

Research Summary

State Laws on the Use of Restraint and Seclusion as Child Abuse

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RESTRAINT AND SECLUSION IN STATE DEFINITIONS OF CHILD MALTREATMENT

NCSL identified ten states with statutory child maltreatment definitions that include explicit reference to the use of restraint or seclusion. Of these, two states, Utah and Arkansas, specifically exempt restraint from the definition of child abuse when certain conditions apply or in limited situations.

Below is a chart of statutory child maltreatment definitions explicitly referencing the use of restraint or seclusion.

State	State Statutes
Arkansas	<p>Ark. Code § 12-18-103 Abandonment does not include acts or omissions of a parent toward a married minor.</p> <p>Abuse does not include any of the following:</p> <ul style="list-style-type: none"> • Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child • When a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if the following applies: <ul style="list-style-type: none"> ○ The person exercising the restraint is an employee of a licensed child welfare agency acting in his or her official capacity while on duty. ○ The agency has policy and procedures regarding restraints. ○ No other alternative exists to control the child except for a restraint. ○ The child is in danger or is hurting himself or herself or others. ○ The person exercising the restraint has been trained in properly restraining children, deescalation, and conflict resolution techniques. ○ The restraint is for a reasonable period of time. ○ The restraint is in conformity with training and agency policy and procedures.

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	<p>Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child, the location of the injury, and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate.</p> <p>It is not considered neglect when the failure to provide appropriate care is caused primarily by the financial inability of the person legally responsible, and no services for relief have been offered.</p>
Florida	<p>Fla. Stat. § 39.01</p> <p>'Abuse' means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause a child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan toward successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions.</p> <p>'Harm' to a child's health or welfare can occur when a person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. Such injury includes, but is not limited to, any of the following:</p> <ul style="list-style-type: none"> • Willful acts that produce specific serious injuries • Purposely gives a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury • Leaves a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition • Uses inappropriate or excessively harsh discipline that is likely to result in physical injury, mental injury as defined in this section, or emotional injury • Commits or allows to be committed sexual battery against the child • Allows, encourages, or forces the sexual exploitation of a child • Abandons the child • Exploits a child or allows a child to be exploited • Neglects the child • Exposes a child to a controlled substance or alcohol • Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child • Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child • Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another • Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect

	<p>Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence</p>
<p>Minnesota</p>	<p>Minn. Stat. § 260E.03 'Physical abuse' means any physical injury, mental injury, or threatened injury inflicted by a person responsible for the child's care on a child by other than accidental means; physical or mental injury that cannot reasonably be explained by the child's history of injuries; or any aversive and deprivation procedures or regulated interventions that have not been authorized by law. Physical abuse includes, but is not limited to, any of the following acts:</p> <ul style="list-style-type: none"> • Throwing, kicking, burning, biting, or cutting a child • Striking a child with a closed fist • Shaking a child under age 3 • Striking or other actions that result in any nonaccidental injury to a child under 18 months • Unreasonable interference with a child's breathing • Threatening a child with a weapon • Striking a child under age 1 on the face or head • Striking a child who is at least age 1 but under age 4 on the face or head, which results in an injury • Purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances that were not prescribed for the child by a practitioner, in order to control or punish the child; giving the child substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury; or subjecting the child to medical procedures that would be unnecessary if the child were not exposed to the substances • Unreasonable physical confinement or restraint not permitted by law, including, but not limited to, tying, caging, or chaining • In a school facility or school zone, an act by a person responsible for the child's care that is a violation under § 121A.58 (prohibiting corporal punishment)
<p>New Jersey</p>	<p>N.J. Rev. Stat. § 9:6-8.21 'Abused child' or 'abused or neglected child' means a child under age 18 whose parent, guardian, or other person having custody and control does any of the following:</p> <ul style="list-style-type: none"> • Inflicts or allows to be inflicted upon such child physical injury by other than accidental means that causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ • Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means that would be likely to cause death or serious or protracted disfigurement or protracted loss or impairment of the function of any bodily organ

