

Barton Child Law & Policy Clinic	Emory University School of Law 1301 Clifton Road Atlanta, Georgia 30322	Phone: 404.727.6664 Fax: 404.727.7851 E-mail: bartonclinic.emory@gmail.com Internet: www.childwelfare.net
---	--	--

Adding "Emotional Abuse" to the Georgia Juvenile Code

I. Introduction

A frustrated father intentionally breaks his child's arm by twisting it hard. The treating physician observes the fracture, can see that the injury is not accidental, and reports the abuse. Under these facts, the father has clearly committed child abuse that would bring the family under the deprivation jurisdiction of Georgia's juvenile courts. However, if a similarly frustrated parent is severely emotionally abusive with his or her child, most professionals interacting with the child would not recognize this as child abuse under our law. Thus, this second child is much less likely to get the protection of the juvenile court, even though the effects of emotional abuse can linger long after broken bones have healed.

Recent studies show that emotional abuse can have devastating, long term impact on the physiology of a child's brain, and seriously impair the child's ability to develop healthy relationships even into adulthood.¹ Definitions of emotional abuse vary, but commonly include an injury or potential injury to a child's mental and emotional health or development, evidenced by the child's inability to function at his or her normal range of performance and behavior.² Under the current Georgia juvenile code, parents or caretakers are required to provide a child with the proper "care and control necessary for the child's physical, mental or emotional health or morals."³ However, the current juvenile code and Georgia case law do not provide any further definition or explanation of what is required to protect a child's mental or emotional health or of how to determine when a child's emotional health is at risk. Further, Georgia's statute requiring certain professionals interacting with children to report suspected child abuse does not include emotional abuse in its definition of child abuse.⁴

The Proposed Model Code ("PMC") recently released by the Juvenile Law Committee of the Young Lawyer's Division of the State Bar of Georgia attempts to provide children greater protection from emotional abuse.⁵ The PMC includes a new "Definitions" section, 15-11-302, expanding and clarifying the definitions of key terms used in the juvenile code. This section defines child abuse for the purpose of deprivation, and defines the term "abuse" to include "emotional

¹ See *infra* notes 17-29 and accompanying text.

² See *infra* notes 30-36 and accompanying text.

³ O.C.G.A. § 15-11-2(8)(A) (2003).

⁴ O.C.G.A. § 19-7-5(b)(3) (2008) (defining child abuse to include physical injury, neglect and sexual abuse and exploitation). Georgia is one of only two states that do not include emotional abuse in their mandatory reporting statutes. See, CHILD WELFARE INFORMATION GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT: SUMMARY OF STATE LAWS 3 (Current through 2007), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/defineall.pdf.

⁵ Soledad A. McGrath, Velma Cowen Tilley & Lucy S. McGough, State Bar of Georgia Young Lawyers Division Juvenile Law Committee, THE JUVENILE CODE REVISION PROJECT: A MODEL CODE FOR GEORGIA, art. 3, p. 3 (2008) [hereinafter Juvenile Code Revision Project].

abuse.”⁶ This white paper examines current Georgia law and how the PMC would seek to change that law. Next it analyzes the scientific research the effects of emotional abuse in childhood and the ways other states and government agencies have defined emotional abuse. Finally, it applies this research and the experience of other states and agencies to the PMC provisions. This paper concludes by recommending that emotional abuse be explicitly included in Georgia’s definition of child abuse and deprivation, for both juvenile court and child abuse reporting purposes.

II. Current Georgia Law on Emotional Abuse

The provisions and definitions in Georgia law of terms relating to child abuse and emotional abuse are inconsistent and unclear. The protection of children from abuse and specifically emotional abuse varies across the Georgia Code. The “Cruelty to Children” statute in the Georgia criminal code prohibits causing a child excessive physical or mental pain or allowing a child to witness a forcible felony, battery, or family violence.⁷ Violating this statute would result in a criminal prosecution but not necessarily a deprivation case.

The mandatory reporting statute in the domestic relations portion of the Code requires persons in a wide range of professional positions to report to child protective services any suspected abuse of children, but emotional abuse is not included in the definition of abuse.⁸ Instead, it specifies only physical injury, neglect, and sexual abuse and exploitation.⁹ Professionals such as teachers, doctors, psychologists, childcare providers, and others must make a report if they “have reasonable cause to believe that a child has been abused.”¹⁰ These reports are then investigated by the Department of Family and Children Services (DFCS). If the report is substantiated and DFCS believes intervention is necessary to protect the child, a deprivation petition may be brought in juvenile court.

