglect in relation to domestic violence.

This survey illuminated three different types of child neglect statutes: (1) failure to protect statutes; (2) environmental circumstances statutes; and (3) domestic violence exception statutes. Part II explains each type of statute and the problems, or benefits, of each type. The full 50 state survey is included in Appendix A.

II. THE CURRENT CHILD WELFARE INFRASTRUCTURE IN CALIFORNIA DOES NOT SUPPORT PARENT-SURVIVORS OR RECOGNIZE THEIR PROTECTIVE CAPACITY

The qualitative interviews, online survey, and 50-State Survey revealed several ways that California's family regulation system and neglect statute fail families experiencing domestic violence. Broadly, this research showed that the current Los Angeles child welfare system is ill-equipped to respond to the complexities of domestic violence. The current system in Los Angeles is unable to both protect children from the harm of witnessing domestic violence *and* the harm of being removed from their protective parent. Instead, the current system punishes parent-survivors and their children by failing to train county employees (including judges, social workers, and mental health professionals) on the complexities of domestic violence, removing the children from the protective parent, placing unreasonable and unattainable expectations on parents to regain custody of their children, and providing inadequate or impractical services for families.

During the author's review of this research, three major root causes of the system's failure to support and serve families experiencing domestic violence emerged: (1) many families experiencing domestic violence enter the family regulation system as a result of a mandated report; (2) the framing of neglect as "failure to protect" gives wide discretion to state actors but little guidance when faced with a situation of domestic violence; and (3) the lack of acknowledgment of the complexity of domestic violence throughout the system and a lack of knowledge among system actors leaves the system unprepared to respond to domestic violence. Although domestic violence certainly produces harm and witnessing domestic violence can harm children, removing children from their families also creates harm and trauma. The harm of removal must be seriously evaluated when the system responds and works to serve families experiencing domestic violence.

A. Mandated Reporting

Mandated reporting laws work hand-in-hand with failure to protect laws[29] to unnecessarily bring families experiencing domestic violence into the family regulation system. Domestic violence may be considered a ground for a mandated report because domestic violence

29. *See* discussion defining "failure to protect" neglect statutes *infra* Section II.B.1.

occurring in the home is considered child neglect under several state laws,[30] including California law.[31] A mandatory supporting system is needed to support the non-offending parent's ability to care for their child and bolster their protective capacity.

Currently, California has a mandatory reporting, not a mandatory supporting model. A mandated reporter in California is *required* to make a report to the child abuse hotline, "whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of [their] employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect."[32] On the other hand, a mandated reporter has the *choice* of whether to make a report if they have "knowledge of or . . . *reasonably suspects* that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others."[33] "Reasonable suspicion" is defined as it being

> objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect . . . .[34]

If a mandatory reporter fails to report an incident of known or reasonably suspected child abuse or neglect, it is a "misdemeanor punishable by up to six months confinement in a county jail or by a fine of one

30. *See, e.g.*, Hirt, *supra* note 16 (in Florida, 25 percent of removals were due to domestic violence in 2018); *see also* discussion of 50-State Survey *infra* Section III.B (describing how the failure to protect statute in California conflates domestic violence with child neglect).

31. *See* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 14–15 (citing CAL. WELF. & INST. CODE § 300(b)(1) (2022)); *see also* discussion of 50-State Survey *infra* Section III.B (describing the proliferation of unsubstantiated reports of neglect from mandated reporters that results from twenty-seven states' failure to protect statutes which unduly burden survivors of domestic violence).

32. CAL. PENAL CODE § 11166(a) (2022).

33. CAL. PENAL CODE § 11166.05 (2022) (emphasis added).

34. CAL. PENAL CODE § 11166(a)(1) (2022).

thousand dollars ($1,000), or by both."[35] Because of the criminal punishment for not reporting and the risk of child harm, many mandated reporters err on the side of caution and overreport, even if they do not necessarily have reasonable suspicion.[36]

When a call is made, the hotline operators evaluate the report to determine if the reasonable suspicion standard has been met for a child-welfare social worker to follow up.[37] There are generally five requirements that must be met for a mandated report to be forwarded to the local child welfare agency: (1) there must be sufficient information about the identity and location of the allegedly abused child; (2) the child must be under eighteen; (3) the alleged abuse must have occurred in the state where the report is being made, so that there is jurisdiction; (4) the alleged perpetrator must be someone legally responsible for the child, as defined by state law; and (5) the allegations must constitute abuse or neglect as defined by state law.[38]

If the social worker assigned to the case chooses to conduct an investigation, they will interview child(ren), parent(s), other family members, teachers, and others to determine if the child is in danger.[39] If the social worker determines that the child is in danger, they can remove the child or open a court case in Dependency Court.[40]

Several people that a family may encounter in their everyday life or when seeking help for domestic violence are mandated reporters. In California, mandated reporters include most licensed professionals,[41]

35. *Id.*

36. *See, e.g.*, UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 10 (citing Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U. L. REV. 819, 829 (2010); David Wolowitz, *Mandatory Reporting Laws & Schools: Making Sense Out of Disorder*, N.H. BAR J., Winter 2013, at 6, 6).

37. *See What Criteria Must Be Met?*, DO RIGHT BY KIDS, https://www.dorightbykids.org/how-do-i-call-in-a-report/what-criteria-must-be-met/ [https://perma.cc/JU5H-USQ4].

38. *See id.*

39. *See, e.g.*, Dale Margolin Cecka, *Abolish Anonymous Reporting to Child Abuse Hotlines*, 64 CATH. U. L. REV. 51, 56–57 (2014).

40. *See, e.g.*, *What We Do*, L.A. CNTY. DEP'T OF CHILD. & FAM. SERVS., https://dcfs.lacounty.gov/about/what-we-do/ [https://perma.cc/882F-FBKF]. In California, child neglect is defined in section 300 of the California Welfare & Institutions Code.

41. Licensed professionals include people like doctors, dentists, nurses, therapists, social workers, clinical counselors, and paid and court-ordered child visitation monitors. *How Do You Know if You Are a Mandated Reporter?*, FAM. VIOLENCE APP. PROJECT, https://www.cpedv.org/sites/default/files/file-attachments/tip_sheet_-_who_is_and_who_is_not_a_mandated_reporter_-_final.pdf [https://perma.cc/T56R-KP3H].

people who take care of or work with children,[42] and public safety workers.[43] Therefore, many survivors do not seek help because of the risk that who they seek help from might be a mandated reporter and initiate the child neglect investigation process.[44]

B. Neglect Statutes

California's neglect statute contributes to the harm that the mandated reporting system causes. Mandated reporters seek guidance in the neglect statute to evaluate whether a situation constitutes neglect.[45] Social workers who receive mandated reports also reference the neglect statute to see whether a report is substantiated.[46] And judges use the neglect statute once the family enters their courtroom to define child maltreatment. The way neglect is framed therefore works with a mandated reporting system to bring families experiencing domestic violence unnecessarily into the family regulation system. Consequently, both must be addressed and reformed to better serve families. Other scholars have also argued that reforming the mandated reporting system and narrowing the statutory definitions of child neglect must go together, including Robert J. Lukens.[47]

The 50-State Survey revealed three types of neglect laws.[48] Each category approaches the conditions that domestic violence raises differently, and two types have a framing that encourages state actors to find that witnessing domestic violence is neglect. The problems of mandatory reporting are intertwined with and aggravated by "failure to protect" and "environmental" statutes.

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42. People who work with children include people like teachers, coaches, day care workers, clergy members and foster care providers. *Id.*

43. Public safety workers include *paid* EMTs, firefighters, police, and probation/parole officers. *Id.*

44. *See generally* Carrie Lippy et al., *The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change*, 35 J. FAM. VIOLENCE 255, 256 (2020) (describing how intimate partner violence survivors avoided medical care or other formal services to prevent triggering a report from a mandated reporter or dependency court involvement).

45. *See* DO RIGHT BY KIDS, *supra* note 37.

46. *See* L.A. CNTY. DEP'T OF CHILD. & FAM. SERVS., *supra* note 40.

47. *See* Robert J. Lukens, *The Impact of Mandatory Reporting Requirements on the Child Welfare System*, 5 RUTGERS J.L. & PUB. POL'Y 177, 184 (2007) ("To alleviate some of the surplus burden on the child welfare system caused by over-reporting, the statutory definitions of abuse and neglect should be clarified so that bona fide abuse cases are reported more consistently and the less egregious neglect cases do not continue to absorb most of the resources of the child protective services.").

48. *See infra* Appendix A.

1. Failure to Protect Statutes

Failure to protect statutes specifically contemplate an omission on behalf of the parents that leads to the neglect of the child. These statutes primarily use the term "failure to protect," although they do not always use this terminology.[49] California's definition of child neglect is a failure to protect statute. Section 300(b)(1) of the California Welfare and Institutions Code defines child neglect as follows:

> The child has suffered, or there is a substantial risk that the child will suffer, 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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family.50

In addition to California, twenty-five other states and one U.S. territory have failure to protect statutes, including the following: Colorado, Connecticut, Delaware, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Vermont, and Virginia.[51]

For families experiencing domestic violence, there are several ways a failure to protect statute can lead a non-offending, survivor parent to temporarily lose custody of their children due to the conditions of their victimization. For example, the term "substantial risk" in California's neglect statute means that this statute can be invoked even

49. *See infra* Appendix A.
50. *See* CAL. WELF. & INST. CODE § 300(b)(1) (2022).
51. *See infra* Appendix A.

if the child is not harmed (physically, emotionally, or verbally).[52] "Substantial risk" invites the mandated reporter to bring their own views on parenting into their evaluation of child safety. This, paired with other parts of the statute that allow the mandated reporter to exercise discretion, may lead to overreporting.

