

Weasel Words Don't Protect Children

An analysis of Minnesota's pseudo-definition of child abuse

By Jordan Riak

Legal definitions of child abuse are a kind of Pandora's Box from which flow a quantity and quality of duplicitous language unequalled elsewhere. I have before me a copy of an official notice from the Minnesota Department of Human Services, dated July 3, 2000, that was mailed to an academician in that state. The title is: "Maltreatment of Minors Act, Requirements for Mandated Reporters." The recipient who forwarded me this material is a member of the faculty of a major Minnesota institution of higher learning. One of her duties is to prepare students to carry out their obligations as mandated reporters of suspected child abuse. Students must understand their state's definition because, when they enter their various child-related and health-related fields, they'll be required to inform the appropriate authorities whenever they see signs of child abuse, or what they reasonably believe to be signs of child abuse. As trained, qualified professionals, they'll be expected to know it when they see it. But will they?

After several, patient readings of the definition, I found myself far better versed in what the drafters were attempting to exclude than in what they were attempting to include. They seem to have been grappling with two irreconcilable demands: on the one hand, to give the appearance of providing a meaningful catalogue of abusive behaviors, while, on the other, creating an infinitely elastic range of exclusions. At every turn, they seem to be bending over backwards in order to exonerate somebody and to establish loopholes, exceptions and exemptions. The result is a vague, convoluted, self-contradictory, self-nullifying antidefinition that fails to declare any act, categorically, to be abuse. Their document generously protects adult perpetrators of abuse while affording children virtually no protection at all. Let's examine some of its parts.

DEFINITION

[Emphasis added. Underlined phrases are discussed under ANALYSIS.]

"Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive and deprivation procedures that have not been authorized under Minnesota Statutes, section 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- throwing, kicking, biting, or cutting a child;
- striking a child with a closed fist;
- shaking a child under the age of three;
- triking or other actions which result which result in any nonaccidental injury to a child under 18 months or age;
- unreasonable interference with a child's breathing;
- threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- striking a child under the age of one on the face or head;
- purposely giving a child poison, alcohol, or dangerous, harmful or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgement or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances; or
- unreasonable physical confinement or restraint not permitted under 609.379, including but not limited to tying, caging or chaining.

ANALYSIS

"...other than by accidental means..."

The exclusion of "accidents" provides child abusers a ready-made, all purpose alibi. Every definition of child abuse (in the U.S.) that I have examined contains the word "accident" within the first few sentences--and not by accident!

When children are physically injured or killed as a result of punishment, abusers do not typically admit that these outcomes were intended or foreseeable, and lawyers who represent caretakers who've injured children are almost invariably heard to argue at their their clients were merely punishing the child for some misbehavior, as every caretaker has the legal right to do, and that the outcome was "an accident."

The fact that children experience accidents, as do all other age groups, and that sometimes parents innocently cause injury to their children is not in question, and no one needs to be reminded of the obvious. But such a reminder, within this context, cynically panders to, and reinforces, the notion that whenever a child is injured in the course of being battered (spanked) by an adult caretaker, it automatically can be dismissed as accidental, as good intentions somehow gone awry. The absurdity of this theory can be demonstrated by simply substituting an adult in the child's role in this analogous scenario: adult A slaps adult B on the side of the head claiming the act was for B's own benefit and that B's resulting ruptured eardrum was an accident.

DEFINITION continued

"Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

"Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual or mental injury.

"Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person who has a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes as violation of section 609.342 (criminal sexual conduct in the first degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatening sexual abuse. See Minnesota Statutes Section 626.556, Subdivision 2.

"Neglect" means failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonable able to do so; failure to protect the child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonable able to do so; failure to provide the necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety of another child in their care; failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11; nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian or caretaker, or other person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to a child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care.