	<ul style="list-style-type: none"> • Inflicts unreasonably or allows 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 • Uses excessive physical restraint upon the child under circumstances that do not indicate that the child's behavior is harmful to himself or herself, others, or property
Ohio	<p>Ohio Rev. Code §§ 2151.031; 2919.22</p> <p>'Endangering children' includes any of the following acts committed against a child under age 18 or a mentally or physically handicapped child under age 21:</p> <ul style="list-style-type: none"> • Abuse, torture, or cruel abuse • Corporal punishment, other physical disciplinary measure, or physical restraint in a cruel manner or for a prolonged period that creates a substantial risk of serious physical harm to the child • Repeated and unwarranted disciplinary measures that, if continued, create a substantial risk of serious impairment of the child's mental health or development • Allowing the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, the illegal manufacture of drugs, cultivation of marijuana, or possession of chemicals for the illegal manufacture when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation
Oregon	<p>Or. Rev. Stat. § 418.257</p> <p>"Abuse" means one or more of the following:</p> <ul style="list-style-type: none"> • Any physical injury to a child in care caused by other than accidental means, or that appears to be at variance with the explanation given of the injury. • Neglect of a child in care. • Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, certified foster home, developmental disabilities residential facility or other person. • Willful infliction of physical pain or injury upon a child in care. • An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525. • Verbal abuse. • Financial exploitation. • Sexual abuse. • The use of restraint or involuntary seclusion of a child in care in violation of ORS 418.521 or 418.523.
Pennsylvania	<p>23 Pa. Cons. Stat. § 6303</p> <p>The term 'child abuse' shall mean intentionally, knowingly, or recklessly doing any of the following:</p> <ul style="list-style-type: none"> • Causing bodily injury to a child through any recent act or failure to act • Fabricating, feigning, or intentionally exaggerating or inducing a medical symptom or disease that results in a potentially harmful medical evaluation or treatment to the child through any recent act

	<ul style="list-style-type: none"> • Causing sexual abuse or exploitation of a child through any act or failure to act • Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act • Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act • Causing serious physical neglect of a child • Engaging in any of the following recent acts: <ul style="list-style-type: none"> ○ Kicking, biting, throwing, burning, stabbing, or cutting a child in a manner that endangers the child ○ Unreasonably restraining or confining a child, based on consideration of the method, location, or the duration of the restraint or confinement ○ Forcefully shaking a child younger than age 1 ○ Forcefully slapping or otherwise striking a child younger than age 1 ○ Interfering with the breathing of a child ○ Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement ○ Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known: <ul style="list-style-type: none"> ▪ Is required to register as a tier II or tier III sexual offender, when the victim of the sexual offense was younger than age 18 when the crime was committed ▪ Has been determined to be a sexually violent predator ▪ Has been determined to be a sexually violent delinquent child • Causing the death of the child through any act or failure to act • Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under Federal law (22 U.S.C. § 7102)
Tennessee	<p>Tenn. Code Ann. § 37-1-102 Definitions “Dependent and neglected child” means a child at the time of the filing of the petition:</p> <ul style="list-style-type: none"> • Who is without a parent, guardian or legal custodian; • 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; • 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; <p>...</p>
Utah	<p>Utah Code § 78A 6-105 The term 'abuse' does not include the following:</p> <ul style="list-style-type: none"> • Reasonable discipline or management of a child, including withholding privileges

	<ul style="list-style-type: none"> • The use of reasonable and necessary physical restraint or force on a child in self-defense, in defense of others, to protect the child, or to remove a weapon in the possession of a child in self-defense or defense of others <p>'Neglect' does not include any of the following:</p> <ul style="list-style-type: none"> • A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child • 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 • A parent or guardian exercising the right described in § 78A-6-301.5 (seeking a second medical opinion) • 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 any of the following: <ul style="list-style-type: none"> ○ Traveling to and from school, including by walking, running, or bicycling ○ Traveling to and from nearby commercial or recreational facilities ○ Engaging in outdoor play ○ Remaining in a vehicle unattended, except under the conditions described in § 76-10-2202(2) ○ Remaining at home unattended ○ Engaging in a similar independent activity
Wisconsin	<p>Wis. Stat. §§ 48.02; 48.981</p> <p>'Abuse' means any of the following:</p> <ul style="list-style-type: none"> • Physical injury inflicted on a child by other than accidental means • When used in referring to an unborn child, serious physical harm inflicted on the unborn child and the risk of serious physical harm to the child when born caused by a habitual lack of self-control of the expectant mother of the unborn child in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree • Manufacturing methamphetamine in violation of § 961.41(1)(e) under any of the following circumstances: <ul style="list-style-type: none"> ○ With a child physically present during the manufacture ○ In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home ○ Under any circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child <p>'Physical injury' includes, but is not limited to, lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or great bodily harm.</p> <p>'Incident of death or serious injury' means an incident in which a child has died or has been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported or in which a child who has</p>

	<p>been placed outside the home by a court order is suspected to have committed suicide.</p> <p>'Incident of egregious abuse or neglect' means an incident of suspected abuse or neglect that has been reported under this section, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.</p>
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