Additionally, California's neglect statute states that a child can be removed from a non-offending, survivor parent due to "the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."[53] This part of California's neglect statute allows a child to be removed from the non-offending, survivor parent due to the effects of domestic violence that the non-offending parent, not the child, feels. The social worker, county counsel, or the child's attorney can use this part of California's neglect statute to argue that a non-offending, parent survivor's mental illness, which results from being in a domestic violence relationship, makes the survivor unable to provide sufficient care for their child.[54] However, stigma associated with mental illness may cloud an evaluation of the non-offending parent's protective capacity.

The failure to protect framing encourages mandated reporters and social workers to search for parental deficiencies, not protective capacity. The part of California's neglect statute quoted in the previous paragraph only addresses the conditions of the parent, not the child, that make the parent deficient.[55] It pushes the narrative that if a parent cannot protect themselves, they cannot protect their child. Through the lack of focus on the perpetrator of harm, this statute draws the

52. *See, e.g.*, *In re* T.V., 157 Cal. Rptr. 3d 693, 699 (Ct. App. 2013) ("[E]ven though [the child] had not been physically harmed, the cycle of violence between the parents constituted a failure to protect her 'from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.'" (quoting *In re* Heather A., 60 Cal. Rptr. 2d 315, 321 (Ct. App. 1996))); *see also In re* R.C., 148 Cal. Rptr. 3d 835, 844 (Ct. App. 2012) ("Children can be 'put in a position of physical danger from [spousal] violence' because, 'for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .'" (citing *In re* Heather A., 60 Cal. Rptr. 2d 315, 321 (Ct. App. 1996))).

53. *See* CAL. WELF. & INST. CODE § 300(b)(1) (2022).

54. *See, e.g.*, *In re* R.T., 399 P.3d 1, 9 (Cal. 2017) (finding a "substantial risk" of "serious physical harm" due to the mother's "self-destructive behavior").

55. *See* CAL. WELF. & INST. CODE § 300(b)(1) (2022).

evaluator's[56] attention to the vulnerability of the non-offending parent due to their victimization. Thus, the status of the non-offending parent as a victim is equated with an inability to parent in a way that the state recognizes as protective solely because of the abuse that they experience. This orientation results in victim-blaming due to a shift in the focus of the court away from the perpetrator of domestic violence. In framing child neglect as a *failure to protect*, failure to protect statutes fault the non-offending survivor, ignore survivors' demonstrations of protective capacity, and fail to acknowledge the significant barriers to leaving a domestic violence relationship.

California dependency court cases reveal the impact of this neglect statute in cases of domestic violence. In *In re* A.R.,[57] the court found

> ample evidence to support [a failure to protect] finding. Mother . . . knew about father's long-standing history of substance abuse. Because father frequently beat her, she clearly knew that he was violent and physically abusive. . . . He stalked and threatened mother and she was by her own admission scared to death of him. . . . Despite this, she gave up trying to see the girls after one unsuccessful request for help from the police and moved out of state, where she started a new family with another man. We recognize that mother was justifiably in fear of father, but that should have motivated her to take more steps to regain custody of her children. She never fully acknowledged that her efforts to regain custody of the children were halfhearted at best. We also recognize that mother was coming to terms with her mental health and substance abuse problems. Even so, her ultimate success remained for future determination. These factors supported a finding that mother still might not be able to adequately protect the minors.[58]

The facts summarized in the above paragraph show that the mother made several efforts to protect her children. She went to the police and

56. Depending on the scenario, the evaluator can be the mandated reporter, social worker, or judge. *See supra* Section II.A.

57. 175 Cal. Rptr. 3d 851 (Ct. App. 2014).

58. *Id.* at 856.

asked for help, but they did not help her.[59] She left her abuser and moved out of state to prevent continued exposure to her abuser.[60] She did the internal work to overcome her mental health and substance abuse problems, which likely were impacted by her victimization.[61] Yet this was not enough, and the court characterized her efforts as "halfhearted."[62] Instead of recognizing the ways the mother in this case sought to protect her children and the efforts she went to, the court used these efforts as parental failure because they did not achieve an effective, immediate outcome. This is exemplary of the high, unachievable expectations that are placed on parent-survivors. Given the quickness of dependency court,[63] the mother in this case was not even given enough time to achieve the expected outcome.

2. Environmental Neglect Statutes

Environmental neglect statutes focus on the environment created by the parent and how that environment creates a risk of harm for the child. Both environmental and failure to protect statutes focus on the shortcomings of a parent, but environmental statutes are more about what the parent has failed to do in general, not failed to do in the face of risk or danger. Environmental neglect is the second most-common type of neglect alleged in child maltreatment cases.[64] Yet, it goes unrecognized that foster care, which results from a finding of neglect under the environmental statutes, can also be a bad environment that

59. *Id.* at 853.

60. *Id.*

61. *Id.* at 854.

62. *Id.* at 856.

63. The entire process from mandated report to permanent termination of parental rights can take as little as eighteen months. This is mandated by the Adoption and Safe Families Act of 1997 which sets forth timelines for child dependency proceedings, Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended at 42 U.S.C. § 1305), which was adopted by California in 2001 as the Child Welfare System Improvement and Accountability Act, Assemb. B. 636, 2021–2022 Leg., Reg. Sess. (Cal. 2021). *See also* CAL. COMMON CORE CURRICULA FOR CHILD WELFARE WORKERS, FRAMEWORK FOR CHILD WELFARE PRACTICE IN CALIFORNIA 9 (2014) [hereinafter FRAMEWORK], https://calswec.berkeley.edu/sites/default/files/framework_trainee-v2.0_march_2014.pdf [https://perma.cc/RK8L-XM85] (requiring that all permanency hearings occur within twelve months of entry into care).

64. 61.6 percent of reported cases of neglect concern environmental conditions. Ferol E. Mennen et al., *Child Neglect: Definition and Identification of Youth's Experiences in Official Reports of Maltreatment*, 34 CHILD ABUSE & NEGLECT INT'L J. 647, 652 (2010).

is injurious to a juvenile's welfare.[65] Although environmental neglect statutes raise several problems, they are not the focus of this Article. However, much like the failure to protect statutes, the environmental statutes focus on the mental disability of the survivor parent, not the care of the child. Consequently, environmental statutes tend to cast victimhood as the equivalent of poor parenting.

Prior to 2022, North Carolina had an environmental statute:

> Neglected juvenile. – Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; *or who lives in an environment injurious to the juvenile's welfare . . . .*[66]

An injurious environment is one that places the child "at a substantial risk to suffer from any physical, mental, or emotional impairment as a consequence of living in [the parent's] home."[67] Dependency cases in North Carolina have interpreted exposure to domestic violence as conditions that create an injurious environment sufficient to constitute a finding of neglect under the statute.[68]

In addition to North Carolina, nineteen other states and the District of Columbia have environmental statutes, including: Alabama, Arizona, Arkansas, Georgia, Iowa, Louisiana, Maine, Michigan, Mississippi, Missouri, New Hampshire, New Mexico, North Dakota, South Dakota, Tennessee, Utah, West Virginia, Wisconsin, and Wyoming.[69]

South Dakota also has an environmental statute, where a neglected child is one "[w]hose environment is injurious to the child's welfare."[70] Much like failure to protect statutes, environmental statutes allow courts to judge the actions of parents based on the court's

65. *See generally* TRAUMA CAUSED BY SEPARATION, *supra* note 4, at 18–24 (reviewing the scientific literature and court decisions that recognize the trauma and other psychological impacts of foster care placement on children).

66. N.C. GEN. STAT. § 7B-101(15) (2020) (amended 2021) (emphasis added).

67. *In re* J.A.M., 795 S.E.2d 262, 265–66 (N.C. Ct. App. 2016).

68. *In re* S.R.F., 853 S.E.2d 415, 419–20 (N.C. 2021).

69. *See infra* Appendix A.

70. S.D. CODIFIED LAWS § 26-8A-2(3) (2020).

own conception of right and wrong.[71] In *Matter of D.A.B.*,[72] the Supreme Court of South Dakota affirmed the trial court's finding than an injurious environment was present where the mother "was still associating with the abusive stepfather on a regular basis."[73] The trial court reasoned that the "potential harm would result if the parent-child relationship were to continue under these circumstances. Little purpose is served if a dependent and neglected child remains in such a potentially injurious environment."[74]

3. Domestic Violence Specification Statutes

Domestic violence specification statutes specifically address domestic violence or exempt it as a basis for finding child neglect. There are two types of domestic violence specification statutes: (1) statutes that exempt conditions of domestic violence as a basis for a finding of child neglect; and (2) statutes that require additional procedures in neglect cases involving domestic violence, in recognition of the complexity of such situations and to counter victim-blaming.[75]

Only Washington has a domestic violence specification statute that exempts domestic violence in its definition of child neglect.[76] In Washington, the statutory definition of neglect states that "[p]overty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 [domestic violence definition statute] that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself."[77] Consequently, a judge cannot find that a child is neglected solely because their parents or caregivers are in a domestic violence relationship.

