

**PURPOSE**

The purpose of this policy is to assure consistency across the Michigan Department of Health and Human Services (MDHHS) state operated facilities, hospitals, and centers in the definition and reporting requirements for apparent or suspected abuse and neglect of recipients.

**REVISION HISTORY**

This policy has not been updated since original publication effective date of May 16, 2010.

**DEFINITIONS****Abuse, Class I**

Abuse, Class I is a non-accidental act, or provocation of another to act, by an employee, volunteer or agent of MDHHS which caused or contributed to the death or sexual abuse of or serious physical serious harm to a recipient.

**Abuse, Class II:**

- (a) A non-accidental act, or provocation of another to act, by an employee, volunteer or agent of MDHHS which caused, or contributed to, non-serious physical harm to a recipient.
- (b) The use of unreasonable force on a recipient by an employee, volunteer or agent of MDHHS, with or without apparent harm.
- (c) Any action, or provocation of another to act, by an employee, volunteer or agent of MDHHS which causes, or contributes to, emotional harm to a recipient.
- (d) An action taken on behalf of a recipient, by assuming incompetence, although a guardian has not been appointed or sought, which results in substantial economic, material, or emotional harm to the recipient; or,
- (e) Exploitation of a recipient by an employee, volunteer or agent of MDHHS.

**Abuse, Class III**

Abuse, Class III means the use of language, or other means of communication, by an employee, volunteer or agent of MDHHS to degrade, threaten, or sexually harass a recipient.

**Bodily function**

Bodily function means the usual action of any region or organ of the body.

**Degrade**

Degrade means:

(a) Treat humiliatingly: to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem; make worthless; to cause a person to feel that they or other people are worthless and do not have the respect or good opinion of others. (syn) degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace.

(b) Degrading behavior shall be further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

**Emotional Harm**

Emotional harm is impaired psychological functioning, growth, or development of a significant nature as evidenced by observable, physical symptomatology or as determined by a psychiatrist, fully or limited licensed psychologist or social worker.

**Employee**

Employee means an individual who works for the MDHHS and receives compensation for that work.

**Exploitation**

Exploitation is an action by an employee, volunteer, or agent of MDHHS that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.

**Facility**

Facility is a residential or inpatient setting providing mental health services which is operated by the department.

**Neglect, Class I**

Neglect, Class I means either of the following:

- a. Acts of commission or omission by an employee, volunteer or agent of MDHHS which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and which cause, or contribute to, the death, or sexual abuse of, or serious physical harm to a recipient.
- b. The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

**Neglect, Class II**

Neglect, Class II means either of the following:

- a. Acts of commission or omission by an employee, volunteer or agent of MDHHS which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and which cause, or contribute to, non-serious physical harm, or emotional harm, to a recipient.
- b. The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

**Neglect, Class III**

Neglect, Class III, means either of the following:

Acts of commission or omission by an employee, volunteer or agent of MDHHS which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service which either placed or could have placed, a recipient at risk of physical harm.

The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

**Non-serious physical harm**

Non-serious physical harm is a physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or R.N. determines could not have caused or contributed to the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his/her bodily function(s).

**ORR**

ORR is the Office of Recipient Rights.

**Physical management**

Physical management is the technique used by staff to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself or others.

**Physician**

Physician is a person who is licensed to practice in this state under Article 15 of the Public Health Code, Act 368 of the Public Acts of 1978.

**Psychologist**

Psychologist is a person who is licensed to practice in this state under Article 15 of the Public Health Code, Act 368 of the Public Acts of 1978.

**R.N.**

R.N. is a registered professional nurse who is licensed to practice nursing in this state under Article 15 of the Public Health Code, Act 368 of the Public Acts of 1978.

**Serious physical harm**

Serious physical harm is physical damage suffered by a recipient, which a physician or RN determines caused or could have caused the death of a recipient, or caused the impairment of his/her bodily function(s), or the permanent disfigurement of a recipient.

**Sexual abuse**

Sexual abuse is any sexual contact, or sexual penetration involving an employee, volunteer or agent of MDHHS and a recipient.

**Sexual contact**

Sexual contact is the intentional touching of the recipient's or employee's, volunteer's or agent's intimate parts, or the touching of the clothing covering the immediate area of the recipient's, employee's, volunteer's or agent's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following reasons:

- a. Revenge.
- b. To inflict humiliation.

- c. Out of anger.

**Sexual harassment**

Sexual harassment is any action, by an employee, volunteer or agent of MDHHS, which can be construed as sexual advances toward a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

**Sexual penetration**

Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

**Social Worker**

Social Worker is a social worker, or social work technician, licensed in this state under Article 16 of the Occupational Code, Act 299 of the Public Acts of 1980.