From: "Maltreatment of Minors Act, Requirements for Mandated Reporters," State of Minnesota

Let us move from the hypothetical to the actual by considering several recent deaths of children in the care of professional caretakers. They are illustrative. At a behavior modification camp in Nevada, three staff members "restrained" a teenager in a way that prevented his breathing. By the time they decided to released him, he had already fallen unconscious and, when released, didn't resume breathing. Later at the hospital he was declared brain dead. The camp administration characterized the event as a tragic "accident." In an Arizona facility for adjudicated youth, four counselors and a registered nurse, worked as a team to force a teenager whose lungs were nearly filled with fluid, and who was visibly dying of pneumonia, to do physical exercise (push-ups) until his heart stopped. His demise, true to form, was explained by camp officials as having been "accidental." In a Colorado behavior modification camp, three staff members "restrained" a teenager by forcing his face into ground so that his air passages were blocked by fine dirt and held him in that position until he stopped struggling. By the time they decided to released him, he was dead. This too was called an "accident." In a 10 year period, there have been approximately 140 "accidental" restraint deaths of children in custodial settings in the United States.

In the 40s, 50s, and to a lesser extent in recent times, the pseudo-scientific label "accident-prone child" was routinely applied to injured children whose repeated visits to doctors' offices and hospital emergency wards needed some kind of soothing explanation. Reference to children as "easy bruisers" or being "soft-boned" served the same purpose. These phony designations have fallen into disuse, not because child abusers' and their apologists' need for self-exoneration and self-deception is diminishing, but because health care professionals are becoming increasingly reluctant to be silent partners in the maltreatment of children. Nevertheless, in common parlance, in the thinking of lawmakers and in the arguments of defense attorneys, "accident" remains child abusers' alibi of choice.

"...reasonable and moderate physical discipline..."

The pairing of the two words, "physical" and "discipline," serves to corrupt the meaning of the latter. When we say, for instance, that the study of molecular biology is a demanding discipline, it is hard to envision where physical battering comes into the picture. Nevertheless, "physical" and "discipline" have become fused in child-specific jargon as a euphemism for battery.

By qualifying "physical discipline" with the adjectives "reasonable" and "moderate," the drafters of the definition legitimize the notion that battering someone can be done reasonably and moderately--that is, of course, if that someone happens to be younger than 18 and is under the legal control of the batterer. At the moment a person being battered passes the age of 18, new ground rules and new

language apply indicating that the perception of human violence has more to do with the status of the victim than with the nature of the act.

The authors conveniently leave “reasonable” and “moderate” open to interpretation. Ask ten law-abiding spankers to describe precisely how they hit their children, and what they think of the methods of the other nine, you'll get ten very different recipes, plus a lively debate among the ten as to which one is the true exponent of “reasonable and moderate.”

“...done in anger...”

Who is to say, with any degree of certainty, whether or not a caretaker who batters a child is angry or calm at the time of the act? And how, if at all, does the perpetrator's frame of mind influence the experience of the victim? Spankers who are observed doing the deed usually appear to be very angry. However, when they argue in defense of their own behavior, they typically ascribe to themselves a state of calmness and deliberation when they spank, and often equate the spanking with a measured dosage of medicine. In this connection, one hears words like “administer” and “apply,” never “inflict.” Some spankers might indeed be telling the truth about themselves, which points to even more alarming possibilities in light of the fact that acts of extreme cruelty, even torture, are often carried out in a very calm, calculated and methodical manner.

“...striking a child with a closed fist...”

Most children who are injured or killed by their caretakers are injured or killed by hand, literally. As to whether or not the involved hand is closed into a fist at the moment it strikes, whose to say? Shall we trust the perpetrator's account of events? Shall we ask the victim? Shall we wait until there is an injury or death and then invite experts to speculate as to whether the hand of the perpetrator was open or closed? The drafters of the definition don't distinguish between a blow delivered by a large open hand and one delivered of a small, delicate fist. They don't confront the obvious likelihood that a large, strong person, repeatedly whacking a child with an open hand will do more damage than a small person throwing a single punch. By narrowly barring the use of the closed fist, they implicitly allow a range of alternatives that are potentially worse.

“...shaking a child under the age of three...”

The drafters here, by implication, establish the age of three as a threshold at which the shaking of a child becomes acceptable. Their cavalier disregard for the dangers involved--dangers recognized and warned against by medical science, and known to every informed lay person--needs no further comment.