Alaska has a domestic violence specification statute requiring additional procedures in child neglect cases involving domestic violence. Alaska defines "neglect" as "the failure by a person responsible for the

71. Michael F. Sullivan, *Child Neglect: The Environmental Aspects*, 29 OHIO ST. L.J. 85, 85 (1968).

72. 313 N.W.2d 787 (S.D. 1981).

73. *Id.* at 788.

74. *Id.*

75. *See* Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 46 (2017).

76. *See infra* Appendix A.

77. WASH. REV. CODE § 26.44.020 (2021). This was added to the definition of the neglect statute in 2007. *See also In re* Dependency of D.L.B., 376 P.3d 1099, 1110 (Wash. 2016) ("Being the victim of domestic violence is not a parental deficiency.").

child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child."[78] The additional domestic violence exception statute states:

> (a) In consultation with the Council on Domestic Violence and Sexual Assault, the department shall develop written procedures for screening reports of harm for abuse and neglect of a child to assess whether there is domestic violence occurring within the family. The procedures must include the following factors:
> (1) inquiry concerning the criminal records of the parents or of the alleged abusive or neglectful person or the alleged perpetrator if not the parent of the child; and
> (2) inquiry concerning the existence of protective orders issued or filed under AS 18.66.100–18.66.180 involving either parent as a petitioner or respondent.
> (b) If the department determines in an investigation of abuse or neglect of a child that
> (1) the child is in danger because of domestic violence or that the child needs protection as a result of the presence of domestic violence in the family, the department shall take appropriate steps for the protection of the child; in this paragraph, "appropriate steps" includes
> (A) reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is not a domestic violence offender;
> (B) reasonable efforts to remove the alleged domestic violence offender from the child's residence if it is determined that the child or another family or household member is in danger of domestic violence; and
> (C) services to help protect the child from being placed or having unsupervised visitation with the domestic violence offender until the department determines that the offender has met conditions considered necessary by the department to protect the safety of the domestic violence victim and household members;

78. ALASKA STAT. § 47.17.290 (2022).

> (2) a person is the victim of domestic violence, the department shall provide the victim with a written notice of the rights of and services available to victims of domestic violence that is substantially similar to the notice provided to victims of domestic violence under AS 18.65.520.[79]

The Alaska legislature has gone out of its way in this statute to recognize the harm that a poorly defined neglect statute can cause families experiencing domestic violence and has instituted additional procedural protections to frame a parent-survivor as a *protective* parent, not a victim without capacity to care for and protect their child. This Alaskan statute is the only state child welfare statute, besides Washington's statute, that requires the child welfare department to work towards keeping a family together whenever possible and orients the role of the child welfare department towards providing supportive services.[80] Instead of placing the blame on the non-offending parent like a failure to protect statute, this Alaskan statute requires the child welfare department to make efforts to remove the offending parent, and not force the non-offending parent to leave.[81] As a practical matter, this is a very important distinction because in failure to protect states like California, the non-offending parent is often required to leave the domestic violence household with their children, which is more difficult and dangerous than having the offending parent leave.[82]

C. System-Wide Lack of Expertise in Domestic Violence

As a result of this analysis, the author found that even though many families surveilled by the family regulation system experience domestic violence, most jurisdictions do not explicitly contemplate domestic violence in their juvenile codes, much less the statutory definitions of child neglect. Instead, as the qualitative interviews showed, individual social workers, county counsel, children's attorneys, and judges have significant leeway to interpret the impact of domestic violence on any individual case.

The discretion afforded to mandated reporters, social workers, and judges invites them to impose their personal views on parenting

79. ALASKA STAT. § 47.17.035 (2022).
80. ALASKA STAT. § 47.17.035(b)(1)(A)–(C) (2022).
81. *Id.*
82. *See supra* Section II.B.1.

and child-care. Oftentimes, these state actors seek to evaluate the non-offending parent-survivor against a narrative of the perfect victim. This creates a situation that makes it harder for the survivor to retain or regain their children. These statutes' orientation towards the non-offending parent's victimization empowers state actors with this significant discretion, allowing them to categorize what these individuals view as undesirable or inappropriate behavior as child neglect. Evidence shows that the framing of parent-survivors as victims in neglect statutes, instead of as protective parents, unnecessarily brings families into the family regulation system—only seventeen percent of children enter foster care based on allegations of physical or sexual abuse.[83]

When families experiencing domestic violence come to the attention of DCFS in Los Angeles, the non-offending parent, who is also a survivor of domestic violence, can lose custody of their children under certain categories of neglect statutes.[84] Although whether a child is removed often depends on which social worker is assigned to the case, a key consideration in a removal decision is the protective capacity of a parent.[85]

To retain or regain custody of their children, a survivor is held to high, unachievable expectations—simultaneously forced to appear to be the perfect victim who conforms to the expectations of DCFS and also to show the strength necessary to be able to protect their child.[86] The perfect victim, which the author has conceptualized from reviewing several interviews of dependency professionals and dependency court cases, is one who seeks the help of law enforcement or obtains a domestic violence restraining order to aid them in a domestic violence situation. However, there are several barriers to seeking the aid of law enforcement in domestic violence situations including fear, stigma,

83. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., THE AFCARS REPORT 2 (2020) [hereinafter 2020 AFCARS REPORT], https://www.acf.hhs.gov/cb/report/afcars-report-27 [https://perma.cc/XC4Y-UFE5].

84. *See* CAL. WELF. & INST. CODE § 300(b) (2022).

85. *See, e.g.*, *In re* Giovanni F., 108 Cal. Rptr. 3d 885, 888–91 (Ct. App. 2010) (DV victim mother failed to protect child where father's actions were foreseeable because he consistently engaged in abusive behavior towards mother and mother and father continued to cohabitate in violation of preexisting safety plan).

86. *See* Jane K. Stoever, *Mirandizing Family Justice*, 39 HARV. J.L. & GENDER 189, 207 (2016) ("Once a woman has experienced domestic violence, she somehow becomes incapable of rationality—with rational defined as making the choice the system actors believe she should make." (quoting Leigh Goodmark, *Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal*, 31 WASH. U. J.L. & POL'Y 39, 53 (2009))).

and language barriers.[87] Difficulties in conforming to the perfect-victim narrative are compounded when a parent is nonwhite, an immigrant, or does not speak English.[88]

The perfect-victim narrative does not push judicial officers, who make the ultimate decisions as to whether a child is removed, to recognize the varied manifestations of domestic violence nor the virtues of parent-survivors who do not fit into its mold. Instead of analyzing a situation by taking into account the complexities of domestic violence, the vagueness of statutory definitions of child neglect also allows social workers and judges to easily deem conditions of poverty as child neglect.[89] Consequently, survivors who do not appear to be the perfect victim are disadvantaged in removal proceedings. When faced with a survivor that does not, for example, seek aid from the criminal legal system or obtain a restraining order, the judicial officer may draw unfair adverse inferences. These adverse inferences may include that the survivor, in their role as a parent, is failing to protect their child because they fall short of the perfect-victim expectations. Furthermore, the court does not recognize what it perceives as the survivor's inadequacies as psychological consequences of domestic violence.[90] For example, forgetting or confusing details and timelines is a common symptom of trauma, but courts and social workers perceive this as dishonesty.[91]

87. *See, e.g.*, Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1248–49 (1991) ("Language barriers present another structural problem that often limits opportunities of non-English-speaking women to take advantage of existing support services.").

88. UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 15.

89. *See* Dorothy Roberts, *The Child Welfare System Already Hurts Trans Kids. Texas Made It a Nightmare*, WASH. POST (Mar. 3, 2022, 12:23 PM), https://www.washingtonpost.com/outlook/2022/03/03/texas-trans-youth-welfare/ [https://perma.cc/7A3S-MHNY] ("Relying on vague state child neglect laws, investigators often deem conditions of poverty—lack of food, insecure housing, inadequate medical care—as evidence of parental unfitness.").

90. "Battered women may also exhibit psychological symptoms that confuse judges. Many battered women suffer from post-traumatic stress disorder (PTSD), which can lead them to display 'a strange lack of affect when discussing the violence, or to giggle inappropriately.' Trauma can also affect victims' memories, leading them to have difficulty articulating events in chronological order. Courts may misinterpret these behaviors as a sign that the victim is lying or not credible." Campbell, *supra* note 75, at 43.

91. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUM. SERVS., TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES 61 (2014), https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf [https://perma.cc/5K6L-655Q].

Courts often fail to recognize the extensive efforts that survivors go to in order to protect their children because they are distracted by the fact that a survivor has chosen to remain in a household where domestic violence is occurring or remain in contact with the perpetrator of domestic violence (who is the other parent of their child), thus exposing their child to the risk of violence.[92] However, several studies have shown that leaving the perpetrator of domestic violence can be very difficult.[93] There are personal, cultural, financial, and social obstacles to a victim/survivor's ability to leave their abuser.[94] Perpetrators of domestic violence commonly isolate their victims to exercise power and control.[95] As a result of this isolation, a domestic violence survivor might not have anyone to turn to for help leaving their abusive relationship or have an income because the abuser may prevent the victim/survivor from working.[96] Furthermore, the risk of homicide is at its greatest for a domestic violence victim/survivor when they attempt to leave.[97] The survivor's fear that a perpetrator may follow through on their threats cannot be discounted.[98] One survivor advocate with whom the Pritzker Center team spoke emphasized the fear that a victim/survivor experiences and noted that judges often don't fully understand it. Because of this complexity, a victim/survivor must make difficult choices every day to ensure the safety of themselves and their children.

