
Title	Northern Lakes CMH Policies
Part 106	Supports and Services – NLCMH Provided and Contract
Subpart J	Mental Health Code Protected Recipient Rights
Policy No.	106.1025
Subject	Freedom from Abuse and Neglect (RR)

Applicability

Policy applies to all NLCMH activities, operations and sites and to all Workforce Members except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that has elected to adopt and adhere to NLCMH policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

Policy

The abuse or neglect of a recipient by a Workforce Member, contract Workforce Member, volunteer of Northern Lakes CMH or a contract provider is strictly prohibited pursuant to the Michigan Mental Health Code (PA 258 of 1974, MCL 330.1722) and shall subject the Workforce Member, volunteer, or agent of a provider to disciplinary action, up to and including termination.

STANDARDS

A. RIGHT TO FREEDOM FROM ABUSE AND NEGLECT:

1. A recipient shall not be subjected to abuse or neglect.
2. All Workforce Members, contract Workforce Members, and volunteers are responsible for protecting recipients from abuse or neglect and for understanding the definitions and adhering to reporting requirements established by this policy and procedure.

B. RECOGNIZING ABUSE AND NEGLECT:

The terms Abuse and Neglect have specific legal meaning depending on the context in which they occur. This policy addresses the following types of Abuse and Neglect:

1. Recipient Abuse or Neglect as defined by the Mental Health Code and the Michigan Department of Community Health Administrative Rules, specific definitions of which are outlined in EXHIBIT A.

2. Criminal Abuse of a Recipient as defined by the Michigan Penal Code, specific definitions of which are outlined in EXHIBIT B.
3. Vulnerable Adult Abuse or Neglect, as defined by the Michigan Social Welfare Act, and the Michigan Penal Code, specific definitions of which are outlined in EXHIBIT C.
4. Child Abuse or Neglect, as defined by the Michigan Child Protection Act and the Michigan Penal Code, specific definitions of which are outlined in EXHIBIT D.

C. REPORTING ABUSE AND NEGLECT:

1. All incidents of recipient abuse or neglect, as defined by this policy (refer to EXHIBIT A), that are apparent to or suspected by an Workforce Member, contract Workforce Member or volunteer shall be **immediately reported**, both orally and in writing, directly to the Northern Lakes CMH Office of Recipient Rights in accordance with the procedures section of this policy.
2. The terms "apparent" or "suspected" shall be construed to mean any and all incidents that the Workforce Member, contract Workforce Member, or volunteer has either witnessed or received reports of that constitute, or may constitute abuse or neglect as defined by this policy, whether or not the person believes the allegation to be true.
3. Failure to report recipient abuse and neglect in accordance with this policy and procedure shall subject the Workforce Member to administrative and potentially disciplinary action.
4. Workforce Members, contract Workforce Members, and volunteers are also required to make an immediate oral report in person or by phone, followed by a written report within 24 hours, directly to the Northern Lakes CMH Office of Recipient Rights in the event of the criminal or sexual assault of a recipient by any person, or of the accidental or unexplained death or serious injury of a recipient.
5. As also mandated by law, Workforce Members, contract Workforce Members, and volunteers are required to make an oral and written report to the appropriate law enforcement agency when there is reasonable cause to suspect the criminal abuse of a recipient by any person (refer to EXHIBIT B).
6. As also mandated by law, Workforce Member, contract Workforce Members, and volunteers are required to make an oral and written report to the Michigan Department of Human Services when there is reasonable cause to suspect the abuse or neglect of a child or a vulnerable adult by any person (refer to EXHIBITS C and D).
7. The Recipient Rights Officer may direct that such reports be made.

D. INVESTIGATION OF ABUSE AND NEGLECT:

1. The Office of Recipient Rights shall initiate immediate investigation of reports of recipient abuse or neglect through a prompt and thorough review of the allegations and in a

manner that is fair to both the recipient alleged to have been abused and the charged Workforce Member, volunteer, or agent of a provider.

2. Staff of the Office of Recipient Rights shall be given unimpeded access to all Workforce Members, all recipients, all provider sites, and any evidence determined as necessary by the office to carry out a thorough and independent investigation of allegations of abuse or neglect or allegations of other of rights violations. Workforce Members, contract Workforce Members, and volunteers are required to be available, cooperate, and respond as requested, both orally and in writing, to questions put forth by investigators from the Office of Recipient Rights and other authorized investigative agencies.