“...nonaccidental injury to a child under 18 months...”

Here, the authors identify 18 months of age as a threshold beyond which the standard for acceptable treatment of a child changes. They don't say how. Once again, they bring in the ever-ready, all-weather umbrella, “accident.”

“...unreasonable interference with a child's breathing...”

By implication, interference with a child's breathing is permissible, provided it is done reasonably. The drafters don't elaborate. They offer no practical guidance for an adult who wishes to punish a child by reasonably restricting the child's breathing.

“...striking a child under the age of one on the face or head...”

By implication, striking a child over the age of one on the face or head, and striking a child younger than one on any part of the body other than the face or head, are subject to a different, presumably a more relaxed standard. Child hitters in Minnesota may rest easy. At any given time in a child's life there will be certain areas of the child's anatomy that are legitimate loci for the deliberate infliction of pain.

“...Mental injury...with due regard to the child's culture...”

The authors seem to be saying that psychological well-being is culture-specific, and therefore, mistreatment of a child is acceptable if the perpetrators can lay claim to having acted according their culture. The authors seem unaware that “mental injury,” in large degree, is a result of having been victimized, particularly when the victim is a dependent child and the victimizer is the primary caretaker. The destructive effect assaults have lately been shown to have on the developing nervous system of a child are not ameliorated by factors of culture, ethnicity, religion, social class, etc.

The authors' criterion for the absence of "mental injury" as being the child's ability to function "within the normal range" sets a very low standard, if it sets any standard at all, for children's psychological health. It is permissive in the extreme toward those who would, and do, harm children psychologically.

"...Threatened injury..."

Here, the writers qualify "threatened injury" by the phrase, "substantial risk." In so doing, they give new meaning to the word "threat." How does one judge when a threat to injure is substantial? Must one wait and see if the threat is carried out and actual injury results? There is nothing in this section that even remotely moderates adults' right to threaten children or that protects children from being threatened. The point, if there is one, is to condone the behavior.

"...Sexual abuse..."

The authors seem oblivious to the fact that a substantial amount of legally permissible physical battery of children by their adult caretakers involves painful stimulation, and sometimes trauma, to the buttocks. This same behavior toward a non-consenting adult constitutes sexual battery and is a serious crime.

"...nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian or caretaker, or other person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to a child's health..."

The authors here condone the substitution of "spiritual means" for medical care in treating an ill child, but instruct the caretakers that, if they believe their behavior poses a "serious danger" to the child (assuming that such caretakers are capable of making that assessment), they must take time out from whatever else they are doing to lodge a report against themselves. The prescription is bizarre. It is impossible even to imagine such a scenario.

"This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care."

This gratuitous tidbit of advice for bystanders is entirely extraneous to a legal definition of child abuse. Its intended effect must be to encourage public non-interference with, and indifference to, the maltreatment of children. It reassures the citizens of Minnesota, lest any have troubled consciences on this account, that it's quite okay to turn a blind eye in the direction of child abuse, i.e., to be Bad Samaritans.

Pity the child whose only protection against adult violence is Minnesota's "Maltreatment of Minors Act, Requirements for Mandated Reporters." Witnesses to child abuse who faithfully follows these requirements can be expected to see nothing, say nothing and do nothing.

RECOMMENDED FURTHER STUDY ON THE WEB

"INFANTICIDE IN THE U.S.--THE INVISIBLE EPIDEMIC," www.nospank.net/infntcd.htm.

"SIDS or Murder?--AMA asks police to investigate," www.nospank.net/sids.htm.

"AMA Study: Number of Child-Abuse Deaths Vastly Underreported," www.nospank.net/ama.htm.

"Across Area, Dozens of Suspicious Deaths," www.nospank.net/lewis.htm.

"Cases Face Medical and Legal Blocks--Flimsy Excuses Often Accepted in Baby Deaths; Sentences in Child Deaths Are Unpredictable, Varied, Lenient." www.nospank.net/lewis2.htm.

"What Justice? - How the killer of eight children got probation," www.nospank.net/noe.htm

"Study: Doctors Missing Abuse Wounds," www.nospank.net/docs.htm