Yet, protective capacity can be demonstrated in several ways which may not always align with the expectations of DCFS workers or judges. These protective actions may include having a relative or other party present when interacting with the perpetrator, engaging in accommodating or compliant behaviors so as not to give rise to violence, and having a safety plan. Because the focus of failure to protect statutes is on the omissions and shortcomings of non-offending

92. *See Why Do Victims Stay?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, https://ncadv.org/why-do-victims-stay [https://perma.cc/DL7B-JSV4].

93. *See id.*

94. *See* ALYCE D. LAVIOLETTE & OLA W. BARNETT, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 8 (2d ed. 2000).

95. *See Know the Signs: Spotlight on Isolation from Friends and Family*, BREAK THE CYCLE, https://www.breakthecycle.org/blog/know-signs-spotlight-isolation-friends-and-family [https://perma.cc/2PTJ-GUB6].

96. *See* NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 92.

97. *See generally* Jacquelyn C. Campbell et al., *Intimate Partner Homicide: Review and Implications of Research and Policy*, 8 TRAUMA, VIOLENCE, & ABUSE: REV. J. 246, 254 (2007).

98. *See* NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 92.

parents, judges and social workers do not look for and are not rewarded for recognizing these signs of protective capacity. The proposed reforms in the next section seek to reorient system actors towards recognizing the protective capacity of non-offending parents and towards providing services for families.

III. PROPOSED STATUTORY AND POLICY REFORM

A. Statutory Reform

California should follow the steps of Washington state and add a Domestic Violence Exception to their statutory definition of child neglect. Other states, including California, have non-domestic violence exception statutes that exempt other conditions from being the basis of a neglect finding. California's current neglect statute has a clause that states "[a] child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family."[99] And in Massachusetts, another failure to protect state, "inadequate economic resources or . . . the existence of a handicapping condition" cannot alone form the basis of a finding of neglect.[100] Following Washington's example, which the California legislature frequently does in other areas of law and policy,[101] section 300(b) of the California Welfare & Institutions Code should be amended to have a clause that says, "a child shall not be found to be a person described

99. CAL. WELF. & INST. CODE § 300(b) (2022).

100. 110 MASS. CODE REGS. § 2.00 (2022); *see In re* Laurent, 22 N.E.3d 974, 978–79 (Mass. App. Ct. 2015) (rejecting the lower court's finding of parental unfitness because "it is clear that the ultimate determination of unfitness rested primarily on the judge's assessment that the mother's cognitive disabilities would impact her ability to 'understand' and 'follow through on her understanding' of [the child's] needs if he were returned to her care. The judge found that there was no evidence that the mother's substance abuse problems and her involvement in abusive relationships, the issues which caused the department to remove Laurent from the mother's care, and which were responsible for the loss of at least one of the mother's other children, are currently concerns in the mother's life").

101. *See* Press Release, Off. of Governor Gavin Newsom, California, Oregon & Washington Announce Western States Pact (Apr. 13, 2020), https://www.gov.ca.gov/2020/04/13/california-oregon-washington-announce-western-states-pact/ [https://perma.cc/XU5S-GUZV] (announcing that California, Washington, and Oregon will coordinate on a shared approach to reopening their economies and loosing public health measures after the first year of the COVID-19 pandemic). Shortly after this announcement, Colorado and Nevada joined the pact too. *See* Press Release, Washington Governor Jay Inslee, Inslee Announces Colorado & Nevada Will Join Washington, Oregon & California in Western States Pact (Apr. 27, 2020), https://www.governor.wa.gov/news-media/inslee-announces-colorado-nevada-will-join-washington-oregon-california-western-states [https://perma.cc/Q34U-XXPU].

by this subdivision solely due to poverty, homelessness, or exposure to domestic violence as defined in Section 6320 of the Family Code."

This specific language was chosen for several reasons. Primarily, a domestic violence exception forces the court to look outside the domestic violence relationship for parental deficiency, thus preventing removal based on the status of being a non-offending parent in a domestic violence relationship. In forcing the court to make a finding of parental deficiency besides the fact that domestic violence is occurring, the court is encouraged to consider specific parental behaviors and contemplate arguments regarding protective capacity, discouraging seeing the non-offending parent only as a victim. This thus prompts the court to balance the harm of removal and the harm of domestic violence. Furthermore, in accordance with an orientation towards mandated supporting,[102] specifying the parental deficiencies of the non-offending parent outside of their status as being in a domestic violence relationship might motivate the recommendation or imposition of more specific, targeted services.

Second, the suggested amendment to the neglect statute is far-reaching and will impact families experiencing poverty or houselessness too. This approach seeks to address the greater issue of statutory definitions of neglect more broadly, which punish families for conditions outside of their immediate control, including poverty and domestic violence. Although addressing the issue of poverty as a basis for neglect is a topic that requires much more analysis than the content of this Article, others have done extensive research and writing illuminating this problem.[103] It is important that domestic violence is not viewed in a silo, as it currently is. Therefore, including "poverty and homelessness" is important because these are two conditions which are often used as evidence of parental unfitness. The conflation of poverty and homelessness with neglect results from the vague way that neglect is defined. Because poverty and homelessness are root causes of domestic violence, including this exception also prevents families experiencing domestic violence from being charged with neglect due

102. *See* discussion of mandated supporting *infra* Section III.B.

103. *See generally* Jerry Milner & David Kelly, *It's Time to Stop Confusing Poverty with Neglect*, IMPRINT (Jan. 17, 2020, 5:12 AM), https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222 [https://perma.cc/P7BU-UGMJ] (discussing the authors' efforts evaluating initiatives across the country that are committed to making sure families dealing with poverty have the help and support they need).

to poverty or homelessness.[104] The terms "poverty and homelessness" instead of "inadequate economic resources" were chosen because specificity is important given the significant leeway that social worker investigators and judges have to interpret the law. Additionally, I suggest going broader than "lack of an emergency shelter," which is the current exception in California's neglect statute,[105] because although poverty and homelessness create emergency conditions, the policy response to these issues is not urgent and thus families experience these conditions for long periods of time.

Second, it is important to cross-reference the statutory definition of domestic violence in this clause because California's statutory definition of domestic violence is expansive and appropriate to encapsulate the full range of ways domestic violence may manifest. In 2019 and again in 2021, the definition of "domestic violence" in section 6320 of the California Family Code was updated to broadly encompass mental abuse, emotional abuse, reproductive coercion, and coercive control.[106] This definition of domestic violence importantly recognizes its complexity and the variety of ways the cycle of abuse and control may manifest and will appropriately guide a court in determining whether domestic violence is present in a situation so as to give rise to the exception.

Adding a domestic violence exception to California's child neglect statute is politically feasible. In the California legislature, there is growing political support in favor of passing legislation to aid domestic violence survivors. The California State Senate has a Select Committee on Domestic Violence consisting of six state senators.[107] California State Senator Rubio, then a member of that committee, introduced a bill in 2021 to address this specific issue.[108] This committee has recently held hearings and introduced bills to reform statutes that

104. *Domestic Violence and Homelessness: Statistics (2016)*, FAM. & YOUTH SERVS. BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., https://www.acf.hhs.gov/fysb/fact-sheet/domestic-violence-and-homelessness-statistics-2016 [https://perma.cc/22N5-85U6].

105. CAL. WELF. & INST. CODE § 300(b) (2022) ("[A] child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family.").

106. *See* CAL. FAM. CODE § 6320(c) (2022).

107. Select Committee on Domestic Violence, CALIFORNIA STATE SENATE, https://www.senate.ca.gov/domestic-violence [https://perma.cc/TL96-E8RA].

108. *See* S.B. 537, 2021–2022 Leg., Reg. Sess. (Cal. 2021). The author believes this bill was unsuccessful due to the senator's lack of collaboration with all stakeholders in proposing the bill. In the future, lawmakers must engage and consult with both child-welfare and domestic-violence advocates when proposing changes such as this.

impact the ability of parent-survivors to retain custody of their children.[109] Furthermore, the changes relating to poverty are consistent with the California legislature's previous recognition that poverty, such as the lack of an emergency shelter, is not itself neglect.

However, statutory change alone will not resolve the problems identified in Part II. One of the people interviewed for this project from Washington, the only state that has a domestic violence exception statute, emphasized that despite the statutory text, it can be difficult for a survivor to utilize this statutory provision.[110] This interviewee noted that social workers may not consider the statute when removing children, and thus it is up to the judge to raise it or for parents to appeal the removal decision.[111] Thus, social worker ignorance continues unaddressed because parents do not always appeal and judges, who in this situation likely have the benefit of hindsight, can do nothing to relieve the family of the trauma of a removal that has already occurred.