However, as discussed in the introduction, the juvenile code’s definition of deprivation does not specifically mention child abuse and it does not make any reference to the mandatory reporting statute. Instead, it defines a child as deprived if he or she “[i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s

⁶ *Id.*

⁷ O.C.G.A. § 16-5-70 (2008).

⁸ O.C.G.A. § 19-7-5(b)(3) (2008).

⁹ *Id.* Under this definition, physical injury, neglect and sexual exploitation are only child abuse if committed by the child’s parent or caretaker. Sexual abuse, on the other hand, is child abuse regardless of the perpetrator’s relationship to the child. *Id.*

¹⁰ O.C.G.A. § 19-7-5(c)(1).

physical, mental, or emotional health or morals.”¹¹ This definition makes clear that a parent is responsible for a child’s emotional well-being. However, neither the juvenile code nor Georgia case law provides guidance about how to establish when a parent has breached his or her responsibility for a child’s emotional health.

III. The PMC’s Proposed Change

The PMC seeks to protect children’s wellbeing, which includes ensuring each child the care necessary to secure the child’s emotional and mental welfare.¹² To better secure the child’s emotional welfare the PMC specifically includes protection against “abuse” and defines abuse to include emotional abuse.¹³ Under PMC section 15-11-302(8), a “deprived child” is a child who “has been abused or neglected.”¹⁴ “Abuse” includes “emotional abuse,”¹⁵ which is defined as:

any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional.¹⁶

“A person responsible for the care of the child” is not further defined in the Model Code.

IV. Analysis

A. The Potential Effects of Emotional Abuse

Emotional abuse has the potential to create lasting, damaging effects on the child. A study by the Centers for Disease Control and Prevention on the effects of stress on children describes a “toxic” level of stress that can create permanent changes in child brain development.¹⁷ Intense, adverse experiences

¹¹ O.C.G.A. § 15-11-2(8)(A) (2008).

¹² P.M.C. § 15-11-101 (“The purpose of this Code is to secure for each child who comes within the jurisdiction of the juvenile courts of this state such care and guidance, preferably in his or her own home, as will secure the child’s moral, emotional, mental and physical welfare....”).

¹³ P.M.C. § 15-11-302(2).

¹⁴ P.M.C. § 15-11-302(8).

¹⁵ P.M.C. § 15-11-302(2).

¹⁶ P.M.C. § 15-11-302(12).

¹⁷ Jennifer S. Middlebrooks & Natalie C. Audage, U.S. DEPT. OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL, THE EFFECTS OF CHILDHOOD STRESS ON HEALTH ACROSS THE

cause the brain to produce “stress hormones,” which enable the body to respond to any perceived threats by “fight or flight.”¹⁸ During short periods of danger the production of these hormones is necessary for survival. However, during prolonged adverse experiences, such as emotional abuse or neglect, these stress hormones “can literally be toxic to developing brain architecture.”¹⁹ “The essential feature of toxic stress is the absence of consistent, supportive relationships to help the child cope and thereby bring the physiological response to threat back to baseline.”²⁰ The effects of toxic stress include diminished learning ability and memory, an inability to deal with stress, and violence.²¹ The damage caused by stress is the same whether the source of the stress is physical abuse, sexual abuse, emotional abuse, or neglect.²²

Besides causing physical damage to the brain, emotional abuse can also impair the psychological and emotional development of children. Different child development theories posit that for children to develop healthily their basic needs require fulfillment.²³ After physical needs, such as food and shelter, a child’s most basic needs are psychological, which include safety, love, a sense of belonging, and esteem.²⁴ Emotional abuse leaves these psychological needs unfulfilled, and directly inhibits the child’s ability to develop beyond the most basic stage of emotional development.²⁵ Emotional abuse in early childhood can cause “emotional retardation” where the person has a diminished capacity to feel love, empathy, sorrow or guilt.²⁶ Also, emotional abuse adversely impacts a child’s formation of healthy attachments with his or her caregivers, which in turn negatively affects the child’s ability to develop healthy relationships later in life.²⁷

To prevent these lasting, damaging effects, early intervention for children vulnerable to emotional abuse is crucial. A report from the National Scientific Council on the Developing Child (NSCDC) found that “later remediation for highly vulnerable children will produce less favorable outcomes and cost more than appropriate intervention at a younger age.”²⁸ Based on this research the NSCDC

LIFESPAN 4 (2008) [hereinafter Effects of Childhood Stress], available at http://www.cdc.gov/ncipc/pub-res/pdf/Childhood_Stress.pdf.