**Unreasonable force**

Unreasonable force is the use of physical management, or force, by an employee or volunteer with a recipient in one or more of the following situations:

- a. There is no imminent risk of serious or non-serious physical harm to the recipient, staff, or others.
- b. Physical management used is not in compliance with techniques approved by MDHHS.
- c. Physical management used is not in compliance with emergency interventions authorized in the recipient's individual plan of service.
- d. Physical management or force is used when other lesser restrictive measures were possible but not attempted immediately before the use of physical management or force.

**Volunteer**

Volunteer is an individual who, without compensation other than reimbursement for expenses, performs activities for the department, a facility, or a community mental health services

program, or an entity under contract to the department, a facility, or a community mental health services program under specified conditions.

## **POLICY**

It is the policy of the MDHHS that all acts of commission or omission which are abusive or neglectful of recipients are prohibited. All incidents of abuse or neglect which are apparent to, reported to, or suspected by an employee, volunteer or agent of MDHHS covered under this policy, shall be reported to the hospital or center director/designee and the ORR immediately; the MDHHS and the appropriate law enforcement agency as required by law.

This policy is in addition to the requirement that all staff immediately report any apparent or suspected rights violation to the ORR. Failure to do so may result in corrective action.

## **STANDARDS**

1. All employees and volunteers are prohibited from abusing or neglecting recipients.
2. All employees, volunteers and agents of MDHHS shall:
  - a. Immediately report, verbally or in writing, any apparent or suspected rights violations to the hospital or center director and to the ORR.
  - b. Safeguard recipients from abuse and/or neglect and act to obtain treatment for observed injuries and to prevent additional harm.
  - c. Immediately report to the hospital or center director/designee and to the ORR, verbally or in writing, when they witness, discover, or have reasonable cause to suspect, abuse or neglect of recipients.
  - d. Immediately report to the hospital or center director/designee and to the ORR, verbally or in writing, when they witness, discover, or otherwise become aware of, an assault by one recipient upon another.
  - e. Assure a report is made to the designated law enforcement agency, as required by law (MCL 330.1723 Criminal Abuse).

- f. Assure a report is made to the MDHHS Adult Protective Services or Children's Protective Services, as required by law.
    - g. Respond to questions put forth, verbally or in writing, by investigators from the ORR and other authorized investigative bodies.
  3. The ORR shall be responsible for:
    - a. The timely investigation of reports of abuse or neglect of recipients.
    - b. Monitoring progress toward remediation of all substantiated violations of rights.
    - c. Provision of training on the definitions contained in this policy and the mandated reporting requirements.
  4. The ORR shall be given unimpeded access to all staff, volunteers or agents of MDHHS and any evidence determined as necessary by the ORR to carry out a thorough and independent investigation. All records and other documentary or physical evidence shall be secured as necessary and protected from tampering, erasures, deletions, or any other type of falsification.
  5. The hospital or center director shall be responsible for assuring that:
    - a. Immediate safeguards are put in place to protect recipient(s) during the pendency of investigations into the alleged abuse or neglect.
    - b. All employees, volunteers or agents of MDHHS and recipients who may have knowledge of an incident regarding the alleged abuse or neglect of a recipient are available to those conducting official investigations.
    - c. Notification of the appropriate MDHHS offices and bureaus occurs as required.
    - d. Notification of the appropriate law enforcement agencies occurs, as required by law.
    - e. Notification of the appropriate MDHHS offices occurs, as required by law.

- f. Action is taken to remediate recipient rights violations within 10 business days of receipt of the investigative report submitted by the ORR.
- g. Appropriate disciplinary action is taken on substantiated abuse or neglect.
- h. Specific procedures relating to the reporting of abuse and neglect are developed and submitted to MDHHS-ORR for review and approval. Approved procedures shall be reviewed annually.
- i. All employees, volunteers and agents of MDHHS are trained in the requirements for reporting alleged incidents of abuse or neglect, and in the rights of recipients, prior to, or within 30 days of, beginning work which requires contact with recipients of mental health services.
- j. All contractual agreements for services shall include language intended to assure the protection of rights, and cooperation with investigations conducted by the ORR and other authorized investigative bodies.

## REFERENCES

- Michigan Mental Health Code, MCL 330.1752.
- Michigan Mental Health Code, MCL 330.1722.
- Michigan Mental Health Code, MCL 330.1723.
- Department of Community Health Administrative Rules, Part 7, Rule 330.7001.
- Michigan Penal Code, MCL 750.520a.
- CFR 482.13 / JC RI.01.01.01.