Furthermore, the Washington interviewee also stated that although a parent's victimization itself cannot be a ground for removal under the statute, the ways in which a parent responds to their victimization and the conditions that these responses create for a child can be a ground for removal.[112] For example, in *In re Dependency of G.G.*,[113] the judge reasoned that:

109. *See id.* (bill introduced by Senator Rubio to amend the definition of child neglect in California Welfare and Institutions Code to explicitly exclude the fact that a parent experiencing domestic violence as a ground for finding that a child has been neglected); *see also The Intersection Between Child Welfare and Domestic Violence*: *Informational Hearing Before the S. Select Comm. on Domestic Violence*, S. 2021–2022 Leg., Reg. Sess. (Cal. 2021) (agenda) [hereinafter *Hearing Agenda*], https://www.senate.ca.gov/sites/senate.ca.gov/files/select_committee_informational_hearing_agenda.pdf [https://perma.cc/CVJ2-5QYH] (discussing child welfare and domestic violence in the California court system with the goal of improving outcomes for children, victims, and families experiencing domestic violence).

110. UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 17.

111. *Id.*

112. *Id. But see In re* Dependency of G.G., 361 P.3d 726, 726 (Wash. 2015) (C.J. Madsen dissenting) ("The 'appropriate choices' phrase implies that a woman can avoid domestic violence by carefully choosing her romantic partners, that by failing to do so she makes inappropriate choices, and that by making such poor choices she is an unfit mother. Such reasoning is at odds with the statutory definitions of 'dependent child,' 'abuse or neglect,' and 'negligent treatment or mal-treatment,' all relevant terms in this case. . . . [A]buse or neglect of child based on negligent treatment or maltreatment expressly excludes exposing child to domestic violence against person other than the child." (citing WASH. REV. CODE §§ 26.44.020(1), (19))).

113. 344 P.3d 234 (Wash. Ct. App. 2015).

> Although domestic violence victims face great challenges, a parent must exercise good judgment to avoid genuine risk of harm to her children. Here, the focus of the trial court's finding was not based on [parent's] status as a domestic violence victim; it was her *failure to make appropriate choices* and participate in recommended services to address parental deficiencies related to domestic violence trauma that placed her children at risk of harm.[114]

This reasoning circumvents the domestic violence exception by attributing the suspected or potential harm to the parent's personal decision-making, despite the impact that the experience of domestic violence had on those decisions. This judge perpetuated the perfect-victim narrative through this reasoning and found additional deficiencies in parenting to circumvent the domestic violence exception.[115] In *In re Dependency of D.L.B.*,[116] the court similarly found common effects of domestic violence, such as being in several domestic violence relationships, minimizing the conditions of abuse to outsiders, and the mother's safety planning, as evidence of "parental deficiency" and not protective capacity.[117] Consequently, the court upheld a decision to remove the mother's children from her care, despite the domestic violence exception and significant evidence that these behaviors are a clear result of being in a domestic violence relationship.[118]

To mitigate the problem that this Washington case suggests will follow, increased education about domestic violence and domestic violence specialists within DCFS must also be put in place.[119] Increased

114. *Id.* at 243 (emphasis added).

115. *Id.*

116. 376 P.3d 1099 (Wash. 2016).

117. *See id.* at 1110 (finding a "parental deficiency" in a mother who was a victim of domestic violence where she (1) had several past relationships with abusers and was currently in a relationship with an abuser, (2) had maintained two past abusive relationships despite no-contact orders, (3) misrepresented the nature of these relationships and the abusive conditions of her current relationship to the department of children and family services, and (4) the mother's current abusive relationship and decision to hide it from the Department raised concerns about "control issues and the potential for stress in the home as [the mother] plan[ned] for [her children] to be raised in [this man's] home"; the Washington Supreme Court affirmed the trial court's finding "that these facts damaged [the mother's] credibility and indicate[d] an inability to put into practice what was taught/discussed at [the domestic violence] programs in which [the mother had] participated" (internal citations omitted)).

118. *Id.* at 1111.

119. *See* UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5, at 9–10.

training and education will enable judges to reasonably identify cases in which the witnessing of domestic violence does not warrant removal.

Failure to protect statutes are harmful because they wrongly place the onus of blame and culpability on the non-offending parent for conditions that the offending parent creates. Adding the domestic violence exception to the statutory definition of child neglect importantly shifts the burden of culpability and refocuses the investigation of child neglect on the person causing the harm. However, the interviews revealed that mandated reporting laws are as much of a problem as the statutory definition. Both mandated reporting statutes and the current definition of neglect work together to unnecessarily bring families experiencing domestic violence to the attention of the family regulation system in unproductive ways. Consequently, mandated reporting laws must also be reformed.

B. Shifting the Paradigm from Mandated Reporting to Mandated Supporting

Much like adding a domestic violence exception to the neglect statute, shifting from a mandated reporting to a mandated supporting scheme will move the paradigm from one that currently places blame on parents to one that recognizes that there is a vulnerability in these families that it is the state's duty to remedy. In a mandatory supporting scheme, the mandated reporter does not call the child abuse/neglect hotline to report a family. Instead, they call that hotline to receive expert assistance as to what supportive services they can offer a family in this situation. Instead of an investigator going to the family's home, a social worker or community member visits the family to offer services. This person approaches the family through a lens of support, not investigation. If the harm continues, then a removal process is instigated. But, at that point the social worker has tried to intervene in non-punitive ways.

The simplest example of a mandatory supporting scheme is as follows. A child comes to school during the winter without a coat. In a mandated reporting scheme, the teacher may have to report this to the child neglect hotline. In a mandated supporting scheme, the teacher instead asks the social worker at the school or the school's counselor to help her find a coat to send the child home with.

This example illuminates the fundamental shift that occurs when we reorient from mandated *reporting* to mandated *supporting*. A mandated supporting scheme asks mandated reporters to discern neglect from need.[120] In the domestic violence context, mandated supporting might prompt the reporter to recognize the root causes of domestic violence, which can include an unresolved generational trauma and barriers to accessing needed supportive services including conflict mediation.[121]

There are situations where immediate removal and emergency intervention are necessary. However, studies show that only 17 percent of children enter foster care on the basis of physical or sexual abuse.[122] Procedures must be developed to distinguish between emergency situations where immediate removal is necessary and the majority of situations where supportive services can remedy the harm a family is experiencing. Once the reporter realizes what problems may be better addressed by supportive services, they can connect that family to those services or a social worker who will provide the services. In cases where the reporter reflects and realizes that the situation might be appropriate for state intervention, the reporter should include the parents in the reporting process, inform the family of their rights, and connect them to legal services.[123]

To begin to shift this paradigm, the statutory scheme governing mandated reporting needs to change. Additionally, internal DCFS policies must change to focus on providing supportive services and resources before investigations. These services do not currently exist, and if they do exist, they are not connected to current DCFS infrastructure.[124] Consequently, a mandated *supporting* scheme will require a reallocation of resources and staff within DCFS.

There are two bills that were pending in the California legislature to relax mandated reporting standards. The first, AB 2085, distinguished between neglect and severe neglect, only requiring a mandated reporter to report in situations of severe neglect and child

120. *See* SOC. WORKERS AGAINST MANDATES, FAMILY DEFENSE 4 (2021) [hereinafter FAMILY DEFENSE], https://static1.squarespace.com/static/5c8ad6374d546e4cda43d02e/t/61bbaa2cf2f200130eb08217/1639688756829/Family+Defense+Module+2021.pdf [https://perma.cc/D8PQ-8WAU].

121. *See id.* at 7.

122. *See* 2020 AFCARS REPORT, *supra* note 83, at 2.

123. *See* FAMILY DEFENSE, *supra* note 120, at 9.

124. *Id.*

abuse.[125] AB 2085 also redefined "reasonable suspicion" as a situation in which, based on a mandated reporter's reasonable observations and professional training and experience, the mandated reporter suspects that the person is responsible for abusing or severely neglecting a child."[126] The second, AB 2790, is more aligned with the mandatory supporting paradigm. AB 2790 would "require a health care practitioner who suspects that a patient has suffered physical injury that is caused by domestic violence . . . to provide brief counseling, education, or other support, and a warm handoff, as defined, or referral to local and national domestic violence or sexual violence advocacy services."[127] These two bills show that political actors recognize the harms that mandated reporting laws cause and are searching for ways to reorient child protective services towards supporting families, providing protective services, and not punishing families. If this political will can be harnessed, many families can be strengthened.

CONCLUSION

Together, statutory reform to the definition of child neglect and the mandated reporting scheme can lead to a paradigm shift in California's family regulation system. These changes will reframe the way social workers, judges, and other state actors view families experiencing domestic violence. Instead of framing domestic violence as a condition that creates culpability for harm, this Article's proposals provide an opportunity for domestic violence to be viewed as a vulnerability that the state can address through supportive policies and practices. Additionally, these upstream, preventative interventions are needed to prevent families from being unnecessarily subjected to the family regulation system in the first place.

Additional policy changes that mitigate the root causes of domestic violence are needed to supplement statutory change so that children who witness domestic violence are not unnecessarily removed from the care of their non-offending parent. The 2021 UCLA Pritzker Center report, *Child Welfare and Domestic Violence: The Report on Intersection and Action*, presents nine policy recommendations, which are based on the same research that formed the basis for this Article, that

125. Assemb. B. 2085, 2021–2022 Leg., Reg. Sess. (Cal. 2022).
126. *Id.*
127. Assemb. B. 2790, 2021–2022 Leg., Reg. Sess. (Cal. 2022).

seek to make interactions with DCFS better for families experiencing domestic violence in Los Angeles.[128] This Article has elaborated on the Pritzker Center's proposal for statutory change. To supplement the 2021 Pritzker Report's recommendations for statutory and policy change, we must institute statutory and policy reform to shift the paradigm from mandatory *reporting* to mandatory *supporting* in California.

