

# Defining Egregious Incidents of Child Maltreatment

A Policy and Research Analysis

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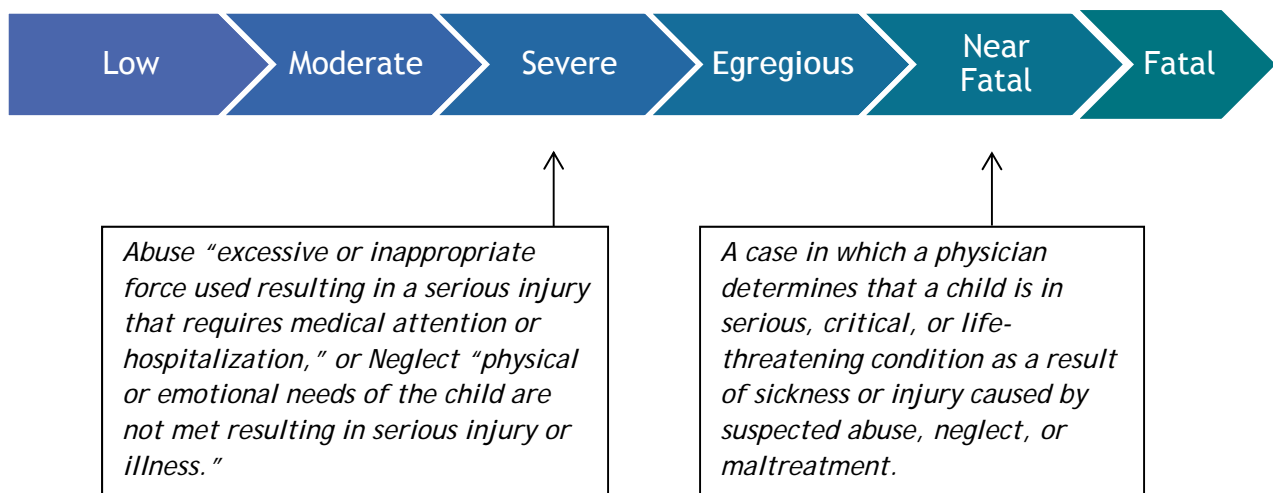
## Introduction

In 2012, legislation in Colorado broadened the purview of the Child Fatality Review Team to those incidents caused by child maltreatment that are ‘near fatal’ and ‘egregious.’ This legislation aligned Colorado with the Child Abuse Prevention and Treatment act, which requires provisions for the review of child maltreatment fatalities and near fatalities. However, the legislation also caused Colorado to stand apart from most other states; Wisconsin is the only other state that requires review of “egregious” incidents. Colorado Revised Statute § 26-1-139(2)(a) provides as follows: “Incident of egregious abuse or neglect means an incident of suspected abuse or neglect involving significant violence, torture, use of cruel restraints, or other similar, aggravated circumstances that may be further defined in rules promulgated by the state department pursuant to this section.”

Unlike fatal and near fatal incidents, which have relatively objective criteria, incidents of egregious abuse or neglect (egregious incidents) involve more subjectivity when differentiating at the high end of child maltreatment severity. The inclusion of egregious incidents creates a severity level that spans between “severe” and “near-fatal.” Severe maltreatment is defined in rule as “excessive or inappropriate force used resulting in a serious injury that requires medical attention or hospitalization” or “the physical or emotional needs of the child are not met resulting in serious injury or illness” (7.000.2). Near fatal incidents are defined in statute as, “case(s) in which a physician determines that a child is in serious, critical, or life-threatening condition as a result of sickness or injury caused by suspected abuse, neglect, or maltreatment” (C.R.S. § 26-1-139).

Operationally, the distinguishing factors between “severe” and “egregious” maltreatment are not clarified by the current statutory definition. The purpose of this analysis is to parse out the severity level for egregious incidents and provide more detailed guidance for implementation of this policy.

### SEVERITY LEVELS IN CURRENT RULE



Note: This initial version constitutes an attempt at solidifying the definition of egregious maltreatment for the fulfillment of Colorado statute and rule by state and local child welfare. Practice and experience may serve to further define egregious maltreatment, and so it is important to note that documents may be updated whenever the opportunity exists to further clarify this definition.

