

NATIONAL CENTER FOR CHILD ABUSE STATISTICS & POLICY

Reducing Violence Against Children By Focusing on Innovation



Tommy James went days without eating and slept on a concrete floor in a 4-by-6-foot basement room. When his bones ached from the Alaskan cold, he'd perch precariously on a heater to sleep. His ankles were malformed from so much time spent curled into a ball for warmth. At age 18, when removed from the home, he only weighed 90 pounds. When fed, the meal consisted mostly of beans, or a mushy mix of raw eggs and oatmeal.

2018

Fighting Child Torture:
Addressing the Gap In U.S.
Criminal Codes

EXECUTIVE SUMMARY

After a thorough review of the 50 U.S. state codes and the D.C. code, a gap which allows perpetrators of child torture to escape justice is evident in many jurisdictions. The James children from Alaska is one example from the hundreds of similar cases across the US over the past 25 years where the system failed.¹ Federal torture law only prohibits government actors from torturing individuals. Only Michigan and California have torture laws prohibiting private citizens from torturing both children and adults. Thirty-two states and D.C. criminalize perpetrating torture or analogous actions against a child. Some of the statutes are more effective than others. Eighteen states do not specifically criminalize torture at all.

Certain elements of child torture such as forced exercise, intentional starvation or other discipline protocols enacted to break the will of the child are not addressed in normal assault laws. A torture statute can provide prosecutors with a tool to address severe and systematic violence, provide justice for survivors, and provide the potential to incarcerate dangerous offenders. Furthermore, those who torture the closest to them often go on to perpetrate acts of mass violence. Many mass shootings in the U.S. are related to severe and systematic family violence. In at least 54 percent of mass shootings from 1999-2017, the perpetrator shot a current or former intimate partner or family member.² Available evidence suggests that most victims faced escalating severe and systematic violence prior to being murdered.³ More than 40 percent of the victims were children.⁴ Enacting a torture statute has the potential to safeguard children and the community, from dangerous individuals.

For jurisdictions that do not have an effective child torture statute, NCCASP urges state, territorial, and tribal legislatures to pass legislation similar to Mich. Comp. Laws Serv. § 750.85 that specifically criminalizes torture.

¹ See Generally, Center for Responsible Home Schooling, *Invisible Children Database* (March 22, 2018), <http://hsinvisiblechildren.org/blog/> (while no official government statistics are not kept on the child torture as a form of child abuse, the Invisible Children Database illustrates the case; it collects and publishes accounts of a subset of child torture cases that have occurred during homeschooling)

² Everytown for Gun Safety, *Mass Shootings In The United States 1999-2017*, 3 (2017), https://everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf; See also J. Reid Melo Ph.D. et al., A Comparative Analysis of North American Adolescent and Adult Mass Murderers, 22 J. Behav. Sci. Law, 291, 296 (2004), http://drreidmelo.com/wp-content/uploads/2015/12/2004_AComparativeAna.pdf

³ See generally, Gail B. Strack et. al, *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. Emergency Med. 303 (2001); George E. McClane et. al, *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation Of The Surviving Victim*, 21 J. Emergency Med. 311, 314 (2001); Dean A. Hawley et al., *A Review Of 300 Attempted Strangulation Cases Part III: Injuries In Fatal Cases* 21 J. Emergency Med. 317 (2001). A. Ann Ratnayake, *The Path to Reinvigorating Evidenced-Based Prosecution in Intimate Partner Violence Cases*, 84 Geo. Wash. L. Rev. Arguendo 18 (Feb. 2016).

⁴ Id.

Special Thanks To: <<Reserved Space>>

Special Thanks to Dr. Barbara Knox, Randi King JD, Ashali Chimata, Judy Johnson, Mike Hemphill, Isabel Gonzalez Whitaker, Erica Soueid, Michael Buse, Mathias Heck JD, National Association of Attorneys General (NAAG), The National District Attorneys Association (NDAA),

TABLE OF CONTENTS

INTRODUCTION: WHEN CHARGES DON'T FIT THE CRIME	4
THE MICHIGAN SOLUTION: A STATUTE CRIMINALIZING TORTURE	6
PREVALENCE OF & IDENTIFYING FEATURES OF CHILD TORTURE	9
THE NEED FOR REFORM: A U.S. STATE BY STATE LEGISLATIVE ANALYSIS.	11
Alabama	12
Alaska	12
Arizona	12
Arkansas	12
California	13
Colorado	13
Connecticut	13
Delaware	13
District of Columbia	14
Florida	14
Georgia	14
Hawaii	14
Idaho	15
Illinois	15
Indiana	15
Iowa	15
Kansas	15
Kentucky	16
Louisiana	16
Maine	16
Maryland	16
Massachusetts	17
Michigan	17
Minnesota	17
Mississippi	18
Missouri	18
Montana	18
Nebraska	18
Nevada	19
New Hampshire	19
New Jersey	19
New Mexico	19
New York	20
North Carolina	20
North Dakota	20
Ohio	20
Oklahoma	21
Oregon	21
Pennsylvania	21
Rhode Island	21
South Carolina	21
South Dakota	21
Tennessee	21
Texas	22
Utah	22
Vermont	23
Virginia	23
Washington	23
West Virginia	23
Wisconsin	24
Wyoming	24
CONCLUSION: FOR MANY STATES ENACTING A STATUTE CRIMINALIZING TORTURE WILL SAVE CHILDREN'S LIVES	25



All rights reserved. No part of this book may be reproduced in any manner without the written permission of the National Center for Child Abuse Statistics and Policy (NCCASP), except in the case of brief quotations used in connection with articles and reviews. © 2018 National Center for Child Abuse Statistics and Policy 601 I Street NW, Washington D.C. 20001

INTRODUCTION: WHEN CHARGES DON'T FIT THE CRIME

In 2011, the six James children were 13, 15, 18, 19 and two who were 20 at the time of removal from the home.⁵ Anya James adopted the children over the course of over a decade. Their bedrooms were downstairs in a converted garage with a concrete floor. Anya James allowed no personal items in the rooms. She forced the victims to use buckets instead of toilets.⁶ As punishment, she had them strip naked and use the buckets in front of siblings.⁷

Anya James isolated them from the world. The doors and windows had alarms.⁸ The rooms had audio and video equipment to track the children, so they could not escape.⁹ The children were homeschooled and purposefully kept away from the world.¹⁰

During his witness impact statement, Tommy said he went days without eating and slept on a concrete floor in a 4-by-6-foot basement room.¹¹ When his bones ached from the cold, he'd perch precariously on a heater to sleep. His ankles were malformed from so much time spent curled into a ball for warmth.¹² At age 18 when removed from the home, he only weighed 90 pounds.¹³



Solomon "Tommy" James, who lived with his adoptive mother Anya James for 10 years starting at age 8, testified during her sentencing at the Nesbett Courthouse on Tuesday. (Bill Roth / Alaska Dispatch News)

Tommy's siblings were also severely malnourished. The youngest, who was 13, had to be hospitalized immediately and two others were bony and looked pre-pubescent even though they were 15 and 20.¹⁴ All three were covered by downy hair that is characteristic of starvation.¹⁵ When Anya James fed the children, the meal consisted mostly of beans or a mushy mix of oatmeal, mashed potatoes and raw eggs.¹⁶ Anya James served the mixtures in small plastic containers without silverware. The siblings fought over the food and licked the containers clean.¹⁷

⁵ Lisa Demer & Richard Mauer, *Anchorage Woman Charged With Abuse Of Adopted Kids*, Anchorage News (May 18, 2011), available at, <https://www.adn.com/alaska-news/article/anchorage-woman-charged-abuse-adopted-kids/2011/05/18/>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* Michelle Theriault Boots, *In Emotional Hearing, Former Adopted Children Confront Hillside Mother Accused Of Abuse*, Anchorage Daily News (Oct 24, 2017), available at, <https://www.adn.com/alaska-news/2017/10/24/in-emotional-sentencing-former-adoptive-children-confront-hillside-mother-charged-with-abusing-them/>