128. UCLA PRITZKER CTR. DOMESTIC VIOLENCE AND CHILD WELFARE REPORT, *supra* note 5.

APPENDIX A – 50 STATE SURVEY

A. Exception Statutes

Alaska

In Alaska, "neglect" is defined as "the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child."[129]

Alaska also has a domestic violence specific child welfare statute that states:

> **(a)** In consultation with the Council on Domestic Violence and Sexual Assault, the department shall develop written procedures for screening reports of harm for abuse and neglect of a child to assess whether there is domestic violence occurring within the family. The procedures must include the following factors:
>
> > **(1)** inquiry concerning the criminal records of the parents or of the alleged abusive or neglectful person or the alleged perpetrator if not the parent of the child; and
> >
> > **(2)** inquiry concerning the existence of protective orders issued or filed under AS 18.66.100 — 18.66.180 involving either parent as a petitioner or respondent.
>
> **(b)** If the department determines in an investigation of abuse or neglect of a child that
>
> > **(1)** the child is in danger because of domestic violence or that the child needs protection as a result of the presence of domestic violence in the family, the department shall take appropriate steps for the protection of the child; in this paragraph, "appropriate steps" includes
> >
> > > **(A)** reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is not a domestic violence offender;
> >
> > > **(B)** reasonable efforts to remove the alleged domestic violence offender from the child's residence if it is determined that the child or another family or household member is in danger of domestic violence; and
> >
> > > **(C)** services to help protect the child from being placed or having unsupervised visitation with the domestic violence

129. ALASKA STAT. § 47.17.290 (2022).

> offender until the department determines that the offender has met conditions considered necessary by the department to protect the safety of the domestic violence victim and household members;
>
> (2) a person is the victim of domestic violence, the department shall provide the victim with a written notice of the rights of and services available to victims of domestic violence that is substantially similar to the notice provided to victims of domestic violence under AS 18.65.520.
>
> **(c)** For purposes of obtaining access to information needed to conduct the inquiries required by (a)(1) and (2) of this section, the department is a criminal justice agency conducting a criminal justice activity.
>
> **(d)** A person may not bring a civil action for damages for a failure to comply with the provisions of this section.[130]

Washington

In Washington, "negligent treatment or maltreatment" of a child is defined as:

> [A]n act or a failure to act, or 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, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, experiencing homelessness, or exposure to domestic violence as defined in RCW 7.105.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.[131]

130. *Id.* § 47.17.035.

131. WASH. REV. CODE § 26.44.020 (2021).

B. Failure to Protect Statutes

California

In California, a court may find that a child is neglected if:

(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of any of the following:

> (A) The failure or inability of the child's parent or guardian to adequately supervise or protect the child.
> (B) The willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.
> (C) The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment.
> (D) The inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

(2) A child shall not be found to be a person described by this subdivision solely due to any of the following:

> (A) Homelessness or the lack of an emergency shelter for the family.
> (B) The failure of the child's parent or alleged parent to seek court orders for custody of the child.
> (C) Indigence or other conditions of financial difficulty, including, but not limited to, poverty, the inability to provide or obtain clothing, home or property repair, or childcare.[132]

Colorado

Child neglect is defined in Colorado as:

(1) A child is neglected or dependent if:

> (a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

132. CAL. WELF. & INST. CODE § 300(b) (2022).

> (b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;
> (c) The child's environment is injurious to his or her welfare;
> (d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;
> (e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;
> (f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;
> (g) The child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use.

(2) A child is neglected or dependent if:

> (a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and
> (b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and
> (c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.[133]

Connecticut

In Connecticut, "[a] child may be found "neglected" who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child."[134]

133. COLO. REV. STAT. § 19-3-102 (2022).
134. CONN. GEN. STAT. § 46b-120 (2023).

Connecticut also has a statute that specifically discusses the connection between domestic violence and neglect:

> (a) The state of Connecticut finds that family violence can result in abuse and neglect of the children living in the household where such violence occurs and that the prevention of child abuse and neglect depends on coordination of domestic violence and child protective services.
> (b) The Commissioner of Children and Families may consider the existence and the impact of family violence in any child abuse investigation and may assist family members in obtaining protection from family violence.[135]

Delaware

Delaware defines a "neglect" as occurring where a person who:

> a. Is responsible for the care, custody, and/or control of the child; and
> b. Has the ability and financial means to provide for the care of the child; and
>
> > 1. 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; or
> > 2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being; or
> > 3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child's own basic needs or safety, after considering 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.
>
> In making a finding of neglect under this section, consideration may be given to dependency, neglect, or abuse history of any party.[136]

135. *Id.* § 17a-106b.
136. DEL. CODE ANN. tit. 10, § 901 (2023).

Florida

Florida's statutory code defines child neglect as:

> (50) "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such 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. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:
>
> > (a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or
> >
> > (b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.
> >
> > Neglect of a child includes acts or omissions.[137]

Florida also has a statute that specifically discusses the connection between domestic violence and neglect:

> (14)(a) If the department or its agent determines that a child requires immediate or long-term protection through medical or other health care or homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive Crisis Counseling Program, such services shall first be offered for voluntary acceptance unless:

137. FLA. STAT. ANN. § 39.01 (2022).

> 1. There are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse, mental illness, or domestic violence; or
> 2. There is a high likelihood of lack of compliance with voluntary services, and such noncompliance would result in the child being unsafe.[138]

Guam

In Guam, child abuse and child neglect are both defined as "a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare."[139]

Hawaii

In Hawaii, child abuse and neglect are both defined as:

> (1) The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:
>
> (A) When the child exhibits evidence of:
>
> (i) Substantial or multiple skin bruising or any other internal bleeding;
> (ii) Any injury to skin causing substantial bleeding;
> (iii) Malnutrition;
> (iv) Failure to thrive;
> (v) Burn or burns;
> (vi) Poisoning;
> (vii) Fracture of any bone;
> (viii) Subdural hematoma;
> (ix) Soft tissue swelling;
> (x) Extreme pain;

138. *Id.* § 39.301.
139. 19 GUAM CODE ANN. § 13101 (2022).

> (xi) Extreme mental distress;
> (xii) Gross degradation; or
> (xiii) Death; and
>
> such injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;
>
> (B) When the child has been the victim of sexual contact or conduct, including but not limited to sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b);
>
> (C) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function;
>
> (D) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
>
> (E) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this subparagraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240; or
>
> (F) When the child has been the victim of labor trafficking under chapter 707; or
>
> (2) The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202.[140]

140. HAW. REV. STAT. § 350-1 (2022).

Idaho

Neglect is defined in Idaho as:

(31) "Neglected" means a child:

> (a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or
>
> (b) Whose parent, guardian or other custodian is unable to discharge the responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or
>
> (c) Who has been placed for care or adoption in violation of law; or
>
> (d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.[141]

Illinois

A "neglected child" is defined in Illinois as:

> [A]ny child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare and (ii) the likely

141. IDAHO CODE § 16-1602 (2022).

> harm to the child is the result of a blatant disregard of parent, caretaker, person responsible for the child's welfare, or agency responsibilities; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2/1 et seq.]. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of this Act [325 ILCS 5/4]. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of The School Code [105 ILCS 5/26-1 et seq.], as amended.[142]

142. 325 ILL. COMP. STAT. 5/3 (2020).

Indiana

Indiana does not have a specific statutory definition of neglect. However, it has a statute that defines the "endangerment of physical or mental health" of a child as:

> (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:
>
> > (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
> > (2) the child needs care, treatment, or rehabilitation that:
> > > (A) the child is not receiving; and
> > > (B) is unlikely to be provided or accepted without the coercive intervention of the court.
>
> (b) A child is a child in need of services if, before the child becomes eighteen (18) years of age, the child:
>
> > (1) is a victim of: [domestic violence; and]
> > . . .
> > (3) the child needs care, treatment, or rehabilitation that:
> > > (A) the child is not receiving; and
> > > (B) is unlikely to be provided or accepted without the coercive intervention of the court.[143]

Kansas

Kansas defines neglect as:

> (t) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:
>
> > (1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;
> > (2) failure to provide adequate supervision of a child or to remove a child from a situation that requires judgment or actions beyond the child's level of maturity, physical condition or

143. IND. CODE ANN. § 31-34-1-2 (2022).

> mental abilities and that results in bodily injury or a likelihood of harm to the child; or
>
> (3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall, not for that reason, be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments thereto.[144]

Kentucky

Abuse and neglect in Kentucky are defined as:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:

> (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:
>
> 1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
>
> 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
>
> 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to a substance use disorder as defined in KRS 222.005;
>
> 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
>
> 5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
>
> 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
>
> 7. Abandons or exploits the child;

144. KAN. STAT. ANN. § 38-2202 (2022).

> 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being when financially able to do so or offered financial or other means to do so. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
>
> 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months; or
>
> 10. Commits or allows female genital mutilation as defined in KRS 508.125 to be committed; or
>
> (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age.[145]

Maryland

Neglect is defined in Maryland as:

> (s) "Neglect" means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:
>
> (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
>
> (2) mental injury to the child or a substantial risk of mental injury.[146]

145. KY. REV. STAT. § 600.020 (2022).
146. MD. CODE ANN., FAM. LAW § 5-701 (LexisNexis 2022).

Minnesota

Neglect is defined in Minnesota as:

(a) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (8), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;

(6) medical neglect, as defined in section 260C.007, subdivision 6, clause (5);

(7) chronic and severe use of alcohol or a controlled substance by a person responsible for the child's care that adversely affects the child's basic needs and safety; or

(8) emotional harm from a pattern of behavior that contributes to impaired emotional functioning of the child, which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not

> within the normal range for the child's age and stage of development, with due regard to the child's culture.