## CONTACT

For additional information concerning this policy, contact the Director of the Office of Recipient Rights at 517-373-2319.

Content Author: Office of Recipient Rights.

## EXHIBITS

- A. Abuse, as defined by the Michigan Penal Code.

B. Vulnerable Adult Abuse, as defined by Section 145n of the Michigan Penal Code.

C. Child Abuse, as defined by Section 136b of the Michigan Penal Code.

## EXHIBIT 1: ABUSE AS DEFINED BY THE MICHIGAN PENAL CODE

MCL 330.1723 A mental health professional or an employee, volunteer, or agent of a MDHHS hospital or center who as reasonable cause to suspect the criminal abuse of a recipient shall immediately make or cause to be made, by telephone or otherwise, an oral report of the suspected criminal abuse to the state police. Criminal abuse is defined by Section 723 as:

Violations of Sections 81 to 90 of the Michigan Penal Code; including an attempt or a conspiracy to commit a violation of Sections 81 to 90.

**Note:** Abuse does not include an assault which is a violation of Section 81 of the Michigan Penal Code committed by a recipient or resident against another recipient or resident unless the battery results in serious physical injury.

**Note:** A brief explanation of the violation follows each section where necessary for the sake of understanding. These explanations are not exact definitions from the Penal Code.

### SEC. 750.81 ASSAULT/ASSAULT AND BATTERY

**Assault** - Any willful attempt or threat to inflict injury upon the person of another when coupled with an apparent present ability to do so and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm.

**Assault and Battery** - Any unlawful touching of another which is without justification or excuse. Battery requires physical contact of some sort (bodily injury or offensive touching).

### SEC. 750.81A AGGRAVATED ASSAULT

An assault committed with the intention of committing some additional crime or one attended with circumstances of peculiar outrage or atrocity. A person is guilty of aggravated assault if he/she:

(a) Attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) Attempts to cause or purposely or knowingly causes bodily injury to another with a dangerous or deadly weapon.

**SEC. 750.82 FELONIOUS ASSAULT (DANGEROUS WEAPON)**

An unlawful attempt or offer to do bodily harm without justification or excuse by use of an instrument calculated to do harm or cause death. An aggravated form of assault as distinguished from a simple assault, e.g., pointing a loaded gun at another is an assault with a dangerous weapon.

**SECTION 750.83 ASSAULT WITH INTENT TO MURDER**

To constitute this assault, specific intent to kill, actuated by malice aforethought must occur.

**SEC. 750.84 ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER****SEC. 750.86 ASSAULT WITH INTENT TO MAIM**

An assault which inflicts upon another any injury which deprives that person of the use of any limb or member of the body; or to seriously disfigure or disable.

**SEC. 750.87 ASSAULT WITH INTENT TO COMMIT (A FELONY)**

An example would be inflicting bodily injury with an accompanying intent to kidnap or rape the victim.

**SEC. 750.88 ASSAULT WITH INTENT TO ROB WHILE UNARMED****SEC. 750.89 ASSAULT WITH INTENT TO ROB WHILE ARMED**

Criminal homicide in violation of Sections 316, 317, or 321 of the Michigan Penal Code, including an attempt or a conspiracy to commit a violation of Sections 316, 317, or 321.

**SEC. 750.316 FIRST DEGREE MURDER**

All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbing or burglary are commonly deemed murder of the first degree.

**SEC. 750.317 SECOND DEGREE MURDER**

All other kinds of murder not deemed in the first degree.

**SEC. 750.321 MANSLAUGHTER**

The unlawful killing of a human without malice and without premeditation and deliberation.

**CRIMINAL SEXUAL CONDUCT AS DEFINED UNDER THE MICHIGAN CRIMINAL CODE**

Criminal sexual conduct in violation of Sections 520b to 520e, or assault with intent to commit criminal sexual conduct in violation of Section 520g of the Michigan Penal Code, including an attempt or conspiracy to commit a violation of Sections 520b through 520e or Section 520g.

**DEFINITIONS**

MCLA 750.520a.(as amended)

**Actor** means a person accused of criminal sexual conduct.

**Developmental Disability** means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:

- a. It originated before the person became 18 years of age.
- b. It has continued since its origination or can be expected to continue indefinitely.
- c. It constitutes a substantial burden to the impaired person's ability to perform normally in society.
- d. It is attributable to one or more of the following:
  1. Mental retardation, cerebral palsy, epilepsy, or autism.
  2. Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

**Intimate parts** include the primary genital area, groin, inner thigh, buttock, or breast of a human being.

**Mental illness** means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

**Mentally disabled** means that a person has mental illness, is mentally retarded, or has a developmental disability.

**Mentally incapable** means that a person is temporarily or permanently incapable of appraising the nature of his or her conduct.