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Michelle Theriault Boots, *In Emotional Hearing, Former Adopted Children Confront Hillside Mother Accused Of Abuse*, Anchorage Daily News (Oct 24, 2017), available at, <https://www.adn.com/alaska-news/2017/10/24/in-emotional-sentencing-former-adoptive-children-confront-hillside-mother-charged-with-abusing-them/>

Anya James told neighbors the victims were severely emotionally disturbed. She also took all the victims to the same psychiatrist and suggested diagnoses and medications.¹⁸ Ana James gave heavy doses of anti-psychotics and tranquilizers to make the victims compliant.¹⁹ Four of the children tried to run away at various times.²⁰ Each was returned to James after James convinced police each child was disturbed.²¹

Originally, Anya James was charged with:

- 10 counts of kidnapping: class A felony (up to 20 years in prison per count),
- 6 counts of first-degree assault by knowingly engaging in conduct that causes serious physical injury to a person: class A felony (up to 20 years in prison per count), and
- 2 counts of endangering the welfare of a child by recklessly failing to provide an adequate quantity of food

or liquids to a child and causing protracted impairment of the child's health: class C felony (up to five years in prison per count).²²

"I'm 25 and I'm still scared," she said. "My world revolves around my past."



Eula Parent comforts her biological daughter Zemira James as she testified during the sentencing of her adoptive parent Anya James at the Nesbett Courthouse on Tuesday. (Bill Roth / Alaska Dispatch News)

The kidnapping charges apply when restraining a person for ransom or other payment. The kidnapping charges did not fit the elements of the case. The assault charges apply if the perpetrator engaged in conduct that caused physical injury either by an act performed under circumstances that create a substantial risk of death, or by an act that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy.

The elements of the assault charge did not neatly fit the elements of the case.

After a six years of court proceedings, in 2017, James plead guilty to two counts, endangering the welfare of a child, which roughly equated to eight years in prison. However, James wore an ankle monitor for six plus years of court proceedings and was given credit for "time served" for the years of electronic monitoring. She will likely serve less than two in jail.

After the sentencing Tommy stated, "It's not justice. Collectively we've had over 50 years taken from us. Fifty years of pain, collectively, between all the time each one of us spent." In the eighteen states that have a gap in criminal statutory code, outcomes similar to the James injustice are common.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Alaska vs. James, 3AN-11-05573CR, court records, available at, https://records.courts.alaska.gov/eaccess/search.page.6.1?x=P8g7qK5QNHhMWA*SoZllyrsvZebmRdJtmN9iarrzR1av3aBbwuy7AW9Edoe0PICsZZDvfD0OajsAT3t2Hp*DA

THE MICHIGAN SOLUTION: A STATUTE CRIMINALIZING TORTURE

“From time to time, a criminal case arises for which current laws do not seem to ‘fit’ the elements of the case. When that happens, it can be difficult for prosecutors to find a charge that can be supported by the evidence and that will carry an appropriate punishment.”²³

In 2005 Huron County Michigan law enforcement officials uncovered a bizarre set of events in which a husband had repeatedly tortured his wife.²⁴ The husband starved his blind and diabetic wife and manipulated her medications causing her to lose consciousness.²⁵ He dressed her in lingerie and asphyxiated with a plastic bag. When she was close to the point of death, he would revive her.²⁶ The wife had no memory of these events.²⁷ The attacks were uncovered when a police officer found videotapes of the incidents during a traffic stop.²⁸ At the time, Michigan like all 50 other states prohibited torturing an animal but did not have a law prohibiting the torture of a human.²⁹ Since the husband revived the wife, he could not be charged with murder. In response to this case, Michigan passed a torture statute.³⁰

MICH. COMP. LAWS SERV. § 750.85³¹ TORTURE; FELONY; PENALTY; DEFINITIONS; ELEMENT OF CRIME; OTHER LAWS.

A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

²³ MI Legis. Bill Hist. H.B. 5268 (2005).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Mich. Comp. Laws Serv. § 750.85 (2016),

[http://www.legislature.mi.gov/\(S\(peifuayif4pt0xrzuobqzvpy\)\)/mileg.aspx?page=GetObject&objectname=mcl-750-85](http://www.legislature.mi.gov/(S(peifuayif4pt0xrzuobqzvpy))/mileg.aspx?page=GetObject&objectname=mcl-750-85)

The Michigan statute addresses a situation where the perpetrator intends to cause cruel extreme pain and causes that pain to a person within his or her custody and control. The main components of the statute are: (1) the specific intent to cause cruel extreme pain, (2) causing the pain - whether mental or physical, *and* (3) to someone within the person's custody and control.

INTENT

The Michigan Torture statute requires that the perpetrator intended to cause cruel or extreme mental or physical pain. Often, intent is inferred from actions that demonstrate the perpetrator wanted the victim to suffer.³² In the case of the James children, purposefully locking a child in a 4 by 6 freezing basement room for days at a time without adequate food is evidence of intent.

ACT

Infliction of Severe Mental Suffering

Mental pain or suffering is defined as a

1. "mental injury that results in a substantial alteration of mental functioning
2. that is manifested in a visibly demonstrable manner
3. caused by ... a number of actions including
 - a. the administration or application, or
 - b. threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality."³³

In the James case, the children were given psychotics. Furthermore, Ana James established a set of rules and protocols to establish her dominance over the children's psyche through severe and cruel punishments – such as forcing the children to strip naked and using a bucket for a toilet in front of their siblings.

or

Infliction of Great Bodily Injury

For clear cases of torture, courts have broadly interpreted the definition of great bodily injury. In the case of *Brockett v. Stoddard*, a three-year-old child's temporary loss of use of limb while his arms were tied behind his back with electrical tape for a substantial period of time while his father urinated on him and placed urine-soaked pants on his head while he was naked in the bath tub was a great bodily injury.³⁴ The court interpreted great bodily injury to include among other things even temporary impairment of a body function such as loss of use of a limb for cases of torture.³⁵ In this case, Tommy James's malformed ankles would likely fit into this definition.

CUSTODY OR PHYSICAL CONTROL

Custody or physical control means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without the person's consent or without the person's lawful authority.³⁶ Thus, the statute allows: (1) a conviction of a defendant if the victim does not consent to the restriction

³² Christopher G. Browne, *Tortured Prosecuting: Closing The Gap In Virginia's Criminal Code By Adding A Torture*, 56 WM. & MARY L. REV. 269, 276 (2014).

³³ Mich. Comp. Laws Serv. § 750.85

³⁴ Id.

³⁵ Mich. Comp. Laws Serv. § 750.85; See *Brockett v Stoddard*, Case No. 1:14-cv-939 (W.D.-MI 2014), available at, https://scholar.google.com/scholar_case?case=17877805371042335414&hl=en&as_sdt=20006

³⁶ Id.

or confinement, or (2) a conviction, even in the face of a victim's consent, where a defendant acts without lawful authority to restrict or confine a person.³⁷ In *Michigan v. Anderson*, the court states a child can be presumed to lack the capacity to consent to the forcible restriction of his movements or the forcible confinement of his person.³⁸ Ana James placed security cameras and motion detectors to monitor the children's movements and locks on the windows and doors to prevent them from leaving. She both forcibly confined the victims and interfered with their personal liberties. As an aside, for cases of intimate partner violence, Michigan courts have ruled that a threats to harm another if the victim does not abide by the perpetrator's demands could also constitute forcible constraint.³⁹

Conviction for one count of torture under the Michigan statute provides the judge the flexibility of sentencing anywhere from 0 years to a lifetime in prison. Remember Tommy James' anguished cry, "It's not justice. Collectively we've had over 50 years taken from us. Fifty years of pain, collectively, between all the time each one of us spent." Had Ana James been convicted of torture, Tommy James and the other survivors might have received some semblance of justice.