(b) Nothing in this chapter shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care.

(c) This chapter does not impose upon persons not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care a duty to provide that care.[147]

Montana

Montana defines child abuse and neglect as:

(7)(a) "Child abuse or neglect" means:

> (i) actual physical or psychological harm to a child;
> (ii) substantial risk of physical or psychological harm to a child; or
> (iii) abandonment.

(b)

> (i) The term includes:
>
> > (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;
> >
> > (B) exposing a child to the criminal distribution of dangerous drugs . . the criminal production or manufacture of dangerous drugs . . . or the operation of an unlawful clandestine laboratory . . . or
> >
> > (C) any form of child sex trafficking or human trafficking.
>
> (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act or [sections 1 through 18] are

147. MINN. STAT. § 260E.03 (2022).

applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.[148]

Nebraska

Nebraska defines child abuse and neglect as:

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830.[149]

Nevada

Nevada defines child abuse and neglect as:

1. . . .

(a) Physical or mental injury of a nonaccidental nature;

(b) Sexual abuse or sexual exploitation; or

(c) Negligent treatment or maltreatment as set forth in NRS 432B.140, of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

148. MONT. CODE ANN. § 41-3-102 (2022).
149. NEB. REV. STAT. § 28-710 (2022).

> 2. A child is not abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:
>
> > (a) The parent of the child delivers the child to a provider of emergency services pursuant to NRS 432B.630, if the parent complies with the requirements of paragraph (a) of subsection 3 of that section; or
> >
> > (b) The parent or guardian of the child, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.
>
> 3. As used in this section, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.[150]

Nevada has an additional statute that places some limits on situations where neglect can be found:

> Negligent treatment or maltreatment of a child occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.[151]

New Jersey

Abuse and neglect are defined in New Jersey as:

> c. "Abused or neglected child" means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted

150. NEV. REV. STAT. § 432B.020 (2022).
151. *Id.* § 432B.140.

disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious

denomination by a duly accredited practitioner thereof shall for this reason alone be considered to be abused or neglected.[152]

New York

New York defines neglect as:

(f) "Neglected child" means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so, or, in the case of an alleged failure of the respondent to provide education to the child, notwithstanding the efforts of the school district or local educational agency and child protective agency to ameliorate such alleged failure prior to the filing of the petition; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

152. N.J. REV. STAT. § 9:6-8.21 (2022).

> (ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.[153]

Ohio

Neglect is defined in Ohio as:

(A) As used in this chapter, "neglected child" includes any child:

> (1) Who is abandoned by the child's parents, guardian, or custodian;
> (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
> (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
> (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
> (5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;
> (6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
> (7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 of the Revised Code to report child abuse that is known or reasonably suspected or believed to have occurred, child neglect that is known or reasonably suspected or believed to have occurred, and children who are known to face or are reasonably suspected or believed to be facing a

153. N.Y. FAM. CT. ACT § 1012 (Consol. 2023).

threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.[154]

Oklahoma

Neglect is defined in Oklahoma as:

49. a.

(1) the failure or omission to provide any of the following:

(a) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education,

(b) medical, dental, or behavioral health care,

(c) supervision or appropriate caretakers to protect the child from harm or threatened harm of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware, or

(d) special care made necessary for the child's health and safety by the physical or mental condition of the child, or mental condition of the child,

(2) the failure or omission to protect a child from exposure to any of the following:

(a) the use, possession, sale, or manufacture of illegal drugs,

(b) illegal activities, or

(c) sexual acts or materials that are not age- appropriate, or

(3) abandonment.

b. "Neglect" shall not mean a child who engages in independent activities, except if the person responsible for the child's health, safety or welfare willfully disregards any harm or threatened harm to the child, given the child's level of maturity, physical condition or mental abilities. Such independent activities include but are not limited to:

(1) traveling to and from school including by walking, running or bicycling,

154. OHIO REV. CODE § 2151.03 (2023).

> (2) traveling to and from nearby commercial or recreational facilities,
> (3) engaging in outdoor play,
> (4) remaining at home unattended for a reasonable amount of time,
> (5) remaining in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold, except under the conditions described in Section 11-1119 of Title 47 of the Oklahoma Statutes, or
> (6) engaging in similar activities alone or with other children.
>
> Nothing in this paragraph shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child. Nothing contained in this paragraph shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.[155]

Oregon

Oregon does not have a definition of neglect, but does define child abuse as:

> (1)(a)(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
> (B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
> (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts

155. OKLA. STAT. tit. 10A, § 1-1-105 (2022).

are described in ORS chapter 163.
(D) Sexual abuse, as described in ORS chapter 163.
(E) Sexual exploitation, including but not limited to:

> (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and
> (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.
(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
(H) Buying or selling a person under 18 years of age as described in ORS 163.537.
(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.
(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a substantial risk of harm to the child's health or safety.[156]

156. OR. REV. STAT. § 419B.005 (2021).

Rhode Island

Rhode Island defines child abuse and neglect as:

(1) "Abused 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 in § 11-34.1-1 et seq., entitled "Commercial Sexual Activity"; 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 that, 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 that 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 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 § 11-37-1(6).[157]

South Carolina

South Carolina defines child abuse and neglect as occurring when:

> (6)(a) the parent, guardian, or other person responsible for the child's welfare:
>
> (i) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:
>
> (A) is administered by a parent or person in loco parentis;
>
> (B) is perpetrated for the sole purpose of restraining or correcting the child;
>
> (C) is reasonable in manner and moderate in degree;
>
> (D) has not brought about permanent or lasting damage to the child; and
>
> (E) is not reckless or grossly negligent behavior by the parents;
>
> (ii) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;
>
> (iii) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do

157. 40 R.I. GEN. LAWS § 40-11-2 (2023).

> so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter 'adequate health care' includes any medical or nonmedical remedial health care permitted or authorized under state law;
> (iv) abandons the child;
> (v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval;
> (vi) commits or allows to be committed against the child female genital mutilation as defined in Section 16-3-2210 or engages in acts or omissions that present a substantial risk that the crime of female genital mutilation would be committed against the child; or
> (vii) has committed abuse or neglect as described in subsubitems (i) through (vi) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.[158]

South Dakota

An abused or neglected child in South Dakota is one:

(1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
(2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
(3) Whose environment is injurious to the child's welfare;
(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
(5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
(6) Who is threatened with substantial harm;

158. S.C. CODE ANN. § 63-7-20 (2022).

(7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
(8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation as defined in § 22-22-24.3, by the child's parent, guardian, custodian, or any other person responsible for the child's care;
(9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.[159]

Texas

Texas defines child neglect as including:

(4)(A)

(i) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
(ii) the following acts or omissions by a person:
(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or

159. S.D. CODIFIED LAWS § 26-8A-2 (2022).

with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;

(iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) [Neglect] does not include:

(i) the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(a) the child has a severe emotional disturbance;

(b) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(c) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Sub-subparagraph (b); or

(ii) a decision by a person responsible for a child's care, custody, or welfare to:

(a) obtain an opinion from more than one medical provider relating to the child's medical care;

(b) transfer the child's medical care to a new medical provider; or

(c) transfer the child to another health care facility.

(4) [As amended by Acts 2021, 87th Leg., ch. 8 (HB 567)] "Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety and:

(A) includes:

(i) the leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;

(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under

> Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;
>
> (iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or
>
> (iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and
>
> (B) does not include:
>
> (i) the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:
>
> (a) the child has a severe emotional disturbance;
>
> (b) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
>
> (c) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Sub-subparagraph (b); or
>
> (ii) allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.[160]

Vermont

Vermont defines an abused or neglected child as "a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An 'abused or neglected child' also means a child who is sexually abused

160. TEX. FAM. CODE ANN. § 261.001 (2021).

or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect."[161]

Virginia

Virginia defines an abused or neglected child is a child under 18:

> 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;
> 2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents

161. VT. STAT. ANN. tit. 33, § 4912 (2023).

> or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;
> 3. Whose parents or other person responsible for his care abandons such child;
> 4. Whose parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;
> 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;
> 6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or
> 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking . . . .[162]

C. Environmental Statutes

Alabama

Neglect is defined in Alabama as: "Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care."[163]

162. VA. CODE. ANN. § 63.2-100 (2022).
163. ALA. CODE § 26-16-2 (2022).

Arizona

Neglect is defined in Arizona as:

(a) The inability or unwillingness of a parent, guardian or custodian of a child 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, guardian or custodian 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.
(b) 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 with the intent and for the purpose of manufacturing a dangerous drug as defined in section 13-3401.
(c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in section 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in section 13-3401 beyond the requirements prescribed pursuant to section 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:

> (i) Clinical indicators in the prenatal period including maternal and newborn presentation.
> (ii) History of substance use or abuse.
> (iii) Medical history.
> (iv) Results of a toxicology or other laboratory test on the mother or the newborn infant.

(d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.
(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as

defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.