**Mentally incapacitated** means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

**Mentally retarded** means significantly sub-average general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

**Physically helpless** means that a person unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

**Personal injury** means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

**Sexual contact** includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

**Sexual penetration** means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings or another person's body, but emission of semen is not required.

**Victim** means the person alleging to have been subjected to criminal sexual conduct.

**1ST DEGREE CSC  
MCLA 750.520B**

1. A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:
  - a. That other person is under 13 years of age.
  - b. That other person is at least 13 but less than 16 years of age and any of the following:
    - i. The actor is a member of the same household as the victim.
    - ii. The actor is related to the victim by blood or affinity to the fourth degree.
    - iii. The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
  - c. Sexual penetration occurs under circumstances involving the commission of any other felony.
  - d. The actor is aided or abetted by one or more persons and either of the following circumstances exists:
    - i. The actor knows or has reason to know the victim is mentally incapable, mentally incapacitated, or physically helpless, or
    - ii. The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f)(i) to (v).

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- e. The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
  - f. The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
    - i. When the actor overcomes the victim through the actual application of physical force or physical violence.
    - ii. When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
    - iii. When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
    - iv. When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.
    - v. When the actor, through concealment or by the element of surprise, is able to overcome the victim.
  - g. The actor causes personal injury to the victim, and the actor knows, or has reason to know, that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - h. That the other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
    - i. The actor is related to the victim by blood or affinity to the fourth degree.
    - ii. The actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.
  2. Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

**2ND DEGREE CSC:  
MCLA 750.520C**

1. A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:
  - a. That person is under 13 years of age.
  - b. That other person is at least 13 but less than 16 years of age and any of the following:

- i. The actor is a member of the same household as the victim
  - ii. The actor is related by blood or affinity to the fourth degree to the victim, or
  - iii. The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.
- c. Sexual contact occurs under circumstances involving the commission of any other felony.
- d. The actor is aided or abetted by one or more other persons and either of the following circumstances exists:
- i. The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - ii. The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in Sections 520b(1) (f) (i) to (v).
- e. The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.
- f. The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in Sections 520b(1)(f) (i) to (v).
- g. The actor causes personal injury to the victim and the actor knows, or has reason to know, that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- h. That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following;
- i. The actor is related to the victim by blood or affinity to the fourth degree.
  - ii. The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
2. Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

**3RD DEGREE CSC**  
**MCLA 750.520D**

1. A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:
  - a. That person is at least 13 years of age and under 16 years of age.
  - b. Force or coercion is used to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f) (i) (v).

- c. The actor knows, or has reason to know, that the victim is mentally incapacitated, or physically helpless.
2. Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

**4TH DEGREE CSC  
MCLA 750.520E**

1. A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:
  - a. That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.
  - b. Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in Section 520b(1) (f) (i) to (iv).
  - c. The actor knows, or has reason to know, that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - d. That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter.
  - e. The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or recipient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. This does not indicate that the victim is mentally incompetent.
2. Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than two years, or by a fine of not more than \$500.00 or both.

**EXHIBIT B: VULNERABLE ADULT ABUSE AS DEFINED BY THE MICHIGAN PENAL  
CODE  
SEC. 145N.**

- (1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.
- (2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than one (1) year or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than two (2) years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or the reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes physical harm to a vulnerable adult. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment of not more than one (1) year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out pursuant to a durable power of attorney for healthcare executed in accordance with section 496 of the revised probate code, P. A. 642 of 1978, being section 700.496 of the Michigan Compiled Laws.

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**EXHIBIT C: CHILD ABUSE AS DEFINED BY SECTION 136B OF THE MICHIGAN PENAL CODE****(INCLUDED IN MCL 330.1723 AS CRIMINAL ABUSE)**

(1) As used in this section:

- a. **Child** means a person who is less than 18 years of age and is not emancipated by the operation of law as provided in section 4(1) of Act 293 of the Public Acts of 1968, being section 722.4 of the Michigan Compiled Laws.
- b. **Omission** means a willful failure to provide the food, clothing, or other shelter necessary for a child's welfare, or the willful abandonment of a child.
- c. **Person** means a child's parent or guardian or any other person who cares or, or has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.
- d. **Physical harm** means any injury to a child's physical condition.
- e. **Serious physical harm** means an injury of the child's physical condition or welfare that is not necessarily permanent but constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb.
- f. **Serious mental harm** means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if a person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if the person's omission causes serious physical or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child. Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

(4) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years.

(5) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(6) This section shall not be construed to prohibit a parent or guardian, or other person permitted by law, or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.