

GUIDELINES FOR SUBSTANTIATING

There are six categories in Chapter 432B of the Nevada Revised Statutes by which a worker will make the decision to substantiate abuse or neglect:

- Mental injury
- Negligent treatment or maltreatment
- Physical injury
- Excessive corporal punishment
- Sexual abuse
- Sexual exploitation

Policy requires that a supervisor make the substantiation determination conjointly with the assessment worker. Substantiation decisions must be approved by supervisor.

The standard for substantiation is **PREPONDERANCE OF THE EVIDENCE**. Preponderance of the evidence standard is characterized by meaning more likely that an event occurred than it did not occur.

SUBSTANTIATING means that a report made pursuant to NRS 432B.220 was assessed and that the preponderance of evidence supports that the abuse or neglect exists. (NAC 432B.170(7)(a) requires credible evidence; however, agencies are maintaining a stricter guideline with preponderance of evidence.)

UNSUBSTANTIATING means that a report made pursuant to NRS 432B.220 was investigated and that the preponderance of evidence indicates that it is more likely that the abuse or neglect did not occur than it is likely that the abuse or neglect occurred. The term includes efforts made by an agency which provides child welfare services to prove or disprove an allegation of abuse or neglect that the agency is unable to prove because it was unable to locate the child or the person responsible for the welfare of the child. (NAC 432B.170(7)(a) requires credible evidence; however, agencies are maintaining a stricter guideline with preponderance of evidence.)

Necessary Evidence for Justifying a Substantiation of Maltreatment

The assessment worker should weigh the evidence of the elements for and against abuse or neglect as follows:

1. Identify the maltreatment typology (e.g., physical abuse) and describe in detail the facts about the maltreatment (e.g., bruising, degree of injuries, time left unsupervised, effects on the children, etc.) and describe what the sources of information are that support the finding and;
2. Identify the person(s) responsible for the child's welfare and how he/she/they participated in the abuse or neglect. Identify whether the person either caused or allowed: 1) physical or mental injury of a non-accidental nature, 2) sexual abuse or exploitation, or 3) negligent or maltreatment of the child and;
3. Identify and describe the circumstances surrounding the injury or neglect which indicate that the child's health or welfare is harmed or threatened with harm and;
4. For physical or mental injury, identify evidence to demonstrate that the injury was "non-accidental" and;
5. For negligent or maltreatment, identify: 1) the fault or habit of the person responsible for the child's welfare that caused the negligent or maltreatment or 2) the actions constituting neglect or a refusal to provide for the child and;
6. For refusal to provide, determine whether the person was able and/or willing to provide the necessary care or subsistence.

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MENTAL INJURY

DEFINITION

NRS 432B.070 Mental Injury: means any injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

The worker must identify and document what the child's normal range of functioning/behavior is.

To substantiate Mental Injury the following should be present:

1. A child has an observable and substantial impairment of his/her intellectual or psychological capacity or emotional functioning;
AND
2. Evidence that the actions of the person responsible for the child that caused the child's mental injury were non-accidental;
AND
3. The circumstances surrounding the injury that indicate that the child's health or welfare is harmed or threatened with harm.

In general, the following should be considered and well documented in the NIA by obtaining the information from witnesses, through interviewing the child and others involved in the case, such as:

- Relatives;
- School personnel; Therapists involved;
- Other medical professionals;
- Expert opinion that the child's intellectual or emotional impairment is/was caused or partly caused by the act or failure to act (omission) by the parent/caregiver and any documentation on the child or parent such as mental health evaluations, IEP's, and/or early childhood assessments.

Consider factors for determining whether the circumstances indicating the child's health or welfare is harmed or at risk of being harmed, workers should refer to the Impending Danger Caregiver Parental Capacity Definitions and Reference Guide or the NIA Intervention Manual.

NAC 432B.020 "Non-accidental": means arising from an event or effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intend to abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act.