(f) Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present:

(i) Sexual contact as defined in section 13-1401.
(ii) Oral sexual contact as defined in section 13-1401.
(iii) Sexual intercourse as defined in section 13-1401.
(iv) Bestiality as prescribed in section 13-1411.[164]

Arkansas

Neglect is defined in Arkansas as:

(4)(A) Failure to provide, by those legally responsible for:

(i) The care and maintenance of the child and the proper or necessary support;
(ii) Education, as required by law; or
(iii) Medical, surgical, or any other care necessary for his or her well-being; or

(B)

(i) Any maltreatment of the child.
(ii) The term includes both acts and omissions.
(iii) This chapter shall not be construed to mean a child is neglected or abused for the sole reason he or she is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.[165]

District of Columbia

Neglect is defined in the District of Columbia as a child:

(9)(A)(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this

164. ARIZ. REV. STAT. ANN. § 8-201 (2018).
165. ARK. CODE ANN. § 9-30-103 (2023).

> sub-subparagraph, the term "reasonable efforts" includes petitioning for a civil protection order . . . where the child is a family member . . .
> (ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;
> (iii) whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;
> (iv) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care;
> (v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;
> (vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;
> (vii) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;
> (viii) who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;
> (ix) in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or
> (x) who is regularly exposed to illegal drug-related activity in the home.[166]

166. D.C. CODE § 16-2301 (2023).

Georgia

Neglect is defined in Georgia as "harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care."[167]

Iowa

Iowa does not have a statute that defines child neglect. In Iowa, child abuse is defined as:

> (1) Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.
> (2) Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.
> (3) The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child or of a person who is fourteen years of age or older and resides in a home with the child. Notwithstanding section 702.5, the commission of a sexual offense under this subparagraph includes any sexual offense referred to in this subparagraph with or to a person under the age of eighteen years.
> (4)
>
> > (a) The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child's health and welfare when financially able to

167. GA. CODE ANN. § 49-5-131 (2023).

do so or when offered financial or other reasonable means to do so and the failure occurred within five years of a report.

(b) For the purposes of subparagraph division (a), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.

(c) A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

(5) The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this subparagraph include an act or omission referred to in this subparagraph with or to a person under the age of eighteen years.

(6) An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

(7) The person responsible for the care of a child, in the presence of a child, as defined in section 232.96A, subsection 16, paragraph "e", unlawfully uses, possesses, manufactures, cultivates, or distributes a dangerous substance, as defined in section 232.96A, subsection 16, paragraph "f", or knowingly allows such use, possession, manufacture, cultivation, or distribution by another person in the presence of a child; possesses a product with the intent to use the product as a precursor or an intermediary to a dangerous substance in the presence of a child; or unlawfully uses, possesses, manufactures, cultivates, or distributes a dangerous substance specified in section 232.96A, subsection 16, paragraph "f", subparagraph (1), (2), or (3), in a child's home, on the premises, or in a motor vehicle located on the premises and the incident occurred within five years of a report to the department.

(8) The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

(9)

(a) A person who is responsible for the care of a child knowingly allowing another person custody of, control over, or unsupervised access to a child under the age of fourteen or a child with a physical or mental disability, after knowing the other person is required to register or is on the sex offender registry under chapter 692A.

(b) This subparagraph does not apply in any of the following circumstances:

(i) A child living with a parent or guardian who is a sex offender required to register or on the sex offender registry under chapter 692A.

(ii) A child living with a parent or guardian who is married to and living with a sex offender required to register or on the sex offender registry under chapter 692A.

(iii) A child who is a sex offender required to register or on the sex offender registry under chapter 692A who is living with the child's parent, guardian, or foster parent and is also living with the child to whom access was allowed.

(c) For purposes of this subparagraph, "control over" means any of the following:

(i) A person who has accepted, undertaken, or assumed supervision of a child from the parent or guardian of the child.

(ii) A person who has undertaken or assumed temporary supervision of a child without explicit consent from the parent or guardian of the child.

(10) The person responsible for the care of the child has knowingly allowed the child access to obscene material as defined in section 728.1 or has knowingly disseminated or exhibited such material to the child.

(11) The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of commercial sexual activity as defined in section 710A.1.[168]

168. IOWA CODE § 232.68(2) (2023).

Louisiana

Louisiana defines child neglect as:

> [T]he refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health, welfare, and safety is substantially threatened or impaired. Neglect includes prenatal neglect. Consistent with Article 606(B), the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing that has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing in this Subparagraph shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's health, welfare, or safety.[169]

Maine

Maine defines abuse and neglect as:

> [A] threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation . . . or deprivation of essential needs, or lack of protection from these, by a person responsible for the child. "Abuse or neglect" also means truancy . . . when truancy is the result of neglect by a person responsible for the child. "Abuse or neglect" also means a threat to a child's health or welfare caused by child sex trafficking by any person, regardless of whether or not the person is responsible for the child.[170]

Massachusetts

In Massachusetts, "[n]eglect means failure by a caretaker, either deliberately or through negligence or inability, to take those actions

169. LA. CHILD CODE ANN. art. 603 (2022).
170. ME. REV. STAT. tit. 22, § 4002(1) (2022).

necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is not dependent upon location (i.e., neglect can occur while the child is in an out-of-home or in-home setting.)"[171]

Michigan

In Michigan, "'[n]eglect' means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care."[172]

Mississippi

Neglect is defined in Mississippi as a child:

> (l)(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or
> (ii) Who is otherwise without proper care, custody, supervision or support; or
> (iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

171. 110 MASS. CODE REGS. 2.00 (2023) (emphasis omitted).
172. MICH. COMP. LAWS ANN. § 722.602 (2019).

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.[173]

Missouri

Neglect is defined in Missouri as the "failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being. Victims of neglect shall also include any victims of sex trafficking or severe forms of trafficking . . . ."[174]

New Hampshire

New Hampshire defines a neglected child as a child:

XIX. (a) Who has been abandoned by his or her parents, guardian, or custodian; or
(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or
(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;
Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.[175]

173. MISS. CODE. ANN. § 43-21-105 (2023).
174. MO. ANN. STAT. § 210.100 (West 2017).
175. N.H. REV. STAT. ANN. § 169-C:3 (2022).

New Mexico

New Mexico defines a neglected child as a child:

> (G)(1) who has been abandoned by the child's parent, guardian or custodian;
> (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
> (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
> (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
> (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code.[176]

North Carolina

North Carolina defines a "neglected juvenile" as a child under 18:

> (15) (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does any of the following:

176. N.M. STAT. ANN. § 32A-4-2 (2022).

> a. Does not provide proper care, supervision, or discipline.
>
> b. Has abandoned the juvenile.
>
> c. Has not provided or arranged for the provision of necessary medical or remedial care.
>
> d. Or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter.
>
> e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.
>
> f. Has participated or attempted to participate in the unlawful transfer of custody of the juvenile under G.S.14-321.2.
>
> g. Has placed the juvenile for care or adoption in violation of law.

In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.[177]

North Dakota

North Dakota defines a neglected child as:

> 19. . . . [A] child who, due to the action or inaction of a person responsible for the child's welfare:
>
> a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare;
>
> b. Has been placed for care or adoption in violation of law;
>
> c. Has been abandoned;
>
> d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;

177. N.C. GEN. STAT. § 7B-101 (2021).

> e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;
> f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in section 19-03.1-01 in a manner not lawfully prescribed by a practitioner;
> g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia . . . except as used in this subsection, controlled substance includes any amount of marijuana; or
> h. Is a victim of human trafficking . . . .[178]

Pennsylvania

Pennsylvania's statutes distinguish between child abuse and "serious physical neglect." "Serious physical neglect" is defined as:

> Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:
>
> > (1) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
> > (2) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.[179]

Tennessee

Tennessee defines a neglected child as a child:

> (13)(A) Who is without a parent, guardian or legal custodian;
> (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;
> (C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

178. N.D. CENT. CODE § 50-25.1-02 (2021).
179. 23 PA. CONS. STAT. § 6303 (2023).

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;
(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;
(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;
(G) Who is suffering from abuse or neglect;
(H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;
(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or
(J)

> (i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;
> (ii) For the purposes of this subdivision (b)(13)(J):
>
> > (a) A related caregiver shall include the child's biological, step or legal grandparent, great grandparent, sibling, aunt, uncle or any other person who is legally or biologically related to the child; and
> >
> > (b) A child willfully left with a related caregiver . . . because of the parent's military service shall not be subject to action pursuant to § 37-1-183.[180]

180. TENN. CODE ANN. § 37-1-102 (2023).

Utah

Neglect is defined in Utah as:

(58)(a) action or inaction causing:

(i) abandonment of a child . . .

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;

(v) abandonment of a child through an unregulated child custody transfer . . .

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 80-3-304; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.[181]

181. UTAH CODE ANN. § 80-1-102 (West 2022).

West Virginia

West Virginia defines a neglected child as a child:

> (A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;
> (B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent or custodian . . . .[182]

Additionally, the statute defines "'Child abuse and neglect' or 'child abuse or neglect' [as] any act or omission that creates an abused child or a neglected child as those terms are defined in this section."[183]

Wisconsin

Wisconsin defines neglect as the "failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child."[184]

Wyoming

Wyoming defines neglect as "a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's well being."[185]

182. W. VA. CODE § 49-1-201 (2022).
183. *Id.*
184. WIS. STAT. ANN. § 48.02(12g) (2023).
185. WYO. STAT. ANN. § 14-3-202(vii) (2023).