Only two states, Michigan and California have a torture statute which applies to incidents that occur both before and after the age of eighteen. The Michigan torture statute and the analogous California statute have been used to prosecute not only child torture cases, but torture in the context of domestic violence, elder abuse, and rape as well.⁴⁰

³⁷ *Michigan v. Anderson*, No. 277370. (Mich. Ct App 2008) (un. pub), https://scholar.google.com/scholar?scidkt=834240238512555200&as_sdt=2&hl=en

³⁸ *Id.*

³⁹ *People v. Studier*, No. 317351, slip op. (Mich. Ct. App.

2015), https://scholar.google.com/scholar_case?case=17117557453317897301&q=%22forcible+restriction%22++and+threat&hl=en&as_sdt=20006&as_vis=1

⁴⁰ e.g., *People v. Riley*, Nos. 295838, 298164, 2011 WL 4501765, at *1 (Mich. Ct. App. Sept. 29, 2011) (per curiam) (affirming defendant's torture conviction for breaking into an elderly man's home, punching him in the face so hard his dentures came out, leaving a shoe print on his face, tying him up, and beating him at length until he repeatedly lost consciousness); *People v. Lachniet*, No. 297836, 2011 WL 2859818, at *1 (Mich. Ct. App. July 19, 2011) (per curiam) (affirming defendant's torture conviction for breaking into an elderly woman's home, punching her repeatedly in the face until she lost consciousness, and tying her up with cords). See, e.g., *People v. Massie*, 48 Cal. Rptr. 3d 304, 308-09 (Ct. App. 2006) (upholding defendant's torture conviction after he raped a stranger in her home, reacted with rage when she told him that Jesus loved him, used various methods to inflict pain, and acted over a long period of time, taking breaks in between); *People v. Pre*, 11 Cal. Rptr. 3d 739, 740-42 (Ct. App. 2004) (holding that the torture conviction was supported by evidence that defendant selected a woman unknown to him, forcibly entered into her apartment, attacked her viciously when she resisted, twice choked her into unconsciousness, and then intentionally inflicted great bodily injury and cruel and extreme pain by biting her while she was helpless and for no other apparent purpose than revenge or sadistic pleasure) See, e.g., *People v. Alvarez*, No. F066511, 2014 WL 5409070, at *1-2 (Cal. Ct. App. Oct. 24, 2014) (affirming defendant's conviction of torture for beating his girlfriend repeatedly with his hands, feet, a shoe rack, and aluminum bat); *People v. McCoy*, 156 Cal. Rptr. 3d 382, 386, 388 (Ct. App. 2013) (affirming defendant's conviction of torture for folding his girlfriend's legs backwards over her head, breaking her back and leaving her a quadriplegic, shoving batteries in her rectum, and smearing feces on her face); *People v. Hamlin*, 89 Cal. Rptr. 3d 402, 411-13 (Ct. App. 2009) (affirming defendant's conviction of torturing his wife and sentence of life in prison for a long history of physical abuse, including strangulation, threats with guns and a sword, hitting her with a taser, hitting her injured wrist with a metal pipe, and threatening to kill her unless she falsely confessed to molesting their children); *People v. Burton*, 49 Cal. Rptr. 3d 334, 336-37 (Ct. App. 2006) (affirming defendant's conviction of torture of the mother of his children for permanently disfiguring her face with four deep cuts in the presence of their young sons); *People v. Baker*, 120 Cal. Rptr. 2d 313, 315-16 (Ct. App. 2002) (affirming defendant's torture conviction for pouring gasoline over his wife and setting her on fire); *People v. Hale*, 88 Cal. Rptr. 2d 904, 908-09 (Ct. App. 1999) (affirming defendant's torture conviction when he entered the victim's bedroom at night, while the victim slept beside her three-year-old daughter, and struck victim twice in the face with a ball peen hammer, cracking a number of her teeth, splitting her lip, and cutting her under the eye, and then stayed and hid in the room to observe victim's pain and terror); *People v. Healy*, 18 Cal. Rptr. 2d 274, 277 (Ct. App. 1993) (affirming defendant's torture conviction when he told the victim she never had any real hardship in her life and that "he needed to create some hardship" to get her to listen to him and proceeded to beat the victim unprovoked, warning the victim not to make any noise during beatings for fear a neighbor would call police). See, e.g., *Studier*, 2015 WL 447408, at *1 (affirming defendant's torture conviction based on an attack against his estranged wife, whom he had abused for years, in which he kicked open her door and assaulted her until dawn, striking her in the face, kicking her in the groin, choking her, threatening her with a steak knife, calling her a whore, and blaming her for the attack); *People v. Hinton*, No. 308019, 2013 WL 514870, at *1 (Mich. Ct. App. Feb. 12, 2013) (per curiam) (affirming defendant's torture conviction when he committed sexual assault against his victim, peed in her mouth, made her put a beer bottle in her vagina, whipped her with a cord while naked, tied her to the bed, and gagged her while he left the house);

PREVALENCE & IDENTIFYING FEATURES OF CHILD TORTURE

An estimated 1–2% of children evaluated for child maltreatment face experience child torture with circumstances similar to the children in the James case.⁴¹ Child torture is distinct from the most commonly recognized abusive acts in severity, continuous nature, and intent of the perpetrator.⁴² Child torture is usually prolonged or repeated and includes procedures with both severe psychological and physical cruelty designed to establish the perpetrator's dominance and control over the victim's psyche.⁴³ Victims suffer a severe combination of extreme physical and psychological maltreatment that involves intense humiliation and terrorization.⁴⁴ It also usually includes neglect of medical needs resulting from abusive injuries or starvation.⁴⁵ Unlike less acute forms of abuse, it does not result from the perpetrator's episodic or unchecked anger towards the child.⁴⁶ Many are homeschooled and isolated away from others.⁴⁷

In February of 2014, Knox et al., a team of five leading pediatricians published *Child Abuse as a form of Child Torture* in the Journal of Adolescent Trauma with the intent of developing a coherent medical definition. The team selected 28 extreme cases illustrative of the phenomenon of severe and systematic abuse that is often misunderstood.⁴⁸

At time of medical intervention or death, 93% of the children in the study had healing wounds signaling physical abuse; 89% had been isolated from people outside of the immediate family; 89% had been deprived of food; 79% had been deprived of water; 64% were restricted from performing normal bodily functions such as using the restroom; 61% had been physically restrained; and 21% had fractures.⁴⁹ Every child included in the study was the victim of several of the six major types of psychological abuse listed below.⁵⁰ Death threats were made to 32% of the children in the study.⁵¹ The doctors excluded cases involving primarily sexual torture based on their experience that the perpetrator(s) motivation and relationship to the child were qualitatively different in cases of primarily sexual torture.⁵² Half of the children in the study had been reported to Child Protective Services.⁵³ CPS investigators often accepted the caretaker's explanation that the child was "the problem child" and emotionally/physically disturbed.⁵⁴

Based on the similarities found among these children, they proposed defining child torture for medical purposes as a longitudinal experience characterized by at least four repeated forms of maltreatment: at least two physical assaults, and two or more forms of psychological maltreatment (such as terrorizing and death threats) resulting in prolonged suffering, permanent disfigurement/dysfunction, or death.⁵⁵

⁴¹ Barbara L. Knox et al., *Child Torture as a Form of Child Abuse*, 7 J. CHILD ADOLESCENT TRAUMA 38, 46-49 (2014).

⁴² David Allasio & Howard Fischer, *Torture v. Clinical Child Abuse: What's the Difference*, 37 J. Clinical Pediatrics 267 (1998).

⁴³ Barbara L. Knox et al., *Child Torture as a Form of Child Abuse*, 7 J. CHILD ADOLESCENT TRAUMA 38, 46-49 (2014).

⁴⁴ Supra note 15 at 37.

⁴⁵ Knox at 46.

⁴⁶ *Id.*

⁴⁷ Center for Responsible Home Schooling, *Invisible Children Database (March 22, 2018)*, <http://hsinvisiblechildren.org/blog/>

⁴⁸ Knox at 37, 47.

⁴⁹ *Id.* at 39.