## Defining and Identifying Egregious Maltreatment

In order to clarify the distinction of this new severity level, we chose to examine current statute paired with definitions from various sources across other fields. McGee, Wolfe, & Yuen (1995) identify that definitions of child maltreatment fall into three categories: medical, legal, and sociological. These three categories serve to describe multi-disciplinary and community perspectives and may bring further clarity. We use this framework in the following analysis to consider each of the three categories of perspective for each of the four sections of the statutory definition.

To restate, Colorado’s definition of an incident of egregious abuse or neglect is:

“an incident involving **significant violence**, **torture**, use of **cruel restraints**, or other similar, **aggravated circumstances**” (Section 26-1-139, C.R.S.)

The sections, as highlighted above, are: 1) significant violence, 2) torture, 3) cruel restraints, and 4) aggravated circumstances. With the exception of aggravated circumstances, the first three areas focus almost entirely on either threatened or actual physical abuse. The absence of neglect as a significant part of maltreatment in egregious incidents should be noted related to the intent of this statute. However, there are still instances where neglectful behavior is applicable under this definition.

During the review of the literature, it quickly became evident that the four categories share common themes and overlaps. In particular, cases involving permanent physical or psychological injury or impairment to the child appear in each category. Further, those cases where malicious intent is evident and spans over a longitudinal episode also rise to the egregious level. The following categories serve to further define and clarify these distinctions.

### 1. Significant Violence

#### *Medical*

Medically, physical and psychological impairments to children caused by child maltreatment are covered under the current definition of ‘severe’ maltreatment. For example, severe physical abuse requires medical treatment, whereas low and moderate do not. In the case of egregious determination, the literature suggests that severity may generally be ranked higher in those cases where the injuries and impairments from the abuse and/or neglect are *permanent* to the child, as in injuries from abusive head trauma that result in permanent neurological disability, including cerebral palsy, blindness, and seizures (Christian & Block, 2009; Finkelhor & Korbin, 1988).

### *Legal*

Using information gained from medical examination, severe injuries to children may be designated by law enforcement as “Serious Bodily Injury” or SBI. The definition of an SBI is “bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree” (C.R.S. §18-1-901). The first part of this definition focuses on the *risk* of permanent disfigurement. Given that the actual permanent impairments resulting from abuse and neglect are not always evident at the time of initial assessment, this assists in broadening the definition to better assist in defining egregious maltreatment. It is important to note, however, that the designation of an SBI does not necessarily constitute egregious harm to the child, because the level of impairment to the child may not be permanent, as was designated as criteria in the ‘medical’ category. For example, fractures, breaks, and most burns are covered under the ‘severe’ designation.

### *Sociological*

When considering experiences of significant violence, the literature often refers to psychological/mental health consequences to the child. A higher level of trauma for children who witness violent crimes is supported in a large section of literature, which notes that simply having a parent die in a violent manner is predictive of higher levels of post-traumatic stress disorder (PTSD) that complicates bereavement (Kaltman & Bonanno, 2003; Neria & Litz, 2004). Moreover, witnessing violence (regardless of victim) as a child has implications for development of depression, anger, anxiety, dissociation, and PTSD (Singer, 1995). Certainly, when considering the intersection of violence and the field of child welfare, the two experiences, when combined, indicate egregious harm. For example, when discussing childhood trauma that may likely contribute to later dysfunctional, hyper-aroused or dissociative states, Perry & Szalavitz (2007) observe that the murder or intentionally inflicted, significant, permanent impairment of a caregiver, close relative, or sibling by a caregiver of the child, when conducted in the presence of the child, is particularly impactful.

### *Indicators of Significant Violence*

In the case of significant violence, applicable indicators include:

- Injuries from physical abuse that are significant and permanent to the child, as in injuries from abusive head trauma that result in permanent neurological disability, including cerebral palsy, blindness, and seizures
- Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body
- The murder or intentionally inflicted, significant, permanent impairment of a caregiver, close relative, or sibling by a caregiver of the child, when conducted in the presence of the child.

## 2. Torture

### *Medical*

The medical consequences of torture may be varied, depending on the vast array of torturous abuse and neglect experienced by the child. Again, we see the risk of permanent impairment reappearing in the literature, both from a physical and psychological standpoint. Much of the research in this area focuses on the torture encountered by prisoners of war, and is delineated in consequences related to starvation, isolation, long term psychological maltreatment, and extended physical assaults (Başoğlu & Paker, 1995; Kellogg & Lukefahr, 2005).