¹⁸ NATIONAL SCIENTIFIC COUNCIL ON THE DEVELOPING CHILD, THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 9 (2007), [hereinafter Science of Early Childhood], available at http://www.developingchild.net/pubs/persp/pdf/Science_Early_Childhood_Development.pdf.

¹⁹ *Id.*

²⁰ *Id.* at 10.

²¹ Effects of Childhood Stress, *supra* n. 17, at 4.

²² *Id.*

²³ Sana Loue, *Redefining the Emotional and Psychological Abuse and Maltreatment of Children*,

²⁶ J. LEGAL MED. 311, 319, 320 (September 2005).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Catherine Dixon, *Best Practices in the Response to Child Abuse*, 25 MISS. C. L. REV. 73, 76, 77 (Fall 2005).

²⁷ *Id.*

²⁸ Science of Early Childhood, *supra* n. 18, at 2.

recommends that policies that establish nurturing relationships with a primary caregiver be given the highest priority.²⁹

B. Definitions and Standards for Identifying Emotional Abuse

Problematically, even though emotional abuse is recognized as a destructive factor in child development, identification of the emotional abuse of children is difficult.³⁰ Contributing to this difficulty are the inconsistent and varied definitions of emotional abuse.³¹ Within the fields of psychology and child care research, emotional abuse has been defined as: a harmful relationship between parent and child; an act or omission which is psychologically damaging; incidents that convey to children that they are worthless or unwanted; or as the harm, injury, or damage itself to the child's psychological, mental or emotional development.³²

The U.S. Department of Health and Human Services (DHHS) recognizes two different standards to identify children considered to be maltreated: (1) the Harm Standard, which identifies children as maltreated only if they have already experienced a demonstrable harm from abuse or neglect; and (2) the Endangerment Standard, which includes as maltreated children, "children who experienced abuse or neglect that put them at risk of harm" together with the already-harmed children.³³ The advantage of the Harm Standard is that it is objective.³⁴ The disadvantage is that it is narrow and may exclude instances where child maltreatment is occurring, but where the harm is not yet evident.³⁵ To counter this disadvantage the DHHS created the Endangerment Standard which

allows children who were not yet harmed by maltreatment to be counted in the abused and neglected estimates if a non-CPS person considered them to be endangered by maltreatment or if their maltreatment was substantiated or indicated in a CPS investigation. In addition, the Endangerment Standard is slightly more lenient than the Harm Standard concerning the identity of allowable perpetrators in that it includes maltreatment by adult caretakers other than parents³⁶

A requirement of harm to justify state action may result in inaction, "as the harm may not be evident until years after the abuse has occurred."³⁷ The

²⁹ *Id.* at 10, 11.

³⁰ Loue, *supra* n. 23, at 311.

³¹ *Id.*

³² *Id.* at 313-315.

³³ Andrea J. Sedlak & Diane D. Broadhurst, U.S. DEPT. OF HEALTH AND HUMAN SERVICES, THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (1996).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Loue, *supra* n. 23, at 336.

Endangerment Standard provides authorities the latitude necessary to identify children who are at risk of serious emotional and physiological damage due to emotional abuse, before the harm or injury occurs.

C. Analysis of PMC § 15-11-302's Definition of "Emotional Abuse"

The research demonstrating the damaging, lasting effects of emotional abuse supports the addition of emotional abuse to the definition of abuse as provided in the PMC. The proposed definition of emotional abuse follows the Harm Standard described above. However, requiring a mental injury could be counterproductive to the PMC's stated purpose of securing a child's emotional health if a court or government agency must wait until an injury manifests before intervention is allowed.