⁵⁰ *Id.* at 39.

⁵¹ *Id.* at 39.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 39.

MODEL STATUTE

The Michigan statute is the most comprehensive legal statute currently available. Yet, the Michigan statute can still be improved. For our recommended model statute please see below.

A person who knowingly and cruelly inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

As used in this section:

- (a) "Cruelly" means brutal, inhuman, sadistic, or that which torments.
 - (b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.
 - (c) "Great bodily injury" means either of the following: (i) includes, but is not limited to, 1 or more of the following: (ia) Loss of a limb or loss of use of a limb; (ib) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb; (ic) Loss of an eye or ear or loss of use of an eye or ear; (id) Loss or substantial impairment of a bodily function; (ie) Serious visible disfigurement; (if) A comatose state; (ig) Measurable brain or mental impairment; (ih) A skull fracture or other serious bone fracture; (ii) Subdural hemorrhage or subdural hematoma; (ij) Loss of an organ.
 - (ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, cuts, or multiple puncture wounds.
 - (d) "Severe mental pain or suffering" means an injury to the intellectual or psychological capacity or the emotional condition of a person as evidenced by an observable and substantial impairment of the ability of a person to function within his or her normal range of performance or behavior that was caused by (i) The intentional infliction or threatened infliction of great bodily injury. (ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality. (iii) The threat of imminent death. (iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality. (3) Proof that a victim suffered pain is not an element of the crime under this section.
- (4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

The model statute adjusts the intent to a knowing intent rather than a specific intent. While to 9/11 "torture memos" have widely been discredited, the argument that specific intent allows for punishment only where the perpetrator specifically intended pain as his or her precise objective can be countered with a knowing intent. Pairing the word 'cruelly' with 'knowingly' prevents the statute from becoming overbroad. The model statute also clarifies mental injury by using the definition of mental injury from Mo. Stat. § 568.060.

THE NEED FOR REFORM: A STATE BY STATE LEGISLATIVE ANALYSIS

Black's Law Dictionary defines torture as, "[t]he infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure."⁵⁶ The Federal torture law only prohibits government actors from torturing individuals. Michigan and California both have a torture law prohibiting private individuals from torturing both adults and children. Thirty-two states criminalize torture or analogous actions against a child. Some of the statutes are more effective than others. For the states without a child torture statute or for states with ineffective ones, NCCASP encourages legislators to enact legislation similar to the Michigan statute.

FEDERAL LAWS

Section 18 U.S.C. § 2304 prohibits public officials "acting under the color of law" from committing torture outside of the United States.⁵⁷ The Eighth Amendment of the Constitution prohibits the government from using "cruel and unusual" punishment within the United States.⁵⁸

Federal law does not address instances where private individuals commit torture against others.

STATE LAWS

Some state laws do address instances where private individuals commit torture against others. Two states, California and Michigan, have specific standalone torture laws that criminalize instances where individuals commit torture against another individual of any age.⁵⁹ Thirty-two states and DC have child torture statutes.⁶⁰ Other state statutory codes utilize the term "torture as an aggravating factor for enhanced sentencing when murder includes acts of torture,"⁶¹ or when determining the severity of or type of murder.

State Child Torture Statutes

When compiling child torture statutes from across the states, code sections using the words torture or actions synonymous with the conduct of child torture such as cruelty, severe mental and physical suffering, or repeated acts of abuse were included within these charts. Some criminalize torture when only physical injury results from torturous actions – but courts have generally allowed even the lightest cuts to be considered physical injury when coupled with acts intended to induce intense pain under the definition of torture,⁶² while other states criminalize torture that causes both physical injury and severe mental suffering. If found guilty of the relevant child torture statute, perpetrators at sentencing face from eighteen months in jail up to a lifetime in prison depending on the state. Some of the statutes are more effective than others.

⁵⁶ Black's Law Dictionary 1528 (8th ed. 2004)

⁵⁷ *United States Attorneys' Manual*, U.S. Dep't Justice (1997) (accessed Jun. 20, 2017), available at <https://www.justice.gov/usam/united-states-attorneys-manual>.

⁵⁸ U.S. Const. amend. VIII.

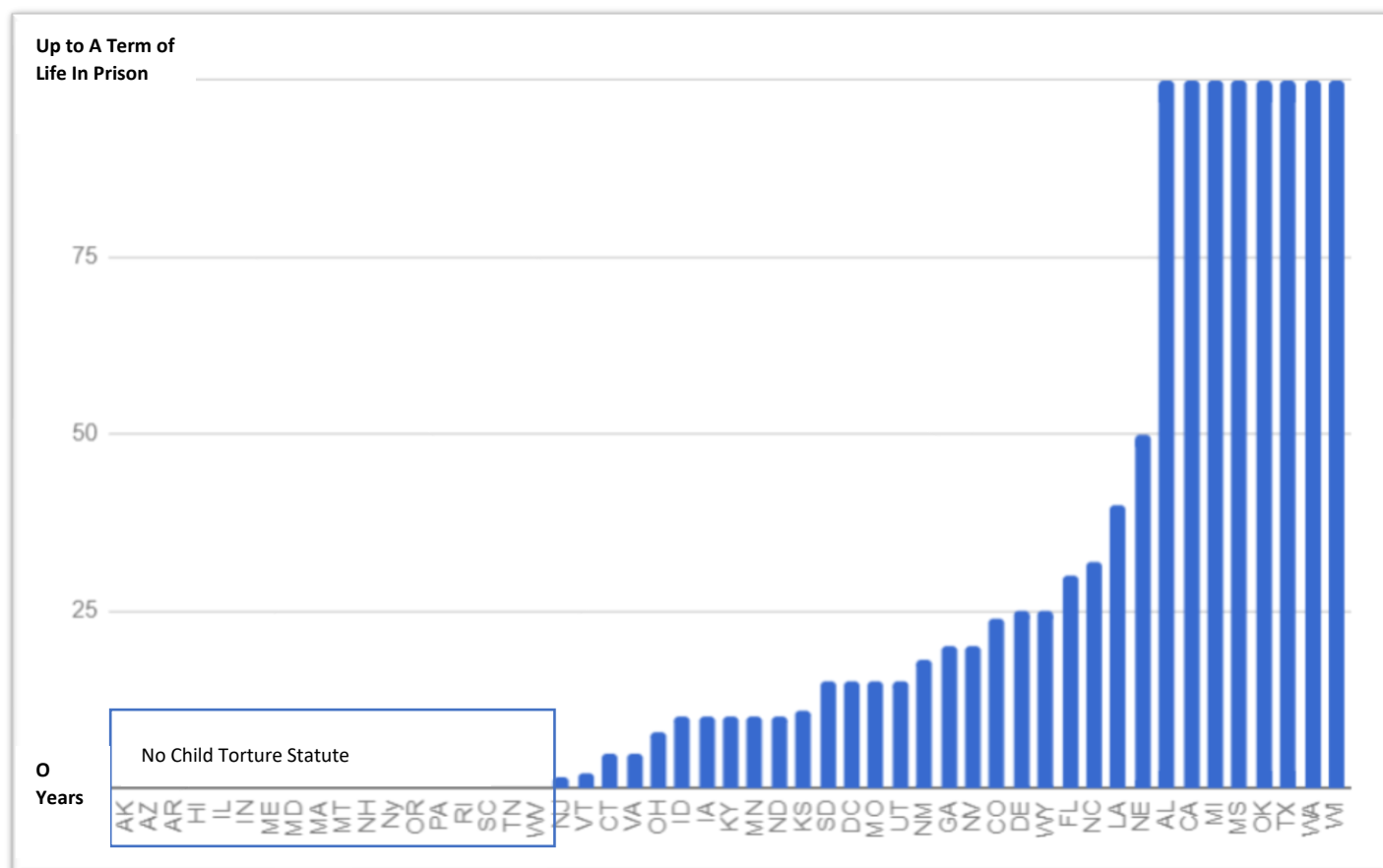
⁵⁹ See, e.g. Cal. Penal Code § 189 ("All murder which is perpetrated by means oftorture is murder in the first degree").