E. REMEDIATION OF ABUSE AND NEGLECT VIOLATIONS:

1. Appropriate disciplinary action shall be taken against those who have engaged in abuse or neglect.
1. Appropriate remedial action will be taken as soon as is administratively possible, consistent with timeframe recommended by the Office of Recipient Rights with documentation submitted to the office.
2. The Chief Executive Officer and the Recipient Rights Officer will monitor the remediation of all substantiated violations of abuse or neglect.

F. TRAINING

All Workforce Members, contract Workforce Members, and volunteers of Northern Lakes CMH or of a contract provider shall receive annual training in abuse and neglect definitions, prevention, identification, reporting, and investigation procedures.

Procedures

I. IDENTIFYING AND REPORTING ABUSE AND NEGLECT:

A Workforce Member, contract Workforce Member, volunteer, or agent of Northern Lakes CMH or of a contracted provider who witnesses or receives a report of the abuse or neglect of a recipient shall do all of the following:

1. Whenever possible, safeguard the recipient from continuing abuse and/or neglect by providing appropriate medical care, comfort, and support to the recipient; and
2. Immediately report the incident to the Workforce Member or volunteer's supervisor unless either the supervisor is unavailable or the Workforce Member has reason to believe that the supervisor has abused or neglected the recipient, in which case the Workforce Member or volunteer shall, if possible, report to another administrator; and

3. Immediately report to the appropriate investigative offices or agencies as follows (*Note: reports may be required to be made simultaneously - refer to ATTACHMENT A, ABUSE/NEGLECT REPORTING REQUIREMENTS FLOWCHART):

**II. RECIPIENT ABUSE OR NEGLECT (Refer to EXHIBIT A for definitions) –
REPORT TO THE NORTHERN LAKES CMH OFFICE OF RECIPIENT RIGHTS:**

1. When a Workforce Member, contract Workforce Member, or volunteer witnesses, discovers, or otherwise becomes aware of, the apparent or suspected abuse or neglect of a recipient by another Workforce Member, contract Workforce Member, or volunteer as defined by this policy, the Workforce Member or volunteer shall immediately make an oral report to the Northern Lakes CMH Office of Recipient Rights (ORR) in person or by phone. The oral report to the Recipient Rights Office may be left on voice mail if the incident occurred after regular business hours. This must be followed by a written report submitted directly to the ORR within 24 hours.
2. A Workforce Member, contract Workforce Member, or volunteer must also immediately make an oral report to the ORR in person or by phone, followed by a written report within 24 hours, when the Workforce Member, contract Workforce Member, or volunteer witnesses, discovers, or otherwise becomes aware of the criminal abuse, accidental or unexplained death, or the serious injury of a recipient.
3. The oral report shall include:
 - a. The name of the recipient; and
 - b. The name of the alleged perpetrator; and
 - c. The date, time, and location the alleged abuse or neglect occurred; and
 - d. The date, time, and location the abuse or neglect was discovered; and
 - e. The specific nature of the abuse or neglect; and
 - f. What actions were taken to protect the recipient from further harm; and
 - g. And any other information related to the incident.
4. The written report shall be made on an agency approved incident report form (copied to the ORR) and also include the above listed information.
5. The Workforce Member, contracted Workforce Member, or volunteer may, but is not required to, file a formal recipient rights complaint in addition to the incident report. The reporting individual is, as required by other policy, to forward complaints made by recipients or other individuals on behalf of recipients immediately to the Office of Recipient Rights.

**III. CRIMINAL ABUSE OF A RECIPIENT (Refer to EXHIBIT B for definitions) –
REPORT TO LAW ENFORCEMENT AND THE OFFICE OF RECIPIENT RIGHTS:**

1. Pursuant to the Michigan Mental Health Code (PA 258 of 1974, MCL 330.1723) if a Workforce Member or volunteer has reasonable cause to suspect the criminal abuse of a recipient that individual shall immediately make an oral report, by telephone or otherwise, of the suspected criminal abuse to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the state police.