The proposed definition of "emotional abuse" as an injury is similar to many states' juvenile code definitions.³⁸ However several states define emotional abuse, not as an injury, but as an act. For example, Connecticut defines emotional abuse as "emotional maltreatment,"³⁹ and Nebraska defines emotional abuse as "knowingly, intentionally, or negligently causing or permitting a minor child to be placed in a situation that endangers his mental health."⁴⁰ Colorado includes in its definition of emotional abuse: "a *substantial risk of impairment* of the child's intellectual or psychological functioning or development."⁴¹ Florida's definition provides significant protection and "guidance to those attempting to discern whether emotional or psychological abuse is occurring."⁴² Florida defines "abuse" as "any willful act or threatened act that results in any mental injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions."⁴³

The current definition in the Georgia Code of a "deprived child" as a child without the proper care necessary for the child's mental or emotional health actually provides courts and agencies greater latitude to intervene than the narrower PMC definition of "emotional abuse." O.C.G.A. § 15-11-2(8)(A) allows

³⁸ See ALA. CODE § 26-14-1(1)-(3) (1993); ALASKA STAT. § 47.17.290 (1987); CAL PENAL CODE § 11166.05 (2005); FLA. ANN. STAT. § 39.01 (2007); IDAHO CODE § 16-1602 (2008); MD. FAM. LAW § 5-701 (2007); MICH. COMP. LAW § 722.622 (2007); OHIO REV. STAT. § 2151.011 (2007); OR. REV. STAT. § 419B.005 (2005); R.I. GEN. LAWS § 40-11-2 (2006).

³⁹ CONN. GEN. STAT. § 46b-120 (2007); see also IND. ANN. CODE § 31-34-1-2 (2007) (A child is in need of services "if the child's mental health is seriously endangered by the act or omission of the child's parent, guardian, or custodian"); 2006 KAN. A.L.S. CH. 200, § 2; LA CH. CODE. art. 603 (1977).

⁴⁰ NEB. REV. STAT. § 28-710 (2005).

⁴¹ COLO. REV. STAT. § 19-1-103 (2007) (emphasis added); see also ILL. § COMP. STAT. CH. 325, § 5/3 (2008); VA ANN. CODE § 63.2-100 (2008).

⁴² Loue, *supra* n. 23, at 322.

⁴³ FLA. STAT. ANN. § 39.01(2) (2003).

juvenile courts to consider both the parental care, which arguably includes both acts or omissions, as well as the emotional health of the child. At present, the Georgia Code does not require juvenile courts to wait for the manifestation of a mental injury before concluding a child is emotionally deprived. Thus, the adoption of the PMC's definition of emotional abuse could constrict the courts' ability to secure children's emotional welfare.

On the other hand, the PMC definition provides a more objective standard than would an Endangerment Standard. One of the concerns that is sometimes raised regarding inclusion of emotional abuse in the definition of child abuse is that it may be interpreted too broadly, and sweep families who are not truly abusive into the juvenile court system. By requiring harm to be shown, the PMC provision would ensure that, for example, an occasional verbal outburst with no lasting effects would not be considered child abuse.

V. Recommendations and Conclusions

Because of the serious potential damage resulting from emotional abuse and the lack of consistency and clarity of the definition of emotional abuse in the current Georgia Code, a clear definition of emotional abuse should be included in both the definition of deprivation in the juvenile code and the definition of child abuse in the mandatory reporting statute. The PMC provision provides such a definition, and should be considered. However, the definition of "emotional abuse" proposed by the PMC may not be adequate to prevent the harm caused by emotional abuse as the proposed definition defines emotional abuse as "mental injury." The current definition of a "deprived child" as a child without the proper care necessary for the child's mental or emotional health may actually provides courts greater latitude in securing the emotional welfare of child than the PMC definition of "emotional abuse." Georgia policy makers and legislators should carefully consider how to best define emotional abuse to protect the emotional wellbeing of children, while still providing a standard that can be objectively applied.

Acknowledgements

The Barton Child Law and Policy Clinic would like to thank all of those who gave their time, insight, and work to this paper. In particular, we would like to thank:

Lead Author: Brad Glick, Barton Child Law and Policy Clinic Student, Spring 2008

Editor: Kirsten Widner, J.D.

Contributor: Jessica Smith, Emory Summer Child Advocacy Program Intern, Summer 2008