⁶⁰ See Christopher G. Browne, *Tortured Prosecution Closing the Gap in VA's Code by Adding A Torture Statute*, 56 Wm. & Mary L. Rev. 269 (2015).

⁶¹ Suzanna Tlapala & Amanda Appelbaum, *Criminal Justice and Child Protection Responses to Cases of Severe Child Abuse: Existing Statutory Frameworks for Torture*, NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE (National District Attorneys Association), Nov. 1, 2011, at 2, available at <http://perma.cc/SL84KK44>. (More than 20 states have listed torture as an aggravating factor for enhanced sentences in cases of homicide).

⁶² Eg. CALCRIM 810 – Torture (Pen. Code, § 206). ("Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.")⁸ *People v. Pre* (2004) 117 Cal.App.4th 413, 419. ("Section 206 does not require permanent, disabling, or disfiguring injuries; "[s]ection 206 only requires 'great bodily injury as defined in Section 12022.7'.... 'Abrasions, lacerations and bruising can constitute great bodily injury.'")

MAXIMUM POTENTIAL SENTENCE IN Yr(s) FOR EACH STATE'S CHILD TORTURE STATUTE



No Child Torture Statute

- **Eighteen states, have no child torture statute.**⁶³

Potential Maximum Sentence of up to 25 Years.

- **Twenty states and DC have a child torture law with a maximum potential sentence of 1.5 years to 25 years.**⁶⁴

Potential Maximum Sentence of between 26 – 50 years

- **Four states have a child torture law with a maximum potential sentence between 26 and 50 years.**⁶⁵

Potential Maximum Sentence of Life in Prison

- **Eight states have a torture law with a maximum potential sentence of life in prison.**⁶⁶

⁶³ AK, AZ, AR, HI, IL, IN, ME, MD, MA, MT, NH, NY, OR, PA, RI, SC, TN, WV

⁶⁴ NJ, VT, CT, VA, OH, ID, IA, KY, MN, ND, KS, SD, DC, MO, UT, NM, GA, NV, CO, DE, WY

⁶⁵ FL, NC, LA, NE

⁶⁶ AL, CA, MI, MS, OK, TX, WA, WI

The red text highlights the portion of the statute fulfilling the criteria for including it within the compilation. I.e. the portion of the statute criminalizing torture or actions synonymous with the conduct of child torture such as cruelty, severe mental and physical suffering, or repeated acts of abuse. The relevant penalties are also highlighted in red.

Alabama				
State Code	Relevant Language	Intent	Level	Sentences Guideline
Ala. Code § 26-15-3 Torture, Willful Abuse, Etc., Of Child Under 18 Years of Age By Responsible Person . ⁶⁷	A responsible person, as defined in <u>Section 26-15-2</u> , who shall torture, willfully abuse, cruelly beat, or otherwise willfully maltreat any child under the age of 18 years shall, on conviction, be guilty of a Class C felony.	Willfully	Class C felony	At least one year, up to 10 years
Ala. Code § 26-15-3.1 Aggravated Child Abuse ⁶⁸	A responsible person, as defined in <u>Section 26-15-2</u> , commits the crime of aggravated child abuse if he or she does any of the following: a. He or she violates the provisions of <u>Section 26-15-3</u> by acts taking place on more than one occasion.	Willfully	Class B felony	At least 2 years to 20 years
Ala. Code § 26-15-3.1 Aggravated Child under the age of Six Abuse ⁶⁹	A responsible person, as defined in Section 26-15-2, commits the crime of aggravated child abuse of a child under the age of six if he or she does any of the following to a child under the age of six years: a. He or she violates the provisions of Section 26-15-3 by acts taking place on more than two occasions... c. He or she violates the provisions of Section 26-15-3 which causes serious physical injury, as defined in Section 13A-1-2, to the child	Willfully	Class A felony	At least 10 years, up to 99 years to life

Alaska

N/A⁷⁰

Arizona

N/A⁷¹

Arkansas

N/A⁷²

⁶⁷ available at, www.lawserver.com/law/state/alabama/al-code/alabama_code_26-15-3

⁶⁸ available at, www.lawserver.com/law/state/alabama/al-code/alabama_code_26-15-3

⁶⁹ available at, www.lawserver.com/law/state/alabama/al-code/alabama_code_26-15-3

⁷⁰ Alaska Stat. §11.41.220(a)(1) & (3) (2014). Assault in the third degree (closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

⁷¹ Ariz. Rev. Stat. Ann. §13-3623 (2014). Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definition ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

⁷² Ark. Code Ann. § 5-13-201 (2014). Battery in the first degree (((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

California

State Code	Relevant Language	Intent	Level	Sentence
Cal. Penal Code § 273a Willful harm or injury to child; endangering person or health; punishment; conditions of probation ⁷³	(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered ...		N/A	Imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.
Cal. Penal Code § 206 torture ⁷⁴	Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily as defined in Section 12022.7 upon the person of another, is guilty of torture. The crime of torture does not require any proof that the victim suffered pain.	Intentionally	N/A	Term of Life

Colorado

State Code	Relevant Language	Intent	Level	Sentence
COLO. REV. STAT. §18-6-401 Child abuse ⁷⁵	(1)(a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.	Bodily Injury Results AND Criminal negligence, OR recklessly/knowingly	Range: Class 2 to Class 5 Felony	One to twenty-four years

Connecticut

State Code	Relevant Language	Intent	Level	Sentence
Conn. Gen. Stat. Ann. § 53-20 Cruelty to persons ⁷⁶	(a) (1) Any person who intentionally tortures, torments or cruelly or unlawfully punishes another person or intentionally deprives another person of necessary food, clothing, shelter or proper physical care shall be guilty of a class D felony.	Intentionally	Class D felony	One to five years

Delaware

State Code	Relevant Language	Intent	Level	Sentence
Del. CodeState tit. 11§ 1103B ⁷⁷ Child abuse in the first degree	A person is guilty of child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child: (1) Through an act of abuse and/or neglect of such child; or (2) When the person has engaged in a previous pattern of abuse and/or neglect of such child. Child abuse in the first degree is a class B felony (1) "Abuse" means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture , negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident ⁵⁶	Intentionally or recklessly	Class B felony	2 to 25 years imprisonment

⁷³ available at, https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=9.&part=1.&chapter=2.&article=

⁷⁴ available at, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=206.&lawCode=PEN

⁷⁵ available at, <http://codes.findlaw.com/co/title-18-criminal-code/co-rev-st-sect-18-6-401.html>

⁷⁶ available at, <https://law.justia.com/codes/connecticut/2015/title-53/chapter-939/section-53-20/>

⁷⁷ available at, <http://delcode.delaware.gov/title11/c005/sc05/index.shtml>

District of Columbia

State Code	Relevant Language	Intent	Level	Sentence
D.C. Code § 22-1101 Cruelty to Children Definition and penalty. ⁷⁸	(a) A person commits the crime of cruelty to children in the first degree if that person intentionally, knowingly, or recklessly tortures, beats, or otherwise willfully maltreats a child under 18 years of age or engages in conduct which creates a grave risk of bodily injury to a child, and thereby causes bodily injury.	Intentionally, knowingly, recklessly	First Degree felony	Imprisoned not more than 15 years

Florida

State Code	Relevant Language	Intent	Level	Sentence
Fla. Stat. § 827.03. Abuse, aggravated abuse, and neglect of a child ⁷⁹	(a) "Aggravated child abuse" occurs when a person: Commits aggravated battery on a child;... Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.	Willfully	First Degree felony	Imprisonment not exceeding 30 years

Georgia

State Code	Relevant Language	Intent	Level	Sentence
Ga. Code Ann. 16-5-70 Cruelty to children	(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized. (b) Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain..	Willfully, maliciously	First Degree felony	Imprisonment for not less than five nor more than 20 years

Hawaii

N/A⁸⁰

⁷⁸ available at, <https://beta.code.dccouncil.us/dc/council/code/sections/22-1101.html>

⁷⁹ available at, <http://codes.findlaw.com/ga/title-16-crimes-and-offenses/ga-code-sect-16-5-70.html>

⁸⁰ HAWAII Haw. Stat. § 709-906 (2014). Abuse of family or household members; penalty (first conviction minimum of 48 hours in jail; misdemeanor)) ((closest available statute according to Physical Child Abuse Penalties, NAT'L DIST. ATTORNEYS ASS'N (2014)).

