

# Civil Maltreatment

Jon Geffen

Arneson & Geffen, PLLC

333 Washington Ave. N., Ste. 415

Minneapolis, MN 55401

[Jon@arnesongeffen.com](mailto:Jon@arnesongeffen.com)

612.465.8580

# Overview of Maltreatment Process/Investigation

- County investigates reports of maltreatment of children.
- State investigates if in a licensed facility (childcare center, etc.).
- Apply the Maltreatment to Minors Act (Minn. Stat. § 626.556).
- Broad statute with capacity to cause huge problems to those deemed to have committed maltreatment.
- Civil determination – does not preclude criminal charges.
- Burden on county – preponderance of the evidence.
- May have finding that no child protection services needed – but still maltreatment. Many are not appealed.

# Forms of Maltreatment

- Physical Abuse
  - Neglect
  - Sexual Abuse
  - Mental Injury
- 
- Sounds right, but the language leads to some absurd results.

## Physical Abuse – (g)

- ▶ "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated intervention

## Physical Abuse – (g) (continued)

"Definition of "accident" is very narrow. "Accidental means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

- (1) is not likely to occur and could not have been prevented by exercise of due care; and
- (2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

# Not Abuse

- Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury.
- What is an injury? A bruise is enough?

# Items that ARE NOT reasonable and/or moderate Physical Discipline

Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section [609.02, subdivision 6](#);
- (7) striking a child under age one on the face or head;

# Items that ARE NOT reasonable and/or moderate Physical Discipline (continued)

- ▶ (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- ▶ (9) unreasonable physical confinement or restraint not permitted under section [609.379](#), including but not limited to tying, caging, or chaining; or
- ▶ (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under

# Nonmaltreatment Mistake

9

(h) "Nonmaltreatment mistake" means:

- (1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part [9503.0045](#);
- (2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;
- (3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;
- (4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

# Nonmaltreatment Mistake (continued)

10

- (5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.
- This definition only ***applies to child care centers licensed*** under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

# Neglect – Biggest Issue

11

- (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;

# Neglect – Biggest Issue

12

- (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) nothing in this section 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; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section 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;

# Neglect – Biggest Issue

13

- (6) 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;
- (7) "medical neglect" as defined in section [260C.007, subdivision 6](#), clause (5);

# Neglect – Biggest Issue

14

- (8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or
- (9) emotional harm from a pattern of behavior which 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.

# Issues with neglect

- Neglect does not require injury.
- Kid gets out and walks into street. Not hurt. Still neglect.
- Exposure to something might just be enough.
- Even more responsibilities if one provides child foster care, or family child care.

# Is the Maltreatment Serious or Recurring?

- This is a decision by DHS, not the county.
- Only applies to those individuals who are subject to the State of Minnesota's Background Study Act. Minn. Stat. ch. 245C.
- DHS conducts about 200,000 of these per year.
- If serious maltreatment or recurring maltreatment, Individual is "disqualified" from jobs with direct contact with individuals in facilities licensed by DHS and MDH.
- DQ lasts 7 years from date of determination.

# Serious Maltreatment

17

- (a) means sexual abuse, maltreatment resulting in death, neglect resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury.
- (b) For purposes of this definition, "care of a physician" is treatment received or ordered by a physician, physician assistant, or nurse practitioner, but does not include:
  - (1) diagnostic testing, assessment, or observation;
  - (2) the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or
  - (3) a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment.

# Serious Maltreatment (continued)

18

- (c) "abuse resulting in serious injury" means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke.
- Treats a bruise the same as "head injury with loss of consciousness"
- VERY broad definition of serious.

# Recurring Maltreatment

- “Recurring maltreatment” means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.
- What if neglect tx in one day?
- What if expose child to same hazard on 2 days in a month?
- Again, recurring neglect may never involve any injury.

# Ramifications of Maltreatment Finding

## ➤ Employment:

If parent works (volunteers) in a facility or area of employment that is licensed by DHS or MDH.

Quite a vast number of jobs in these areas. Includes laundry workers at nursing home, janitor at hospital, home health care, nursing, child care, foster care, and many more.

## Licensing:

If parent hold a license for adult or child foster care, or family childcare. Will lose the license.

# Advocates Need to Appeal Maltreatment even with no protective services.

- Depending on the case, client is offered a “Fair Hearing” or a “Contested Case Hearing.”
- Fair Hearing – ALJ from DHS. See Minn. Stat. § 245C.27
- Contested Case Hearing – State Office of Administrative Hearings. See Minn. Stat. § 245C.28.
- If you don't appeal when County makes original decision on maltreatment, you cannot appeal in the future. You can appeal with the maltreatment was “serious” or “recurring” when that decision is made, if it occurs at a later date.
- High success rates for maltreatment cases.

# Set-aside of maltreatment determination

- An individual who is disqualified from direct contact positions may ask DHS to “set-aside” the disqualification.
- Paper appeal – no hearing.
- Focus is on whether individuals poses a risk of harm to those they wish to serve.
- May allow individual to work in a specific job.
- Burden on individuals to prove they do not pose a risk of harm. Preponderance of the evidence.
- DHS decides. Uses 9 factors articulated in Minn. Stat. 245C.
- Statute sets forth timelines for DHS to determine set-aside, but usually much longer. Average is near 2 months.
- Hard to win at Minnesota Court of Appeals. Lots of discretion for DHS.

# Problems with set-aside

- Facility specific
- Employer may not want to wait the 2 months until reconsideration is decided.
- May require employer to tell those served by program that employee has a set-aside.
- May reclassify data under Data Practices Act as “public.”
- In child care setting, must inform all parents of the basis of the disqualification. Many centers will not employ those with a set-aside.

**Questions?**