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Child Abuse?

What is Child Abuse? What is Neglect?

What Is Child Abuse?

Texas law provides a definition of child abuse. Chapter 261 of the Family Code (recoded in 1995), child abuse is an act or omission that endangers or impairs a child's physical, mental or emotional health and development. Child abuse may take the form of physical or emotional injury, sexual abuse, sexual exploitation, physical neglect, medical neglect, or inadequate supervision.

The law specifically excludes "reasonable" discipline by the child's parent, guardian, or conservator; *corporal punishment is not in itself abusive under the law*. An act or omission is abusive only if "observable and material impairment" occurs as a result, or if it causes "substantial harm," or exposes the child to risk of substantial harm.

Neglect, like physical and emotional abuse, hinges on substantial harm or observable and material impairment. The law excludes from its definition of neglect any failure to provide for the child that is due to lack of financial resources. A child living in poverty is not a victim of neglect under the Texas Family Code except in cases where relief has been offered and refused by the child's parent, guardian, or conservator.

Accidental injury or harm is also excluded from the definition of abuse. However, a person commits abuse if s/he places a child, or allows a child to be placed, in a situation where the child is exposed to "substantial risk" of injury or harm. The law also clearly states that a person commits abuse if s/he fails to make a reasonable effort to prevent another person from abusing a child. This provision applies to all forms of abuse, including physical and emotional abuse, sexual abuse, and neglect.

What is Neglect?

A child's parent, guardian, or conservator is responsible for either directly providing safe and adequate food, clothing, shelter, protection, medical care, and supervision for the child, or arranging to have someone else provide these needs. Neglect, as defined by the Family Code, chapter 261 on child abuse and neglect, is the failure to meet this responsibility. Neglect, like other forms of abuse, must involve "observable and material impairment" or "substantial risk" to the child, in order for the civil statute to apply. In addition, the Penal Code provides criminal sanctions against anyone who knowingly abandons or endangers a child.

Failing to arrange for the care of a child

The caregiver must arrange for necessary care and supervision during any period of time when the caregiver is absent and does not intend to return. Neglect includes placing the child in or failing to remove a child from a situation where the child is exposed to "substantial risk" of harm. Neglect also includes placing a child in or failing to remove a child from a situation requiring judgment beyond the child's years or capabilities. Here again, to qualify as neglect, the acts or omissions must result in harm or substantial risk of harm to the child.

How long can a child be left unattended?

The law provides few guidelines as to how long a child may be left unattended. The law does specify that a caregiver cannot leave a child under age five unattended in a car for more than five minutes, unless a person aged 14 or older is watching over the child. However, there is no set length of time a "latchkey" child of school age may be left unattended. The child's maturity, the proximity of helpful adults, and a number of other circumstances must be considered. As always, the ultimate guideline for determining whether a child is being left unattended too long is whether the child suffers actual harm, or is at substantial risk of being harmed, due to lack of supervision.

Failing to provide a child with food, clothing, or shelter

Failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child may be considered neglect as long as the failure is not primarily caused by financial need.

Caregivers who are impoverished are not neglectful unless the child is harmed or substantially at risk of harm and relief services have been offered and refused. Lack of heating or plumbing in the home does not mean that the children in the home are neglected. On the other hand, failure to prepare meals, spoiled food in the refrigerator or cupboards, and severe infestations of insects and rodents are possible indicators of neglect. Neglect generally involves conditions that are extreme, persistent, and substantially damaging to the child.

Failing to seek, obtain, or follow through with medical care

A parent, guardian, or conservator who fails to seek, obtain, or follow through with medical care for a child may be guilty of neglect. The need for medical care must entail a substantial risk of death, disfigurement, injury, or impairment. Caregivers who refuse medical care for religious reasons are not considered to be neglectful, but may still need to be reported. In extreme cases the court may order treatment for the child over the parents' wishes. Caregivers who cannot afford medical treatment are also not considered to be neglectful unless they have been informed of and have refused free or affordable treatment. Some parents who commit physical and sexual abuse are guilty of medical neglect because of their wish to keep the abuse secret.

Failure to permit the child to return home

The law requires the person responsible for a child to permit the child to return home, or else to arrange for the necessary care for the child, after the child has been absent from the home. The fact that the child has run away or been in residential placement does not in any way diminish the responsibility of the parent, guardian, or conservator to care for the child, either by taking the child back into the home or by making other arrangements.

Indicators of neglect

Physical signs of neglect include obvious malnourishment, lack of personal cleanliness, torn and/or dirty clothes, insufficient clothing for warmth and protection, or need for glasses, dental care, or other medical attention. Behavioral indicators of neglect include stealing, hoarding, or begging for food and frequent absence or tardiness at school. A child that is always hungry, tired, and listless may be neglected. For the situation to indicate neglect under the law, the child's condition must not result solely from the caregiver's lack of financial resources (unless aid has been offered and refused), and the child's condition must be severe, chronic, and threatening to the child's health. The child may say that no one cares for him or her, or may describe being alone, caring for younger children, or doing dangerous things.

This is information only and is not legal advice. For assistance with legal issues, contact an attorney. The Constable and his office may not provide legal advice. For additional assistance, see the Quick Reference link for Helpful Numbers.