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NEGLIGENT TREATMENT OR MALTREATMENT

DEFINITION

NRS 432B.140 Negligent Treatment or Maltreatment: occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control and supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

In general, to substantiate the following should be present:

A child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, or is without proper care, control and supervision or lacks subsistence, education, shelter, medical care or other care necessary for his/her well-being;

AND

Faults or habits of the person responsible for the child's welfare that caused the above-referenced lack of care;

OR

Refusal to provide when able to do so by the person responsible for the child's welfare;

AND

The child is suffering or at risk of suffering an identifiable harm to their health or welfare.

Examples

The child is in present or impending danger because the parent or caregiver does not exhibit parental capacities to ensure the safety of the child;

OR

Parent/caregivers drug or alcohol abuse impairs his/her ability to supervise, protect and care for the child. Impairment suggests that a parent/ caregiver's use of substances prohibits him/her from being able to adequately perform his/her parental duties. Drug use includes prescription drugs, over the counter drugs as well as traditional street drugs.

1. This also could include an infant who is born affected to prenatal illegal substance abuse or who has withdrawal symptoms, but a positive toxicology test alone is not sufficient to substantiate abuse/neglect. There must be proof of abuse or neglect of the child after the child's birth, such as:
 - Substance abuse issues preventing a caregiver from protecting or providing for the child and/or one or more of the guidelines listed below.
2. Confirmed sexual abuse or exploitation of a child can be substantiated as neglect against the non-offending parent/caregiver if the parent/caregiver knew or reasonably should have known of the sexual abuse or exploitation and failed to protect the child.

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These **guidelines** assist in determining evidence that a child is without proper care, control, supervision, or lacks subsistence, education, shelter, medical care, or other care necessary for his well-being:

1. Food provided is not of sufficient nutritional value and quantity to prevent nutritional deficiencies, illness or developmental issues. (A diet of fast food is in and of itself not neglect. It is necessary to show a relationship between this diet and harm to the child);
2. Clothing is not appropriate for the child's age, sex and the weather. Un-cleanliness is neglect if it impacts the child's health, causes social ostracism and should be considered as an indicator of unsanitary living conditions;
3. The physical living conditions are hazardous and are immediately life-threatening or seriously endangering a child's physical health.

Some examples of these conditions may include:

- The physical structure of the house is dilapidated/decaying and/or falling down; The wiring and plumbing in the house are substandard and exposed;
- There is excessive garbage or rotted food that threatens child safety;
- There is evidence of human or animal waste or decay throughout the living areas; The presence of a human corpse or animal carcass;
- Appliances and heating elements (fireplaces, stoves) are hazardous and accessible to a child;
- Lack of utilities, as it applies to weather conditions (heating, plumbing, electricity), and no alternative or safe living arrangements have been made;
- Guns and other weapons are not locked or kept out of the reach of children; The house is being used to manufacture methamphetamines;
- The parent/caregiver has period of incapacitation due to substance abuse;
- The parent/caregiver uses drugs in front of a child or leaves drug paraphernalia in areas accessible to children;
- The parent/caregiver drives with the child in the vehicle when legally intoxicated or incapacitated by substance abuse; The parent/caregiver leaves the household frequently to purchase or use drugs without regard to child supervision;
- The parent/caregiver allows numerous visitors into and out of the home at all hours of the day and night without regard to their potential harm to the child.

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ABANDONMENT

In general, to substantiate negligent treatment with Abandonment one of the following should be present:

Conduct by a parent which demonstrates that the parent wants to forego their parental rights and obligations over the child;

OR

The parent leaves the child in the care and custody of another without provision for the child's support and without communication for a period of time which indicates that the child's health or welfare is harmed or threatened with harm, as evidenced by the child not being able to acquire needed medical services, education, or finances for food and clothing;

OR

The child is left under circumstances where the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within 60 days after the child is found.

Consider the following factors:

- There are no stated or implied plans by the parent to resume custody of the child and if there are, the parent has not followed through on those plans;
- The parent/caregiver has arranged for a substitute caretaker and this person is unwilling or unable to continue to care for the child, the caregiver's efforts to locate the parent/caregiver are unsuccessful and the parent/caregiver has made no effort to contact the child or caregiver or to retrieve the child as originally planned;
- The parent/caregiver has left the child with the caregiver having no means of providing for the child's education or medical health with a notarized statement for the caregiver having permission to do so. (**temporary guardianship**);
- If this child falls under the jurisdiction of the Safe Haven law.