2. Within 72 hours after making the oral report, the reporting individual shall file a written report with the law enforcement agency to which the oral report was made, with the chief administrator of the facility or agency responsible for the recipient, and to the Northern Lakes CMH Office of Recipient Rights.
3. The written report shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred. The report shall become a part of the recipient's clinical record. Before the report becomes part of the recipient's clinical record, the names of the reporting individual and the individual accused of committing the criminal abuse, if contained in the report, shall be deleted.
4. The identity of an individual who makes a report under this section is confidential and is not subject to disclosure without the consent of that individual or by order or subpoena of a court of record. An individual acting in good faith who makes a report of criminal abuse against a recipient is immune from civil or criminal liability that might otherwise be incurred. The immunity from civil or criminal liability granted by this subsection extends only to acts done under this section and does not extend to a negligent act that causes personal injury or death.
5. An individual who makes a report to law enforcement in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report.
6. Workforce Members and volunteers shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
7. The report does not preclude Northern Lakes CMH from investigating reported claims of criminal abuse of a recipient by its Workforce Members or contracted Workforce Members, and from taking or ensuring appropriate disciplinary action against its Workforce Members or contracted Workforce Members based upon that investigation.
8. Workforce Members, volunteers, or contracted Workforce Members are not required to report suspected criminal abuse to law enforcement if either of the following applies:
 - a. The individual has knowledge that the incident of suspected criminal abuse has been reported to the appropriate law enforcement agency as provided in this section.
 - b. The suspected criminal abuse occurred more than 1 year (for adults), and 2 years (for children) before the date on which it first became known to an individual who would otherwise be required to make a report.
9. These procedures do not require an individual required to report suspected criminal abuse to disclose confidential information or a privileged communication except under 1 or both of the following circumstances:
 - a. If the suspected criminal abuse is alleged to have been committed or caused by a mental health professional, an individual employed by or under contract to the department, a licensed facility, or a community mental health services program, or an individual employed by a service provider under contract to the department, a licensed facility, or a community mental health services program.

- b. If the suspected criminal abuse is alleged to have been committed in 1 of the following:
 - i. A state facility or a licensed facility.
 - ii. A county community mental health services program site.
 - iii. The work site of an individual employed by or under contract to the department, a licensed facility, or a community mental health services program or a provider under contract to the department, a licensed facility, or a community mental health services program.
 - iv. A place where a recipient is under the supervision of an individual employed by or under contract to the department, a licensed facility, a community mental health services program, or a provider under contract to the department, a licensed facility, or a community mental health services program.

IV. CHILD OR VULNERABLE ADULT ABUSE OR NEGLECT (refer to EXHIBITS C and D for definitions) - REPORT TO THE DEPARTMENT OF HUMAN SERVICES:

- 1. A Workforce Member, contracted Workforce Member, or volunteer who has reasonable cause to suspect the abuse or neglect of a child by any person, as defined by applicable statutes, shall immediately make an oral report, followed by a written report within 24 hours to the appropriate Department of Human Services (DHS) Child Protective Services office.
- 2. A Workforce Member, contracted Workforce Member, or volunteer who has reasonable cause to suspect the abuse or neglect of a vulnerable adult by any person, as defined by applicable statutes, shall immediately make an oral report to the appropriate Department of Human Services (DHS) Adult Protective Services office.
- 3. Any formal written reports of Child or Vulnerable Abuse or Neglect to DHS shall not be placed in the recipient's clinical record, but forwarded to the NLCMH CEO and kept in a secure location.
- 4. If the abuse or neglect is of a minor or vulnerable recipient who is a resident of a licensed facility, immediately make a report to the appropriate licensing consultant, as required by the Michigan Public Health Code (PA 368 of 1978) and the applicable licensing rules.

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June, 15, 2009
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August 19, 2009
August 31, 2010

EXHIBITS

- A. Recipient Abuse and Neglect definitions**
- B. Criminal Abuse definitions**
- C. Vulnerable Adult Abuse and Neglect definitions**
- D. Child Abuse and Neglect definitions**

EXHIBIT A: RECIPIENT ABUSE AND NEGLECT DEFINITIONS.

ABUSE AND NEGLECT AS DEFINED BY THE MICHIGAN MENTAL HEALTH CODE (PA 258 OF 1974):

Sec. 100a. (2) **"Abuse"** means nonaccidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital or by an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

Sec. 100b. (18) **"Neglect"** means an act or failure to act committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital; a service provider under contract with the department, community mental health services program, or licensed hospital; or an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

ABUSE AND NEGLECT AS DEFINED BY MICHIGAN DEPARTMENT OF COMMUNITY HEALTH ADMINISTRATIVE RULE 7001:"Abuse class I" means a nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

"Abuse class II" means any of the following:

(i) A nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient.

(ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

(iii) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient.

(iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.

(v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

"Abuse class III" means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

"Neglect class I" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.

(ii) The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

"Neglect class II" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non serious physical harm or emotional harm to a recipient.

(ii) The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

"Neglect class III" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm or sexual abuse.

(ii) The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

DEFINITIONS:

"Bodily function" means the usual action of any region or organ of the body.

"Emotional harm" means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.

"Exploitation" means an action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.

"Nonserious physical harm" means physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

"Physical management" means a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.

"Protective device" means a device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined in subdivision (q) of this subrule.

"Provider" means the department, each community mental health services program, each licensed hospital, each psychiatric unit, and each psychiatric partial hospitalization program licensed under section 137 of the act, their employees, volunteers, and contractual agents.

"Serious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

"Sexual abuse" means any of the following:

(i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient.

(ii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient.

(iii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

"Sexual contact" means the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:

- (i) Revenge.
- (ii) To inflict humiliation.
- (iii) Out of anger.

"Sexual harassment" means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

"Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following

circumstances:

- (i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
- (ii) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
- (iii) The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
- (iv) The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

EXHIBIT B: CRIMINAL ABUSE DEFINITIONS

CRIMINAL ABUSE, AS DEFINED BY THE SECTION 700(a) OF THE MICHIGAN MENTAL HEALTH CODE (PA 258 of 1974):

- A. An assault that is a violation or an attempt or conspiracy to commit a violation of sections 81 to 90 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 to 750.90 of the Michigan Compiled Laws. Criminal abuse does not include an assault or an assault and battery that is a violation of section 81 of Act No. 328 of the Public Acts of 1939, being section 750.81 of the Michigan Compiled Laws, and that is committed by a recipient against another recipient.
- B. A criminal homicide that is a violation or an attempt or conspiracy to commit a violation of section 316, 317, or 321 of Act No. 328 of the Public Acts of 1931, being sections 750.316, 750.317, and 750.321 of the Michigan Compiled Laws.
- C. Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 520b to 520e or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b to 750.520e and 750.520g of the Michigan Compiled Laws.
- D. Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.145n of the Michigan Compiled Laws.
- E. Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws.

CRIMINAL ABUSE AS DEFINED BY THE MICHIGAN PENAL CODE (PA 328 of 1931):

Violations of Sections 81 to 90 of the Michigan Penal Code; including an attempt or a conspiracy to commit a violation of Sections 81 to 90.

Note: Abuse does not include an assault which is a violation of Section 81 of the Michigan Penal Code committed by a recipient or resident against another recipient or resident unless the battery results in serious physical injury.

Note: A brief explanation of the violation follows each section where necessary for the sake of understanding. These explanations are not exact definitions from the Penal Code.

Sec. 750.81 Assault/Assault and Battery

Assault – Any willful attempt or threat to inflict injury upon the person of another when coupled with an apparent present ability to do so and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm.

Assault and battery – Any unlawful touching of another which is without justification or excuse. Battery requires physical contact of some sort (bodily injury or offensive touching).

Sec. 750.81A Aggravated Assault

An assault committed with the intention of committing some additional crime or one attended with circumstances of peculiar outrage or atrocity. A person is guilty of aggravated assault if he/she: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a dangerous or deadly weapon.

Sec. 750.82 Felonious Assault (Deadly Weapon)

An unlawful attempt or offer to do bodily harm without justification or excuse by use of an instrument calculated to do harm or cause death. An aggravated form of assault as distinguished from a simple assault, e.g., pointing a loaded gun at another is an assault with a dangerous/deadly weapon.

Sec. 750.83 Assault With Intent to Murder

To constitute this assault, specific intent to kill, actuated by malice aforethought must occur.

Sec. 750.84 Assault With Intent to Do Great Bodily Harm Less Than Murder

Sec. 750.86 Assault With Intent to Maim

An assault which inflicts upon another any injury which deprives that person of the use of any limb or member of the body; or to seriously disfigure or disable.

Sec. 750.87 Assault With Intent to Commit (A Felony)

An example would be inflicting bodily injury with an accompanying intent to kidnap or rape the victim.

