

* * * Human Services; Child Welfare Services; Definitions;
Investigations; Referral to Law Enforcement * * *

Sec. 10. 33 V.S.A. § 4912 is amended to read:

§ 4912. DEFINITIONS

As used in this subchapter:

[Note: amendments to the definition of “harm” removed. As discussed in committee, language pertaining to substance abuse can be placed in the definition of “risk of harm.”]

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(11) “Physical injury” means ~~death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means~~ physical pain, illness, or any impairment of physical condition by other than accidental means. [Except for “accidental means,” this is the definition from 13 V.S.A. § 1021. DCF may be concerned that corporal punishment could fall within the definition of “bodily injury”. That may be possible; however, pursuant to 33 V.S.A. § 4915, DCF would have discretion as to whether to accept any specific case, and therefore could decline cases that are not sufficiently serious]

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(14) “Risk of harm” means a significant danger that a child will suffer ~~serious harm by~~ other than by accidental means, ~~which harm would be likely to cause physical injury~~ [limit to serious physical injury?], neglect, emotional maltreatment, or sexual abuse, including as a result of:

(A) the production or preproduction of methamphetamines when a child is actually present; [Note: DCF’s suggested language concerning “a single, egregious act”]

deleted. This language appears unnecessary as both a single act, and a course of conduct, would seem to be covered by (14). Language concerning production of meth changed to be similar to that in Sec. 4]

(B) leaving a child without supervision appropriate for the child's age and circumstances;

(C) not providing developmentally appropriate supervision or care for a child due to use of illegal substances, or misuse of prescription drugs or alcohol;

(D) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(E) knowingly allowing a child to be at substantial risk of sexual abuse [(E) seems unnecessary because risk of harm is already defined as a significant danger that a child will suffer sexual abuse];

(E) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

(15) ~~“Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child~~ means any conduct involving a child that constitutes a violation of:

(A) lewdness and prostitution in violation of 13 V.S.A. chapter 59;

(B) human trafficking in violation of 13 V.S.A. chapter 60;

(C) obscenity in violation of 13 V.S.A. chapter 63;

(D) sexual exploitation of children in violation of 13 V.S.A. chapter 64; or

(E) sexual assault in violation of 13 V.S.A. chapter 72.

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(17) “Serious physical injury” means, by other than accidental means:

(A) bodily injury which creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or

organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person. [Except for “accidental means,” this is the definition from 13 V.S.A.

§ 1021]

Sec. 11. 33 V.S.A. § 4915 is amended to read:

§ 4915. ASSESSMENT AND INVESTIGATION

(a) Upon receipt of a report of abuse or neglect, the Department shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title or of a child fatality. The Department shall respond to reports of alleged neglect or abuse and reports of a child fatality that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.

(b) If the report is accepted as a valid allegation of abuse or neglect, the Department shall determine whether to conduct an assessment as provided for in section 4915a of this title or to conduct an investigation as provided for in section 4915b of this title. The Department shall begin either an assessment or an investigation within 72 hours after the receipt of a report made pursuant to section 4914 of this title, provided that it has sufficient information to proceed. The Commissioner may waive the 72-hour requirement only when necessary to locate the child who is the subject of the allegation or to ensure the safety of the child or social worker.

(c) The decision to conduct an assessment shall include consideration of the following factors:

- (1) the nature of the conduct and the extent of the child's injury, if any;
- (2) the accused person's prior history of child abuse or neglect, or lack thereof; and
- (3) the accused person's willingness or lack thereof to accept responsibility for the conduct and cooperate in remediation.

(d) The Department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. For purposes of this section, “substantial child endangerment” includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The Department may conduct an investigation of any report.

(e) The Department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(f) The Department may collaborate with child protection, law enforcement, and other departments and agencies in Vermont and other jurisdictions to evaluate risk to a child and to determine the service needs of the child and family. The Department may enter into reciprocal agreements with other jurisdictions to further the purposes of this subchapter. [Explanation: “child fatality” used in (a), instead of “death” because “child fatality used in (d).]

Sec. 12. 33 V.S.A. § 4915b(e) is amended to read:

(e) The Department:

(1) shall report to and request assistance from law enforcement in the following circumstances:

~~(1)~~ (A) investigations of child sexual abuse by an alleged perpetrator age 10 years of age or older; and

~~(2)~~ (B) investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care; and [Question for DCF: Isn't (1)(A) and (B) a subset of (2), i.e. every possible case or situation described in (1)(A) and (B) also included in (2) below? If that is true, then (1) is redundant and can be deleted]

(2) shall report to and request assistance from Special Investigation Units pursuant to 24 V.S.A. § 1940 in the following circumstances:

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

(i) 13 V.S.A. § 2602;

(ii) 13 V.S.A. chapter 60;

(iii) 13 V.S.A. chapter 64; and

(iv) 13 V.S.A. chapter 72; and

(3) may report to and request assistance from Special Investigation Units pursuant to 24 V.S.A. § 1940 in the following circumstances:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in 13 V.S.A.

§ 1021; or

(ii) death; and

(B) potential violations of:

(i) 13 V.S.A. § 2601;

(ii) 13 V.S.A. § 2605;

(iii) 13 V.S.A. § 1304; and

(iv) 13 V.S.A. § 1304a.

(3) (C) situations potentially dangerous to the child or Department worker.

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