### *Legal*

Numerous states indicate that child torture should be considered when decisions of termination of parental rights are at stake and in determining the severity of crimes against children (Hirst & Seldin, 2012). Other states use the term ‘torture’ to enhance sentencing in crime. For example, in some states, torture is defined as recurrent harm to the child, usually on two or more occasions (Tiapula & Appelbaum, 2011). Statutes often discuss impact and indicate that in the case of torture, extreme pain or permanent psychological or physical impairment results. However, no state has an existing statute that comprehensively defines this phenomenon (Tiapula & Appelbaum, 2011).

On an international basis, both the World Health Organization and the United Nations (the UN Convention Against Torture, 1975) have attempted to describe torture as it applies to international relations and treatment for prisoners of war. Both definitions include *intentional* affliction of severe pain with the purpose being submission or dehumanization (Knox, Starling, & Feldman, 2014). Neither definition is specific to abuse of children by their caregivers, however.

### *Sociological*

Recognizing the need for a concise, consistent definition as related to children, Knox, Starling, & Feldman (2014, p.1) propose, “...a longitudinal experience characterized by at least two physical assaults or one extended assault, two or more forms of psychological maltreatment, and neglect resulting in prolonged suffering, permanent disfigurement or dysfunction, or death.” This definition was developed after a global review of both child abuse and international law research. Similarly, a less comprehensive review of the literature produced a less precise summary, which characterizes torture as “distinctly different in its premeditation, intent, and ongoing nature” and defines it as “any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing” and add that the abuse must be, “continued or repeated” (Allasio & Fischer, 1998. p.269). While the definitions are not contradictory, the Knox, et al.(2014) definition does provide additional clarity and operationalization. The second definition adds intent, however, and both are important for consideration in the definition of egregious maltreatment.

### *Indicators of Torture*

Indicators of child torture come from a synthesis developed by Knox, et al. (2014) and another examination by Allasio & Fischer (1998).

- A longitudinal experience characterized by:
  - At least two physical assaults and/or
  - One extended assault and/or
  - Two or more forms of psychological maltreatment and/or
  - Neglectand resulting in prolonged suffering, permanent disfigurement or dysfunction
- Any act by which continued or repeated severe pain and suffering, whether physical or mental, is intentionally inflicted on a child for such purposes as punishing.

### **3. Use of Cruel Restraints**

Cruel restraints are often discussed in the context of torture, and so the overlapping portions in this section are even more evident than in others. However, there are some clear distinctions related to isolation that come from examination of the literature on cruel restraints.

#### *Medical*

Medically, restraint is about withholding basic needs and can result in developmental and/or physical impacts to the child. Restraints may be considered cruel when used to withhold food to the point of starvation, isolate the child so as to impact the child in a permanent developmental or emotional manner, or result in permanent injury to the child. The developmental consequences of prolonged isolation are well-known, specifically in examination of Romanian orphans who suffered dire impact from long term restraints (Zeanah et al., 2003, 2009).

#### *Legal*

The cruel use of restraints is included in many state statutes that describe torture or inappropriate punishment of a child based on circumstances. The restraints discussed in these statutes also closely mirror torture definitions reviewed in prior sections (Tiapula & Appelbaum, 2011).

#### *Sociological*

As noted above, cruel restraints are also characteristic of torture and significant violence from a sociological standpoint (Başoğlu & Paker, 1995). In considering cruel restraints in the context of torture as child abuse, forms can be locking, tying, caging, or otherwise restricting a child's movement for prolonged periods (Knox, et al., 2014).

#### *Indicators of Cruel Restraints*

The medical and sociological definitions provide the best guidance for indicators of cruel restraints:

- Restraints used to withhold food to the point of starvation, isolate the child so as to impact the child in a permanent developmental or emotional manner, or result in permanent injury. Restraints are typically in forms such as locking, tying, caging, or otherwise isolating the child or restricting the child's movement for prolonged periods

## 4. Aggravated Circumstances

### *Medical*

In the field of medicine, “aggravation” of a medical condition means causing the patient’s health to deteriorate. In child maltreatment, the parallel would be prolonged failure to seek medical care for a child in clear distress from a medical condition, causing the child’s medical condition to significantly worsen. To distinguish from severe maltreatment, this neglect would need to rise to levels of risk of permanent impairment, as discussed in the SBI definition. This type of imposed suffering/neglect is also often included in definitions of torture (Başoğlu & Paker, 1995).