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EDUCATIONAL NEGLECT

In general, to substantiate negligent treatment with Educational Neglect one of the following should be present:

This is interpreted to be chronic absences, excessive tardiness;

OR

Failure to be enrolled in an appropriate school setting where the student's fundamental right to an appropriate education is being denied or impeded;

AND

The circumstances surrounding the neglect indicate the child's welfare is harmed or threatened with harm through the faults or habits of the parent/caregiver.

Educational NRS guidelines:

NRS 392.040: Attendance required for a child between the age of 7 and 18 years of age, minimum age required for kindergarten and first grade; a waiver from attendance available for a child 6 years of age; developmental screening test required of certain children to determine placement.

NRS 392.122: Children are required to attend school and can only miss 10 days per school year before educational neglect is a consideration. If any of the absences or tardies for the child has been excused by the parent/caregiver or medical staff, the absence is not counted against the child's attendance.

Consider the following factors:

- The child, age 7 to 18 years, fails to attend school due to the faults and habits of the parent/caregivers and the school district has exhausted all available means including, but not limited to, contact with law enforcement, juvenile probation or the truancy program, to compel attendance;
- The frequency and duration of nonattendance;
- Specific efforts made by the school district to rectify the problem;
- Educational Neglect Packet has been submitted by the school district. (Clark County only); Parent/caregiver's response to these efforts;
- Enrollment in an approved home schooling program and compliance with requirements related to home instruction;
- Mitigating circumstances: family emergencies, absence of birth certificates required to enroll child, lack of suitable clothing, lack of immunizations, homelessness, babysitting other siblings, transportation problems and the parent/caregiver's efforts to resolve attendance problems.

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DOMESTIC VIOLENCE

DEFINITION

This is not a separate category of abuse under the child protection statutes in Nevada, but it may be a component in the category of physical abuse, neglect, or mental injury/emotional abuse. If any of these conditions are present, refer to those substantiation guidelines.

In general, to substantiate negligent treatment that involves Domestic Violence, the case decision should be made based:

On the actions of the alleged perpetrator of the domestic violence and their effect on the children causing physical and/or a mental injury;

AND

The capacity and willingness of the non-offending parent/caregiver victim to take appropriate actions to PROTECT the child from physical and/or mental injury.

It is **NOT** acceptable to substantiate against the non-offending parent/caregiver victim solely for the actions of the perpetrator of domestic violence who caused the situation. **ONLY** when a non-offending parent/caregiver victim is given the necessary offers of help and the support system to protect themselves and the child; and the non-offending parent/caregiver acts contrary to that help and support, can the non-offending parent/caregiver be substantiated for failing to protect the child.

If, however, the non-offending parent/caregiver victim has abused or neglected the child, a case decision to substantiate is appropriate.

The following criteria should be considered in making a decision regarding whether the faults or habits of the non-offending parent/caregiver and their ability to protect the child:

- The non-offending parent/caregiver victim's history of using domestic violence shelters or programs;
- The non-offending parent/caregiver victim's history of calling law enforcement or utilizing court services for domestic violence protection orders;
- The non-offending parent/caregiver victim's history of making, or attempting to make, other arrangements to protect the child, such as taking the child to a relative's or a friend's house;
- The non-offending parent/caregiver victim's history and level of cooperation with past CPS services; The non-offending parent/caregiver victim's past efforts to protect the child;
- Safety factors for the child at the present time.

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LACK OF SUPERVISION

In general, to substantiate neglect, with Lack of Supervision the following should be present:

A parent/caregiver has not, will not or is unable to provide sufficient supervision to protect the child from potential harm.