Idaho

State Code	Relevant Language	Intent	Level	Sentence
<i>Id. Code Ann. 18-1501. Injury to Children.</i>	(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering , or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.	Willfully	n/a	Not less than 1 year; not more than 10 years

Illinois

N/A⁸¹

Indiana

N/A⁸²

Iowa

State Code	Relevant Language	Intent	Level	Sentence
Iowa Code § 726.6 Child endangerment ⁸³	(a.) Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety. (b) By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury. (c.) By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.	Knowingly, Intentionally	A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class "C" felony.	Prison term of up to ten years

Kansas

State Code	Relevant Language	Intent	Level	Sentence
Kan. Stat. § 21-5602 Abuse of a child ⁸⁴	(a) Abuse of a child is knowingly: (1) Torturing or cruelly beating any child under the age of 18 years; (2) shaking any child under the age of 18 years which results in great bodily harm to the child; or (3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years. (b) Abuse of a child is a severity level 5, person felony.	Knowingly	Severity level 5	Between 31 – 136 months depending on past conviction history (2.5 - 11.3 years) ⁸⁵

⁸¹ 720 Ill. Comp. Stat. § 5/12-3.05 (2014). Aggravated battery ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

⁸² Ind. Code Ann. § 35-42-2-1. Battery (2014) (closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

⁸³ available at, <https://law.justia.com/codes/iowa/2016/title-xvi/chapter-726/section-726.6/>

⁸⁴ available at, <http://www.sentencing.ks.gov/docs/default-source/2017-forms/2017-nondrug-grid.pdf?sfvrsn=0>

⁸⁵ available at, <http://www.sentencing.ks.gov/docs/default-source/2017-forms/2017-nondrug-grid.pdf?sfvrsn=0>

Kentucky

State Code	Relevant Language	Intent	Category	Sentence
Ky. Rev. Stat. Ann. § Criminal abuse in the first, 508.100 ⁸⁶ , second, 508.110 ⁸⁷ , third degree, 508.120 ⁸⁸	1) A person is guilty of criminal abuse in the first degree when he [Intentionally, Wantonly, Recklessly] abuses another person or permits another person of whom he has actual custody to be abused and thereby: (a) Causes serious physical injury; or (b) Places him in a situation that may cause him serious physical injury; or (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.	Intentionally	Class C felony	Imprisonment 5-10 years
		Wantonly	Class D felony	Imprisonment 1-5 years
		Recklessly	Class A misdemeanor	Imprisonment 90 days to 12 months in jail (.25 yrs. to 1 year)

Louisiana

State Code	Relevant Language	Intent	Sentence
La. Rev. stat. ann. § 14:93 Cruelty to juveniles ⁸⁹	(1) The intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child. Lack of knowledge of the child's age shall not be a defense...	Intentional or Criminally Negligent	No more than 10 years
La. Rev. stat. ann 14:93.2.3 - Second degree cruelty to juveniles	(1) Second degree cruelty to juveniles is the intentional or criminally negligent mistreatment or neglect by anyone over the age of seventeen to any child under the age of seventeen which causes serious bodily injury or neurological impairment to that child.	Intentional Or Criminally Negligent	Not more than forty years.

Maine

N/A⁹⁰

Maryland

N/A⁹¹

⁸⁶ available at, <http://www.lrc.ky.gov/Statutes/statute.aspx?id=19740>

⁸⁷ available at, <http://www.lrc.ky.gov/Statutes/statute.aspx?id=19741>

⁸⁸ available at, <http://www.lrc.ky.gov/Statutes/statute.aspx?id=19742>

⁸⁹ available at, <http://legis.la.gov/legis/Law.aspx?d=78723>

⁷² Me. Rev. Stat. Ann. Tit. 17-A § 207-A (2014). Domestic violence assault (closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

⁹¹ Maryland has a statute, Md. Code Ann. Crim. Law. § 3-601 (2016), which discusses severe physical injury to a minor. We did not include the statute due because it did not use the word torture (using the word cruel without including a strong mental suffering component); and the severe physical suffering is strictly defined as an injury with bleeding within the skull, physical injury that creates a substantial risk of death, causes permanent or protracted serious disfigurement loss of any bodily organ, or impairment of any bodily member; it is more analogous to an assault statute rather than the torture statutes included within the compilation. The statutes that have some form of physical injury component included in this compilation have a heavy mental suffering component (either by using the word torture which innately has a very strong mental suffering component), defines physical injury to include mental suffering, or include much smaller injuries including cuts, and bruising caused with the intent to cause cruel extreme pain within its definition.

Massachusetts

N/A⁹²

Michigan

State Code	Relevant Language	Intent	Level	Sentence
Mich. Comp. Laws § 750.136b ⁹³ Child abuse	(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.	Knowingly or intentionally	First Degree	Life in Jail or Term of Any years
	(3) A person if 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 or serious mental 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.	Recklessly, or Knowingly or Intentionally	Second Degree	First Offense not more than 10 years. Second Offense not more than 20 years
Mich. Comp. Laws Serv. § 750.85 ⁹⁴ Torture; felony; penalty; definitions; element of crime; other laws.	(1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.	Intentionally	First Degree	Life in Jail or Term of Any years

Minnesota

State Code	Relevant Language	Intent	Level	Sentence
MINN. STAT. § 609.377 ⁹⁵ Malicious punishment of child	1.A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child and may be sentenced as provided in subdivisions 2	Intentional	Misdemeanor to felony depending on level of serious bodily harm	No more than 10 years

⁹² Mass. Gen. Laws ann. Ch. 265 § 13J (2014). Assault and battery upon a child; penalties (closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

⁹³ available at, [http://www.legislature.mi.gov/\(S\(vdy114cxkisgijpoiwvgxnrv\)\)/mileg.aspx?page=GetObject&objectname=mcl-750-136b](http://www.legislature.mi.gov/(S(vdy114cxkisgijpoiwvgxnrv))/mileg.aspx?page=GetObject&objectname=mcl-750-136b)

⁹⁴ available at, [http://www.legislature.mi.gov/\(S\(peifuayif4pt0rxuobqzvpv\)\)/mileg.aspx?page=GetObject&objectname=mcl-750-85](http://www.legislature.mi.gov/(S(peifuayif4pt0rxuobqzvpv))/mileg.aspx?page=GetObject&objectname=mcl-750-85)

⁹⁵ available at, <https://www.revisor.mn.gov/statutes/?id=609.377>

Mississippi

State Code	Relevant Language	Intent	Definition	Sentence
Miss. Code Ann. §97-5-39 ⁹⁶ Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child	(a) Whether bodily harm results or not, if the person shall intentionally, knowingly or recklessly: (ii) Physically torture any child;	Intentionally, knowingly, recklessly	"bodily harm" means any bodily injury to a child and includes, but is not limited to, bruising, bleeding, lacerations, soft tissue swelling, and external or internal swelling of any body organ.	Up to Life Imprisonment

Missouri

State Code	Relevant Language	Intent	Definition and Level	Sentence
Mo. Stat. § 568.060 ⁹⁷ Abuse or Neglect of Child	<p>2. A person commits the offense of abuse or neglect of a child if such person knowingly causes a child who is less than eighteen years of age:</p> <p>(1) To suffer physical or mental injury as a result of abuse or neglect; or</p> <p>(2) To be placed in a situation in which the child may suffer physical or mental injury as the result of abuse or neglect.</p> <p>5(1) to have been previously found guilty of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct increases penalty</p>	Knowingly	<p>"Abuse", the infliction of physical, sexual, or mental injury against a child by any person eighteen years of age or older.</p> <p>"Mental injury", an 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 his or her normal range of performance or behavior;</p> <p>"Physical injury", physical pain, illness, or any impairment of physical condition, including but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and impairment of any bodily function or organ...</p> <p>Class D felony (up to 7 years). 5(1) finding changes felony level to Class B (5-15 years)</p>	1 year to 15 years depending on level of injury and child does not die