### *Legal*

The term ‘aggravated’ in this context is most often found in legal language. Similar to the medical definition, the term is used to characterize a pre-defined feature that ‘enhances’ a crime and the subsequent penalty. Typically, aggravating circumstances are considered for sentencing of capital murder. The most common aggravating circumstance is a previous, similar conviction by the perpetrator, but as in prior terms in this definition, cruel treatment above and beyond the (typically felony level) crime to the victim is also considered in many states. Some states consider the use of a deadly weapon as an aggravating circumstance.

Consequently, Colorado’s criminal statute can serve as a guide in measuring the level to which the violence was significant. For example, debilitating psychological impact may occur from abuse that causes the child fear for his/her own life, including direct, actionable threats to the child involving a deadly weapon (Perry & Szalavitz, 2007). A ‘deadly weapon’ is defined in Colorado’s criminal code as:

- (I) A firearm, whether loaded or unloaded; or
- (II) A knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury [C.R.S § 18-1-901 (3)(e)].

When considering levels of criminal offense, use of a deadly weapon during the commission of certain crimes often increases the charge and consequence. For example, assault with a deadly weapon is considered a felony offense in most states. Another determinant area of criminal offense is intent. For example, in child abuse prosecution, testimony from a doctor as to whether the injuries to the child were intentional is considered in the absence of other direct evidence regarding the incident (Feller, Davidson, Hardin, & Horowitz, 1992).



## *Sociological*

In the context of child maltreatment, the Adoption and Safe Families Act (ASFA) specifies past abuse that includes ‘aggravated circumstances’ allows states to forego reasonable efforts for reunification (Hirst & Seldin, 2012). ASFA defines ‘aggravated circumstances’ using four core areas: abandonment, torture, chronic abuse, and sexual abuse. Colorado’s statutory references to aggravated circumstance in TPR statutes, along with those in several other states, are undefined/vague, according to a national review (Hirst & Seldin, 2012).

Indeed, C.R.S. § 19-1-115 provides for termination in the context of the parent subjecting the child to “aggravated circumstances,” however, the statute then references § 19-3-604 for definition. This statute includes a wide range of situations where TPR may result, and does not parse out the specific circumstance which are aggravating and which are not.

## *Indicators of Aggravated Circumstances*

For aggravated circumstances, the most distinct additions come from the medical and legal definitions:

- Failing to seek medical care for a child in clear distress from a medical condition for a prolonged period of time, causing the child’s medical condition to significantly worsen
- Evidence that indicates intent by the caregiver to inflict permanent developmental, physical or emotional harm
- Abuse that causes the child fear for his/her own life, including direct, actionable threats to the child involving a deadly weapon.

## **Conclusion**

As noted in the introduction, there are clear overlaps in multidisciplinary definitions related to significant violence, torture, cruel restraints, and aggravated circumstances. With regard to child maltreatment, the goal of this document is to parse out specific instances and characteristics of abuse and neglect that would exceed the ‘severe’ level of maltreatment while not reaching the ‘near-fatal’ level. Notably, there are two thematic distinctions: 1) permanent or risk of permanent physical or psychological impact, and/or 2) intent by the caregiver to cause longitudinal, significant suffering to the child. The indicators in each section serve to delineate this distinction. For ease of use, all indicators are included in the checklist in the final section of the document.

Note: This initial version constitutes an attempt at solidifying the definition of egregious maltreatment for the fulfillment of Colorado statute and rule by state and local child welfare. Practice and experience may serve to further define egregious maltreatment, and so it is important to note that documents may be updated whenever the opportunity exists to further clarify this definition.

## Egregious Maltreatment Indicators

A. Through the duration of the child maltreatment assessment, reporting to the state within 24 hours is required if the referral or contacts indicate *suspicion* that any of the following indicators for egregious maltreatment are present.\*

B. At the conclusion of a child maltreatment assessment, a finding of severe-egregious must be assigned if any of the following indicators are found to be present and caused by abuse or neglect.

### Significant Violence

- Injuries from physical abuse that are significant and permanent to the child, as in injuries from abusive head trauma that result in permanent neurological disability, including cerebral palsy, blindness, and seizures
- The murder or intentionally inflicted, significant, permanent impairment of a caregiver, close relative, or sibling by a caregiver of the child, when conducted in the presence of the child
- Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body.