Negligent treatment or maltreatment under this heading, consider the following factors:

Child's competence (**age, maturity, behavior, habits, special needs and reaction to the supervision plan**);

AND

Immediate environment (**home conditions, neighborhood, time of day, duration and the frequency of time without supervision**);

AND

Presence/accessibility of a capable adult to assist with special problems, accessibility to the parent, plan to handle emergencies;

AND

Responsibility and expectations in caring for other children, cooking and using appliances;

AND

Resources available to the parent to improve the supervision plan.

If the child is not alone, the assessment worker should evaluate the competency of the caregiver. Lack of supervision can be substantiated if the quality of the supervision plan places the child at risk of physical harm, sexual or other exploitation. The parent is responsible for the maltreatment inflicted by substitute caregivers or others if the parent knew or should have known the child was at risk of abuse or neglect.

The following can be used to assess the caregiver's competency:

- The caregiver is not mature enough to manage the supervision responsibility;
- The caregiver's faults and habits pose a threat to the child's safety;
- The caregiver is not alert and/or available to meet the child's needs;
- The caregiver has any physical, mental or emotional impairment that places the child at risk of harm.

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MEDICAL NEGLECT

In general, to substantiate negligent treatment with Medical Neglect at least one of the following should be present:

Medical, dental, mental health care, eye care, or any other medical condition if left untreated, of a child, caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm;

OR

The parent/caregiver refuses to obtain and provide medical, dental, mental health, eye care or any other medical condition of a child. Under circumstances which indicate that the child's health or welfare is harmed or threatened with harm and a medical professional has provided a medical statement or opinion that suggests that the failure to provide necessary medical care may have detrimental results to a child's physical or mental health;

OR

The withholding of medical treatment because of religious practices is medical neglect if that medical treatment is, in the opinion of a physician, required to safeguard the child from serious health problems;

OR

The medical treatment of a child may be an emergency, life threatening, or chronic condition, constituting a substantial risk to the child's health and well-being, so that a reasonable person would procure medical attention immediately and the parent/caregiver does not do so.

A child is not neglected, nor is their health or welfare threatened with harm, for the sole reason that their parent/caregiver in good faith selects non-medical remedial treatment, if that treatment is permitted under state law.

Examples of situations that may be Medical Neglect:

- A child is in need of immediate medical care;
- A child is not given prescribed medication which without may endanger the child's life, cause serious illness or is given wrong doses of prescribed medication, too much or too little;
- A child is complaining of extreme pain, for which the parent/caregiver does not seek medical attention; A child's lack of hygiene is causing serious illness;
- The parent/caregiver does not follow through on medical care for the child's serious condition regardless of the reason; The family is unable or unwilling to adequately address the child's unusual medical needs;
- The parent/caregiver does not recognize a child's serious physical health condition.

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PHYSICAL INJURY

DEFINITIONS

NRS 432B.090 Physical Injury: includes, but is not limited to:

- Sprain or dislocation;
- Damage to cartilage;
- A fracture of a bone or the skull;
- An intracranial hemorrhage or injury to another internal organ;
- A burn or scalding;
- A cut, laceration, puncture or bite;
- Permanent or temporary disfigurement; or
- Permanent or temporary loss or impairment of a part or organ of the body.

In general, to substantiate Physical Injury, the following should be considered and should be well documented in the Nevada Initial Assessment, (NIA).

Non-accidental injury caused by the parent/caregiver of the child;

AND

The injury occurred under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

DEFINITIONS

NAC 432B.020 "Non-accidental": *means arising from an event or effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intend to abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act.*

If the parent does not admit inflicting the injury to the child, at least ONE of the following pieces of evidence must be present:

1. The injury is consistent with the child and/or other witness' explanation as to the source of the injury.
2. There is a physical injury for which there is no reasonable or credible explanation and one of the following factors exist:
 - A medical evaluation indicates that the injury is a result of abuse of a non-accidental means;
 - Facts observed by child welfare staff and/or supported by other professionals evaluating the incident, injury and/or condition contradict the caregiver's explanation;
 - Parent/caregiver acknowledges the presence of injuries but pleads ignorance as to the how they occurred; yet the parent/caregiver was the sole provider of care for the child during the time the injuries were sustained.