Sec. 750.88 Assault With Intent to Rob While Unarmed

Sec. 750.89 Assault With Intent to Rob While Armed

Criminal homicide in violation of Sections 316, 317, or 321 of the Michigan Penal Code, including an attempt or a conspiracy to commit a violation of Sections 316, 317, or 321.

Sec. 750.316 First Degree Murder

All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbing or burglary are commonly deemed murder of the first degree.

Sec. 750.317 Second Degree Murder

All other kinds of murder not deemed in the first degree.

Sec. 750.321 Manslaughter

The unlawful killing of a human without malice and without premeditation and deliberation. Criminal sexual conduct in violation of Sections 520b to 520e, or assault with intent to commit criminal sexual conduct in violation of Section 520g of the Michigan Penal Code, including an attempt or conspiracy to commit a violation of Sections 520b through 520e or Section 520g.

CRIMINAL SEXUAL CONDUCT AS DEFINED BY THE MICHIGAN PENAL CODE (PA 328 of 1931):

1st Degree CSC:

MCLA 750.520b

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exist:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
 - (i) The actor is a member of the same household of the victim.
 - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
 - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (f) (I) to (v).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for the purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

2nd Degree CSC:

MCLA 750.520c

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mental incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in sections 520b (1) (f) (i) to (v).

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1) (f) (i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

3rd Degree CSC:

MCLA 750.520d

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1) (f) (i) to (v).

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

4th Degree CSC:

MCLA 750.520e

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and any of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section (1) (f) (i) to (v).

(b) The actor knows or has reason to know that the victim is incapable, mentally incapacitated, or physically helpless.

(c) That other person is under the jurisdiction of the department of corrections, and the actor is an employee or a contractual employee or volunteer with, the department of

corrections who has knowledge that the other person is under the jurisdiction of the department of corrections.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision; this does not indicate that the victim is mentally incompetent.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years, or by a fine of not more than \$500.00 or both.

CRIMINAL ABUSE DEFINITIONS:

MCLA 750.520a (as amended)

(a) "Actor" means a person accused of criminal sexual conduct.

(b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:

(i) It originated before the person became 18 years of age.

(ii) It has continued since its origination or can be expected to continue indefinitely.

(iii) It constitutes a substantial burden to the impaired person's ability to perform in society.

(iv) It is attributable to one or more of the following:

(A) Mental retardation, cerebral palsy, epilepsy, or autism.

(B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

(c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(d) "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life.

(e) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.

(f) "Mentally incapable" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(g) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

(h) "Mentally retarded" means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

(I) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(j) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(k) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(l) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(m) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

EXHIBIT C: VULNERABLE ADULT ABUSE AND NEGLECT DEFINITIONS

VULNERABLE ADULT ABUSE AS DEFINED BY THE MICHIGAN PENAL CODE (PA 328 of 1931):

Sec. 144n

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to a vulnerable adult. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

VULNERABLE ADULT ABUSE AS DEFINED BY THE MICHIGAN SOCIAL WELFARE ACT (PA 280 OF 1938, MCL 400.11):

VULNERABLE ADULT

An adult whose condition is such that he or she is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age.

VULNERABLE ADULT ABUSE OR NEGLECT

Harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, nonaccidental physical or mental injury, sexual abuse, or maltreatment.

VULNERABLE ADULT EXPLOITATION

Any action that involves the misuse of an adult's funds, property, or personal dignity by another person.

VULNERABLE ADULT NEGLECT

Harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected, or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, and this act shall not require any medical care or treatment in contravention of the stated or implied objection of that person.

EXHIBIT D: CHILD ABUSE AND NEGLECT DEFINITIONS

CHILD ABUSE AS DEFINED BY SECTION 136B OF THE MICHIGAN PENAL CODE (PA 328 of 1931):

(1) As used in this section:

(a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.

(c) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(d) "Physical harm" means any injury to a child's physical condition.

(e) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(f) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

(a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

(5) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years.

(6) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(7) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

CHILD ABUSE AND NEGLECT AS DEFINED BY THE MICHIGAN CHILD PROTECTION ACT (PA 238 OF 1974, MCL 722.622)

CHILD

A person under 18 years of age.

CHILD ABUSE

Harm or threatened harm to a child's health or welfare by a parent, a legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

CHILD NEGLECT

Harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

- A. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
- B. Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.