

CPS Checklist Guide

Perpetrator	
For committing an act	For failing to act
<ul style="list-style-type: none"> • A parent of the child • A spouse or former spouse of the child's parent • A paramour or former paramour of the child's parent • A person 14 year or older that is responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service • A resident of the child's home that is 14 years or older • An individual 18 years or older who does not reside in the same house as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child • An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102) 	<ul style="list-style-type: none"> • A parent of the child • A spouse or former spouse of the child's parent • A paramour or former paramour of the child's parent • A person 18 or older responsible for the child's welfare • A person 18 or older who resides in the same home as the child
Child Abuse	
Intentionally, knowingly or recklessly doing any of the following:	
<p>(1) Causing bodily injury to a child through any recent act or failure to act <u>Bodily injury</u>: Impairment of physical condition or substantial pain <u>Recent act or failure to act</u>: Any act or failure to act committed within two years of the date of the report to the department or the county agency</p> <p>(2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.</p> <p>(3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act. <u>Serious mental injury</u>: A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:</p>	

1. Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic **or** in reasonable fear that the child's life or safety is threatened; **or**
2. Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

(4) Causing sexual abuse or exploitation of a child through any act or failure to act.

Sexual abuse or exploitation: Any of the following:

Using a child, by employment, persuasion, coercion, etc., to engage in or assist another to engage in sexually explicit conduct, including but not limited to:

1. The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:
 - i. Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.
 - ii. Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.
 - iii. Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.
 - iv. Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

Exception: Consensual activities between a child 14 years of age or older and another person who is 14 years old or older and within 4 years of the child's age is not an offense under this definition.

2. Any of the following offenses committed against a child:

- Rape (18 Pa. C.S. §3121)
- Statutory sexual assault (18 Pa. C.S. §3122.1)
- Involuntary deviate sexual intercourse (18 Pa. C.S. §3123)
- Sexual assault (18 Pa. C.S. §3124.1)
- Institutional sexual assault (18 Pa. C.S. §3124.2)
- Indecent assault (18 Pa. C.S. §3126)
- Indecent exposure (18 Pa. C.S. §3127)
- Incest (18 Pa. C.S. §4302)
- Prostitution (18 Pa. C.S. §5902)
- Sexual abuse (18 Pa. C.S. §6312)
- Unlawful conduct with a minor (18 Pa. C.S. §6318)
- Sexual exploitation (18 Pa. C.S. §6320).

*Effective **December 31, 2014**. 23 Pa. C.S. §6303 (Act 108)*

Sexual misconduct: Any act, including but not limited to, any verbal, nonverbal, written or electronic communication, or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. **Student** - An individual enrolled in a public or private school,

intermediate unit or area vocational-technical school who is under 18 years of age.

Such prohibited acts include, but are not limited to:

- (1) Sexual or romantic invitations;
 - (2) Dating or soliciting dates;
 - (3) Engaging in sexualized or romantic dialogue;
 - (4) Making sexually suggestive comments;
 - (5) Self-disclosure or physical exposure of a sexual, romantic or erotic nature; or
 - (6) Any sexual, indecent, romantic, or erotic contact with the child or student.
- (5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (7) Causing serious physical neglect of a child.
- Serious physical neglect: Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:
1. A repeated, prolonged or unconscionable egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
 2. The failure to provide a child with adequate essentials of life, including food, shelter or medical care.
- (8) Engaging in any of the following recent acts:
1. Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 2. Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
 3. Forcefully shaking a child under one year of age.
 4. Forcefully slapping or otherwise striking a child under one year of age.
 5. Interfering with the breathing of a child.
 6. 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.
 7. Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:
 - (A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed. Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).
- (9) Causing the death of the child through any act or failure to act.
- (10) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

Standards of Culpability

Intentionally: A person acts intentionally with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
- (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

Knowingly: A person acts knowingly with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
- (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

Recklessly: A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Do any exclusions apply?

Environmental factors: No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors, such as inadequate housing, furnishings, income, clothing and medical care, that are beyond the control of the parent or person responsible for the child's welfare with whom the child resides. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

Practice of religious beliefs: If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of sincerely held religious beliefs of the child's parents or relative within the third degree of consanguinity and with whom the child resides, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. In such cases the following shall apply:

- (1) The county agency shall closely monitor the child and the child's family and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.
- (2) All correspondence with a subject of the report and the records of the department and the county agency shall not reference child abuse and shall acknowledge the religious basis for the child's condition.
- (3) The family shall be referred for general protective services, if appropriate.
- (4) This subsection shall not apply if the failure to provide needed medical or surgical care causes the death of the child.
- (5) This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

Use of force for supervision, control and safety purposes: Subject to subsection (d), the use of reasonable force on or against a child by the child's own parent or person responsible for the child's welfare shall not be considered child abuse if any of the following conditions apply:

- (1) The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.
- (2) The use of reasonable force is necessary:
 - i. to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;
 - ii. to prevent the child from self-inflicted physical harm;
 - iii. for self-defense or the defense of another individual; or
 - iv. to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.

Rights of parents: Nothing in this chapter shall be construed to restrict the generally recognized existing rights of parents to use reasonable force on or against their children for the purposes of supervision, control and discipline of their children. Such reasonable force shall not constitute child abuse.

Participation in events that involve physical contact with child: An individual participating in a practice or competition in an interscholastic sport, physical education, a recreational activity or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.

Child-on-child contact:

- (1) Harm or injury to a child that results from the act of another child shall not constitute child abuse unless the child who caused the harm or injury is a perpetrator.
- (2) Notwithstanding paragraph (1), the following shall apply:
 - i. Acts constituting any of the following crimes against a child shall be subject to the reporting requirements of this chapter:
 - A. rape as defined in 18 Pa.C.S. § 3121 (relating to rape);
 - B. involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
 - C. sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault);
 - D. aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
 - E. indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault); and
 - F. indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
 - ii. No child shall be deemed to be a perpetrator of child abuse based solely on physical or mental injuries caused to another child in the course of a dispute, fight or scuffle entered into by mutual consent.

- iii. A law enforcement official who receives a report of suspected child abuse is not required to make a report to the department under section 6334(a) (relating to disposition of complaints received), if the person allegedly responsible for the child abuse is a nonperpetrator child.

Defensive force: Reasonable force for self-defense or the defense of another individual, consistent with the provisions of 18 Pa.C.S. §§ 505 (relating to use of force in self-protection) and 506 (relating to use of force for the protection of other persons), shall not be considered child abuse.

Based upon foregoing information, report is:

Indicated report:

Defined as: Issued when an investigation by the department or the county agency determines that substantial evidence of the alleged abuse by a perpetrator exists based on: available medical evidence; Child Protective Service investigation; or an admission of the acts of abuse by the perpetrator. A report may be indicated for any child who is the victim of child abuse, regardless of the number of alleged perpetrators. The report may be indicated listing the perpetrator as “unknown” if substantial evidence of abuse exists, but the specific perpetrator cannot be identified

Founded report, because:

- There has been a judicial adjudication that the subject child has been abused with the same factual circumstances as the allegation of child abuse.
- Acceptance into an accelerated rehabilitative disposition program for the same factual circumstances in the report of child abuse.
- Consent decree in a juvenile proceeding involving the same circumstances in the allegation of child abuse.
- A final PFA order has been granted when the child who is the subject of the report is one of the individuals being protected; and only one individual is charged with and defends against the charge of abuse, adjudication involves the same factual circumstances as the allegation of child abuse, and the PFA adjudication finds that the child abuse occurred.

Unfounded report:

Defined as: Any report made pursuant to this chapter unless the report is a “founded report” or an “indicated report”