Montana

N/A⁹⁸

Nebraska

State Code	Relevant Language	Intent	Level/Sentence
Neb. Rev. Stat. § 28-707 ⁹⁹ Child Abuse Penalties	<p>(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be: (a) placed in a situation that endangers his or her life or physical or mental health;</p> <p>(b) Cruelly confined or cruelly punished;</p> <p>(c) Deprived of necessary food, clothing, shelter, or care;</p>	Knowingly, intentionally, negligently**knew or should have known of the danger and acted recklessly	Misdemeanor up to Class II Felony. Range: not more than 1 year for lowest misdemeanor; not less than 1 year up to 50 years for Class II Felony depending on level of injury, and child does not die

⁹⁶ available at, <https://law.justia.com/codes/mississippi/2016/title-97/chapter-5/section-97-5-39/>

⁹⁷ available at, <http://www.moga.mo.gov/mostatutes/chapters/chapText568.html>

⁹⁸ Mont. Code § 45-5-201 (2014). Assault ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

⁹⁹ available at, <http://nebraskalegislature.gov/laws/statutes.php?statute=28-707>

Nevada

State Code	Relevant Language	Intent	Level	Sentence
Nev. Rev. Stat. § 200.508 ¹⁰⁰ Abuse, neglect or endangerment of child:	(1) A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect	Willfully	If substantial bodily ¹⁰¹ or mental harm ¹⁰² results to the child: Class B felony (see statute for full sentencing structure, also related to sexual abuse) * If no substantial bodily or mental harm occur, lower prison time (1-6 years); with previous convictions under this section (2-15) *If parent or legal guardian and child under 14 potentially higher penalty	2-20 years

New Hampshire

N/A¹⁰³

New Jersey

State Code	Relevant Language	Intent	Level	Sentence
N.J. STAT. ANN. § 9:6-1. ¹⁰⁴ Abuse, abandonment, cruelty and neglect of child; what constitutes	Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical ; (c) habitually tormenting, vexing or afflicting a child ; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child ;	Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in cruelty Willful act of omission or commission	fourth degree	up to eighteen months (1.5 years)

New Mexico

State Code	Relevant Language	Intent	Level	Sentence
N.M. Stat. § 30-6-1 ¹⁰⁵ Abandonment or abuse of a child	D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:.... (2) tortured, cruelly confined or cruelly punished ;	Knowingly, Intentionally, Negligently	E. A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony	third degree: up to 3 years imprisonment second degree: up to 9 years imprisonment first degree: up to 18 years imprisonment

¹⁰⁰ available at, <https://www.leg.state.nv.us/NRS/NRS-200.html#NRS200Sec508>

¹⁰¹ "Substantial mental harm" means an 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 his or her normal range of performance or behavior

¹⁰² "Physical injury" means: (1) Permanent or temporary disfigurement; or (2) Impairment of any bodily function or organ of the body

¹⁰³ N.H. Rev. Stat. § 631:2 Assault (2014). ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

¹⁰⁴ available at, <https://law.justia.com/codes/new-jersey/2016/title-9/section-9-6-1/>

¹⁰⁵ available at, <https://law.justia.com/codes/new-mexico/2016/chapter-30/article-6/section-30-6-1/>

New York

N/A¹⁰⁶

North Carolina

State Code	Relevant Language	Intent	Level	Sentence
N.C. Gen. Stat. § 14-318.4 ¹⁰⁷ Child abuse a felony	(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury¹⁰⁸ to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class B2 Felony.	Intentionally	B2 Felony	94-393 months (7.8 to 32.75 years) imprisonment

North Dakota

State Code	Relevant Language	Intent	Level	Sentence
N.D. Cent. Code § 14-09-22 ¹⁰⁹ – Abuse of child – Penalty	1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony	Willfully	Class C felony: Class B felony:	Maximum Penalty 5 Years Imprisonment Maximum Penalty 10 Years Imprisonment

Ohio

State Code	Relevant Language	Intent	Level	Sentence
Ohio Rev. Code Ann. § 2919.22 ¹¹⁰ Endangering children.	B. No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:... (2) Torture or cruelly abuse the child¹¹¹...	(B)(2) endangering children is a felony of the third degree. If the violation results in serious physical harm¹¹² to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree *additional penalties for sex trafficking	Third degree felony Second degree felony	9 months to 3 Years Imprisonment 2-8 Years Imprisonment

¹⁰⁶ N.Y. Penal Law § 120.05 (2014). Assault ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

¹⁰⁷ available at, http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-318.4.html

¹⁰⁸ Serious bodily injury. -- Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization

¹⁰⁹ available at, https://www.lawserver.com/law/state/north-dakota/nd-code/north_dakota_code_14_09_22

¹¹⁰ available at, <http://codes.ohio.gov/orc/2919.22>

¹¹¹ Torture: 'the infliction of severe pain or suffering (of body or mind) as defined in [State v. Wainscott, 12th Dist. Butler No. CA2015-07-056, 2016-Ohio-1153, ¶ 24, quoting State v. Surles, 9th Dist. Summit No. 23345, 2007-Ohio-6050, ¶

¹¹² **Serious physical harm to persons** means any of the following:

- (a) Any mental illness or condition of such gravity as would **normally require hospitalization or prolonged psychiatric treatment;**
- (b) Any physical harm that carries a substantial risk of death;
- (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

Oklahoma

State Code	Relevant Language	Intent	Level	Sentence
Okla. Stat. Tit. 21 Ann. § 843.5 (2014). Child abuse--Child neglect--Child sexual abuse--Child sexual exploitation--Enabling--Penalties ¹¹³	A. "child abuse" means the willful or malicious harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.	Willfully, Maliciously	Felony	County jail not exceeding 1 year, or Up to life in prison

Oregon

N/A¹¹⁴

Pennsylvania

N/A¹¹⁵

Rhode Island

N/A¹¹⁶

South Carolina

N/A¹¹⁷

South Dakota

State Code	Relevant Language	Level	Sentence
SOUTH DAKOTA S.D. Codified Laws § 26-10-1 ¹¹⁸ Abuse of or cruelty to minor	Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony.	Class 3 Class 4	Up to 15 years imprisonment Up to 10 years imprisonment

Tennessee

N/A¹¹⁹

- (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

¹¹³ available at, <https://law.justia.com/codes/oklahoma/2016/title-21/section-21-843.5/>

¹¹⁴ Or. Rev. Stat. § 163.205 (2014). Criminal mistreatment in the first degree – failure to protect ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

¹¹⁵ 18 Pa. Cons. Stat. Ann. § 2701 (2014). Simple assault ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014)).

¹¹⁶ R.I. Gen. Laws § 11-9-5.3 (2014). Child abuse (limited to those who have care of a child, whether assumed voluntarily or because of a legal obligation, including any instance where a child; limited to serious bodily injury). ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

¹¹⁷ S.C. Code Ann. § 16-3-95 (2014). Infliction or allowing infliction of great bodily injury upon a child; Child abuse (limited to serious bodily injury). (closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

¹¹⁸ available at, http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=26-10-1

Texas				
State Code	Relevant Language	Intent	Level	Sentence
Texas Penal Code § 22.04 ¹²⁰	(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child ¹²¹ , elderly individual ¹²² , or disabled individual ¹²³ :	(e) An offense under Subsection (a)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly . When the conduct is engaged in recklessly, the offense is a felony of the second degree . -	First degree felony	Imprisonment for life or for any term of not more than 99 years or less than 5 years
	(1) serious bodily injury ¹²⁴ ;			
	(2) serious mental deficiency , impairment, or injury; or		Second degree felony	Imprisonment for any term of not more than 20 years or less than 2 years .
Injury to a Child, Elderly Individual, or Disabled Individual	(3) bodily injury			

Utah			
State Code	Relevant Language	Intent	Sentence
Utah Code Ann. § 76-5-109 ¹²⁵ Child abuse--Child abandonment	(3) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows		
	(i) Serious physical injury" means any physical injury or set of injuries that:	2(a)if done intentionally or knowingly, the offense is a felony of the second degree ;	prison term of one to 15 years
	(A)seriously impairs the child's health;	2(b)if done recklessly , the offense is a felony of the third degree ; or	prison term up to five years
	(B)involves physical torture ;		
	(C)causes serious emotional harm to the child ; or	2(c)if done with criminal negligence , the offense is a class A misdemeanor .	prison term up to one year
	(D)involves a substantial risk of death to the child.		