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EXCESSIVE CORPORAL PUNISHMENT

DEFINITION

NRS 432B.150 Excessive Corporal Punishment: may constitute abuse or neglect: excessive corporal punishment may result in physical or mental injury constituting abuse or neglect of a child under the provisions of this chapter. Refer to these substantiation guidelines

Corporal Punishment is not defined in Chapter 432B of the NRS, but it is defined in Chapters 433 (Mental Health) and 388 (System of Public Instruction) as:

- The intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.
- Excessive is defined in the Black's Law dictionary as "greater than what is usual or proper. A general term for what goes beyond just measure or amount."

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SEXUAL ABUSE

DEFINITIONS

NRS 432B.100 Sexual Abuse: includes act upon a child constituting: incest, lewdness with a child, sado-masochistic abuse, sexual assault, statutory sexual seduction, open or gross lewdness and mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child or removal of a female child from this State for the purpose of mutilating the genitalia of the child.

Definitions of Sexual Abuse under Criminal NRS statute:

- **NRS 201.180:** Incest: persons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void who intermarry with each other or who commit fornication or adultery with each other.
- **NRS 122.020:** Persons capable of marriage: 1.) Except as otherwise provided in this section, a male and a female person, at least 18 years of age, not nearer of kin than second cousins or cousins of the half blood, and not having a husband or wife living, may be joined in marriage. 2.) A male and a female person who are the husband and wife of each other may be rejoined in marriage if the record of their marriage has been lost or destroyed or is otherwise unobtainable. 3.) A person at least 16 years of age but less than 18 years of age may marry only if the person has the consent of: (a) Either parent; or (b) Such person's legal guardian.
- **NRS 201.230:** Lewdness with a child under 14 years: a person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.
- **NRS 201.262:** Sado-masochistic abuse: flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or the condition of being fettered, bound or otherwise physically restrained.
- **NRS 200.366:** Sexual assault: a person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct, is guilty of sexual assault.
- **NRS 200.368:** Statutory sexual seduction: sexual assault that is specifically prohibited by statute, including NRS 201.540 which prohibits sexual conduct between certain employees of a school, or volunteers at school and a pupil.
- **NRS 201.210:** Open or gross lewdness with a minor.
- **NRS 200.5083:** Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from the State for the purpose of mutilation the genitalia of the child. (a) The person engaging in the conduct believes that the conduct is necessary or appropriate as a matter of custom, ritual or standard practice; or (b) the child, the parent or legal guardian of the child, or another person legally responsible for the child has consented to the conduct.

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SEXUAL EXPLOITATION

DEFINITIONS

NRS 432B.110 Sexual Exploitation: means to;

- Allow, force or encourage a child to solicit for or engage in prostitution;
- To view pornographic film or literature; and to
- Engage in filming, photographing or recording on videotape; or
- Posing, modeling, depiction or a live performance before an audience which involves the exhibition of a child's genital or any sexual conduct with a child as defined in (NRS 200.700).

In general, the following should be considered and well documented in the NIA to substantiate Sexual Exploitation:

Credible statement (by the child or witness) describing sexual abuse by a person responsible for the child's welfare;

AND/OR

Physical evidence (e.g., a medical finding consistent with sexual abuse, DNA evidence, pornographic material available to the child or video or pictures depicting the child posing, modeling, or a live performance before an audience which involves the exhibition of a child's genitals for any sexual conduct with a child).

If only **ONE** of the above factors is present, consider at least **ONE** additional piece of evidence:

- Admission by the alleged perpetrator;
- Expert opinion which is normally supplied by one or more expert witnesses;
- Behavioral indicators (e.g. sexually precocious knowledge) supported by a professional with sufficient background and knowledge of the dynamics of sexual abuse;
- Circumstantial evidence is a collection of facts that, when considered together, can be used to infer a conclusion about something unknown. Circumstantial evidence is usually a theory, supported by a significant quantity of corroborating evidence.

A criminal conviction for sexual abuse of a child is sufficient credible evidence to substantiate sexual abuse.