### Torture

- A longitudinal experience characterized by:
  - At least two physical assaults and/or
  - One extended assault and/or
  - Two or more forms of psychological maltreatment and/or
  - Neglectand resulting in prolonged suffering, permanent disfigurement or dysfunction.
- Any act by which continued or repeated severe pain and suffering, whether physical or mental, is intentionally inflicted on a child for such purposes as punishing.

### Cruel Restraints

- Restraints used to withhold food to the point of starvation, isolate the child so as to impact the child in a permanent developmental or emotional manner, or result in permanent injury. Restraints are typically in forms such as locking, tying, caging, or otherwise restricting a child's movement for prolonged periods.

### Aggravating Circumstances

- Failing to seek medical care for a child in clear distress from a medical condition for a prolonged period of time, causing the child's medical condition to significantly worsen
- Evidence that indicates intent by the caregiver to inflict permanent developmental, physical or emotional harm
- Abuse or neglect that causes the child fear for his/her own life, including direct, actionable threats to the child involving a deadly weapon or in the course of a violent crime.

*\*Remember that further assessment might provide clarity on whether abuse or neglect caused the incident AND whether or not it is founded for Severe-Egregious. Initial reporting is based only on presenting information.*

## References

- Allasio, D., & Fischer, H. (1998). Torture versus child abuse: What's the difference? *Clinical Pediatrics*, 37(4), 269-271.
- Başoğlu, M., & Paker, M. (1995). Severity of trauma as predictor of long-term psychological status in survivors of torture. *Journal of Anxiety Disorders*, 9(4), 339-350.
- Christian, C., & Block, R. (2009). Abusive head trauma in infants and children. *Pediatrics*, 123(5), 1409-1411.
- Feller, J., Davidson, H., Hardin, M., & Horowitz, R. (1992). *Working with the courts in child protection*. Retrieved from [childwelfare.gov](http://childwelfare.gov)
- Finkelhor, D., & Korbin, J. (1988). Child abuse as an international issue. *Child Abuse & Neglect*, 12(1), 3-23.
- Hirst, E., & Seldin, H. (2012). Dismantling the united front in child abuse cases: Reevaluating Delaware's serious injury statute after fifteen years of ASFA. *Washington and Lee Journal of Civil Rights and Social Justice*, 19(2), 479-492.
- Kaltman, S., & Bonanno, G. (2003). Trauma and bereavement:: Examining the impact of sudden and violent deaths. *Journal of Anxiety Disorders*, 17(2), 131-147.
- Knox, B., Starling, S., & Feldman, K. (2014). Child torture as a form of child abuse. *Journal of Child & Adolescent Trauma*, 7(1), 37-49.
- Neria, Y., & Litz, B. (2004). Bereavement by traumatic means: The complex synergy of trauma and grief. *Journal of Loss and Trauma*, 9(1), 73-87.
- Perry, B., & Szalavitz, M. (2007). *The boy who was raised as a dog: And other stories from a child psychiatrist's notebook-what traumatized children can teach us about loss, love and healing*. New York, NY: Basic Books.
- Singer, M. I. (1995). Adolescents' exposure to violence and associated symptoms of psychological trauma. *JAMA: The Journal of the American Medical Association*, 273(6), 477. doi:10.1001/jama.1995.03520300051036
- Tiapula, S., & Appelbaum, A. (2011). Criminal justice and child protection responses to cases of severe child abuse: existing statutory frameworks for torture. *Update*. Retrieved from [http://www.ndaa.org/pdf/Update\\_vol23\\_no1.pdf](http://www.ndaa.org/pdf/Update_vol23_no1.pdf)
- Zeanah, C., Egger, H., Smyke, A., Nelson, C., Fox, N., Marshall, P., & Guthrie, D. (2009). Institutional rearing and psychiatric disorders in Romanian preschool children. *American Journal of Psychology*, 166(7), 777-785.
- Zeanah, C., Nelson, C., Fox, N., Smyke, A., Marshall, P., Parker, S., & Koga, S. (2003). Designing research to study the effects of institutionalization on brain and behavioral development: The Bucharest Early Intervention Project. *Development and Psychopathology*, 15(4), 885-907.