¹¹⁹ Tenn. Code § 39-15-401 (2014). Abuse or neglect ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

¹²⁰ available at, <http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm>

¹²¹ "Child" means a person 14 years of age or younger.

¹²² "Elderly individual" means a person 65 years of age or older

¹²³ "Disabled individual" means a person:

(A) with one or more of the following:

(i) autism spectrum disorder, as defined by Section [1355.001](#), Insurance Code;

(ii) developmental disability, as defined by Section [112.042](#), Human Resources Code;

(iii) intellectual disability, as defined by Section [591.003](#), Health and Safety Code;

(iv) severe emotional disturbance, as defined by Section [261.001](#), Family Code; or

(v) traumatic brain injury, as defined by Section [92.001](#), Health and Safety Code; or

(B) who otherwise by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

¹²⁴ "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ

¹²⁵ available at, <https://le.utah.gov/xcode/Title76/Chapter5/76-5-S109.html>

Vermont

State Code	Relevant Language	Intent	Sentence
Vt. Stat. Ann. Tit. 13 § 1304 ¹²⁶ Cruelty to child	(a) A person over 16 years of age, having the custody, charge or care of a child, who willfully assaults, ill treats, neglects or abandons or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner to cause such child unnecessary suffering,	Willfully	Up to two years in prison

Virginia

State Code	Relevant Language	Intent	Level	Sentence
VA Stat § 40.1-103 ¹²⁷ Cruelty and injuries to children; penalty; abandoned infant.	A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated.	Willfully Negligently	Class 6 felony	one to five years in prison

Washington

State Code	Relevant Language	Intent	Level	Sentence
Wash. Rev. Code 9A.36.120 Child ¹²⁸ abuse in the first degree	(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person: (a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or(b) Intentionally assaults the child and either:(i) Recklessly inflicts great bodily harm; or(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.	Intentionally, recklessly	Class A	Up to life in prison

West Virginia

N/A ¹²⁹

¹²⁶ available at, <http://legislature.vermont.gov/statutes/section/13/025/01304>

¹²⁷ available at, <https://law.lis.virginia.gov/vacode/title40.1/chapter5/section40.1-103/>

¹²⁸ available at, <http://app.leg.wa.gov/RCW/default.aspx?cite=9A.36.120>

¹²⁹W. Va. Code, § 61-8D-3 (2014). Child abuse resulting in injury (limited to parent or guardian) ((closest available statute according to *Physical Child Abuse Penalties*, NAT'L DIST. ATTORNEYS ASS'N (2014))

Wisconsin

State Code	Relevant Language	Intent	Level	Sentence
Wis. Stat. Ann. § 948.03 ¹³⁰ Physical abuse of a child	(2) Intentional Causation Of Bodily Harm.	ENGAGING IN REPEATED ACTS OF PHYSICAL ABUSE OF THE SAME CHILD.	Class A	Up to Life Imprisonment in prison
	(A) Whoever Intentionally Causes Great Bodily Harm ¹³¹ To A Child Is Guilty Of A Class C Felony.	(a) Whoever commits 3 or more violations under sub. (2), (3), or (4) within a specified period involving the same child is guilty of the following:	Class B	Up to 60 years in prison
	(B) Whoever Intentionally Causes Bodily Harm ¹³² To A Child Is Guilty Of A Class H Felony.	A Class A felony if at least one violation caused the death of the child.	Class C	Up to 40 years in prison
	(C) Whoever Intentionally Causes Bodily Harm To A Child By Conduct Which Creates A High Probability Of Great Bodily Harm Is Guilty Of A Class F Felony.	A Class B felony if at least 2 violations were violations of sub. (2) (a).	Class D	Up to 25 Years in prison
	(3) Reckless Causation Of Bodily Harm.	A Class C felony if at least one violation resulted in great bodily harm to the child.	Class E	Up to 15 Years in prison
	(A) Whoever Recklessly Causes Great Bodily Harm To A Child Is Guilty Of A Class E Felony.	A Class D felony if at least one violation created a high probability of great bodily harm to the child.		
	(B) Whoever Recklessly Causes Bodily Harm To A Child Is Guilty Of A Class I Felony.	A Class E felony.		
	(C) Whoever Recklessly Causes Bodily Harm To A Child By Conduct Which Creates A High Probability Of Great Bodily Harm Is Guilty Of A Class H Felony.			

Wyoming

State Code	Relevant Language	Intent	Sentence
WY Stat 6-2-503 ¹³³ Child abuse; penalty.	(b) A person is guilty of child abuse, if a person responsible for a child's welfare, intentionally or recklessly inflicts upon a child under the age of eighteen (18) years: (i) Physical injury ¹³⁴ , excluding reasonable corporal punishment; (ii) Mental injury ¹³⁵ ; or (iii) Torture or cruel confinement. (c) Aggravated child abuse is a felony punishable by imprisonment for not more than twenty-five (25) years if in the course of committing the crime of child abuse, as defined in subsection (a) or (b) of this section, the person intentionally or recklessly inflicts serious bodily injury upon the victim or the person intentionally inflicts substantial mental or emotional injury upon the victim by the torture or cruel confinement of the victim	Intentionally, recklessly	Imprisonment for not more than ten (10) years, or twenty-five (25) years if aggravated

¹³⁰ available at, <https://docs.legis.wisconsin.gov/statutes/statutes/948/03>

¹³¹ Bodily Harm" Means Physical Pain or Injury, Illness, Or Any Impairment Of Physical Condition

¹³² "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

¹³³ available at, <https://law.justia.com/codes/wyoming/2016/title-6/chapter-2/article-5/section-6-2-503>

¹³⁴ (B) "Physical injury" means any harm to a child including but not limited to disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, fracture of any bone, subdural hematoma or substantial malnutrition;

¹³⁵ A) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in his ability to function within a normal range of performance and behavior with due regard to his culture;

CONCLUSION: FOR MANY STATES ENACTING STATUTE CRIMINALIZING TORTURE WILL SAVE CHILDREN'S LIVES

A gap in certain state criminal state codes allow perpetrators of heinous acts to escape justice. Federal torture law only prohibits government actors from torturing individuals. Only Michigan and California both have a torture law prohibiting private individuals from torturing both adults and children. Thirty-two states and DC criminalize perpetuating torture or analogous actions against a child. Some of the statutes are more effective than others. Eighteen states do not have a child torture law at all. For the states without a child torture statute or ineffective ones, NCCASP encourages legislators to enact legislation similar to the Michigan statute.

After Anya James's sentencing, Tommy James stated, "It's not justice." The Michigan statute can provide prosecutors with a tool to address severe and systematic violence, provide justice for survivors, and provide the potential to incarcerate dangerous offenders. If legislators are unwilling to pass legislation to protect victims of severe and systematic maltreatment like that endured by the young victims tortured in Alaska, then they should at least be willing to pass legislation to protect the public at large. Closing the gap in criminal codes by criminalizing acts of torture will protect children.



NATIONAL CENTER
FOR CHILD ABUSE
STATISTICS & POLICY
*Reducing Violence Against Children
By Focusing on Innovation*