Child Welfare Policy Manual

Section 2.3: CAPTA, Definitions

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Question 1. We find the "rape" and "statutory rape" language in the definition of sexual abuse found at section 111 (4)(B) of CAPTA confusing, especially within the context of the general definition of child abuse and neglect at section 3 (2). Please clarify.

Answer

The provision at section 3 (2) defines child abuse and neglect as "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Section 111 (4)(B) goes on to say that the term sexual abuse includes "the rape, and in the cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." We understand section 111 (4)(B) to define the circumstances in which a parent or caretaker, although not the perpetrator, is chargeable with child abuse and neglect because of sexual acts committed by a third party.

For the purposes of CAPTA, child abuse and neglect, by definition, is limited to a recent act or failure to act on the part of a parent or caretaker. Thus, if a child is raped due to a failure to act on the part of a parent or caretaker, such failure to act would be considered child abuse by the parent or caretaker under CAPTA, regardless of the identity of the perpetrator. In addition, the definition at section 111 (4)(B) means that action or failure to act by a parent or caretaker that results in

statutory rape by another caretaker or family member is considered to be sexual abuse.

Source/Date

ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Legal and Related References

Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3 and 111

Question 2. Definitions are found in sections 106(b)(4), as well as in sections 3 and 111. What is the difference between the definitions found in these sections?

Answer

The differences in the definitions found in these sections is in what they govern. The definitions of "near fatality" and "serious bodily injury" in sections 106 (b)(4) of CAPTA refer to those specific terms as used in subsection (b) of section 106 of CAPTA. For instance, whenever the terms "near fatality" or "serious bodily injury" are used in subsection (b), the definitions found in section 106(b)(4) would apply.

Section 111, on the other hand, provides the broader definitions of "sexual abuse" and "infant or toddler with a disability," which are used for all other purposes of Title I of CAPTA.

The definitions in section 3 provide still broader definitions such as "child abuse and neglect" and "child with a disability," which are used throughout all of CAPTA.

Source/Date

ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Legal and Related References

Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106(b) and 111

Question 5. Can states have a definition of child abuse and neglect that excludes symptoms of poverty or failure to provide for material needs due to economic instability?

Answer

Yes. A state statute may exempt specific circumstances or conditions, including poverty and income-related factors, from the definitions of child abuse and neglect, as long as the state's statutory definition still meets the minimum Child Abuse Prevention and Treatment Act definition. It is evident that many states have considered complex factors contributing to child maltreatment in their state definitions as more than half of the states specifically exempt financial inability to provide for a child in their definitions of child maltreatment. (See: Neglect and Prevention Policies (NAPP) Data: NDACAN Dataset Number 282. National Data Archive on Child Abuse and Neglect. https://doi.org/10.34681/4D21-NR74; and State Child Abuse and Neglect (SCAN) Policies Database. Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.scanpoliciesdatabase.com/explore-data.)

In 2023, the Child Welfare Information Gateway published an Issue Brief entitled Separating Poverty From Neglect in Child Welfare which explores "what the research shows about the overlap among families experiencing poverty and those reported to the child welfare system for neglect, the societal context within which both poverty and neglect exist, and strategies that have proven effective for preventing and addressing both poverty and neglect, together." This Issue Brief explains that "poverty is a complex, ongoing issue that has significant societal, systemic, organizational, community, and family impacts. Thus, it is critical to recognize that poverty alone does not equal neglect. Families may experience and remain in poverty despite efforts to advance their economic situation. "[G]rowing evidence indicates that providing such supports can reduce maltreatment rates overall, neglect rates in particular, and the number of families coming to the attention of CPS agencies" (Child Welfare Information Gateway, 2023)."
The Children's Bureau encourages states to consider these issues when

defining "child abuse and neglect" and when considering programs designed to stabilize families and to prevent child abuse and neglect.

Source/Date

7/30/2024

Legal and Related References

Section 3(2) of CAPTA, codified at 42 U.S.C. 5101, Note. Neglect and Prevention Policies (NAPP) Data: NDACAN Dataset Number 282. National Data Archive on Child Abuse and Neglect https://doi.org/10.34681/4D21-NR74
