

# FOR THE LEAST OF THESE: A LITERATURE REVIEW OF ARIZONA STATE CHILD MALTREATMENT LAWS AND POLICIES

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## ABSTRACT

*Within the criminal justice system here in Maricopa County, two sets of written sources determine how crimes are addressed. The first is Arizona law, and the second is Maricopa County Protocol. Currently, no comprehensive comparative analysis exists on how different varieties of Family Violence are addressed within Maricopa County by law enforcement. This literature review seeks to fill the gap in the literature by reviewing the 34 relevant Arizona statutes and three relevant Multidisciplinary Protocols which pertain to Family Violence. Child maltreatment serves as the primary focus, and the other two major forms of Family Violence-intimate partner violence and vulnerable adult abuse-provide points of consideration to enable comparative analysis. Differences are highlighted, and their significance for victims of Family Violence in Maricopa County is explained in the context of a thorough, evidence-based definitional framework.*

**Keywords:** *Child Maltreatment, Family Violence, Arizona Law, Domestic Violence, Law Enforcement Protocol*

*Special thanks to Makisha Gunty, LMSW, Dr. Kelly Maguire, and Professor Trevor Duston.*

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“And the disciples asked him, “Rabbi, who sinned, this man or his parents that he was born blind?” Jesus answered, “It was not that this man sinned, or his parents, but that the works of God might be displayed in him,”” John 9:1-3. The question about why the least of these suffer echoes throughout history. However, any answer to that question inherently leads to a more tangible one, namely: “What do we do about it?” The following literature review is designed to provide an answer to this practical question for the field of child maltreatment in the context of the Arizona state criminal justice system with a special focus on Maricopa

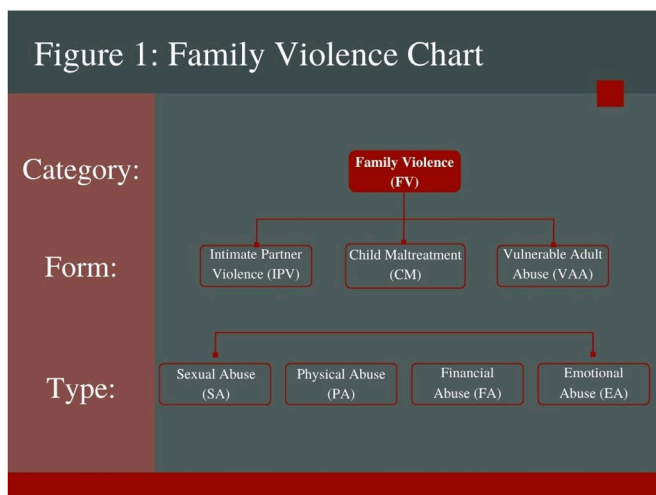
County. To effectively evaluate the way that Family Violence against children is handled by the criminal justice system in the state of Arizona, it is critical to understand the relevant laws and policies which dictate how various systems interact with child maltreatment victims as well as how this interaction compares with other forms of Family Violence.

## DEFINITIONAL FRAMEWORK

Before engaging Arizona state laws and Maricopa County policies, the relevant terminology must be defined from a research-based perspective because there can be discrepancies between legal terminology and research-based definitions. Family Violence (FV) is a particularly crucial category because it encompasses multiple forms of violence perpetrated in domestic relationships. Current lit-

erature supports a definitional framework for FV which incorporates any type of sexual, physical, emotional, or financial abuse perpetrated by a family or household member and includes forms of abuse such as child maltreatment, intimate partner violence, and vulnerable adult abuse (Devakumar et al., 2021; Harman et al., 2018). It is helpful to remember that the legal system often uses the older term Domestic Violence (DV) rather than

Figure 1: FV (Ariz. Rev. Stat. § 13-360, 2022). Figure 1. provides an overview of FV types and forms.



This review specifically focuses on the issue of child maltreatment (CM) which encompasses the neglect, emotional abuse, physical abuse, or sexual abuse of children (Baldwin et al., 2019). Although they are not the primary focus of this review, the other forms of FV, namely intimate partner violence (IPV) and vulnerable adult abuse (VAA), become relevant. They allow for a comparison of how FV is addressed by the criminal justice system with the age of the victim as the independent variable.

#### *Intimate Partner Violence (IPV)*

Burelomova et al. (2018) define intimate partner violence (IPV) as any act of financial, emotional, physical, or sexual abuse toward a romantic partner, ex-romantic partner, or a person with whom someone has a child in common. Examples of this form of violence can range from but are not limited to, threats, marital rape, and battering. The consequences of this form of violence are lifelong for victims; therefore, it must be taken seriously (Butler et al., 2020).

#### *Vulnerable Adult Abuse (VAA)*

Vulnerable adult abuse (VAA) is an inclusively defined form of FV that is designed to describe violence against those who are over 18 but are incapable of defending themselves against maltreatment of a financial, emotional, physical, or sexual nature due to any kind of mental or physical impairment (Curry et al., 2018). Except for IPV, these forms of violence can occur outside of the umbrella of FV if they are perpetrated by individuals not related through a family or household relationship. However, within the context of this review, the primary focus will be on victims within the FV category.

It is also important to distinguish between the various types of violence which occur in the context of each form of FV. Each has unique characteristics which become relevant in evaluating laws and policies. Specifically, physical and sexual abuse are the primary types often addressed through the criminal justice system. However, financial abuse and emotional abuse are becoming an increasing focus, especially in the context of VAA.

#### *Sexual Abuse*

Armstrong et al. (2018) explain that sexual abuse encompasses any sexually motivated behavior or exposure to sexual behavior that is non-consensual through either a statutorily prohibited relationship or a simple lack of consent. Age plays a major role in the qualification of this type of violence, alongside the perpetrator's relationship with to the victim. For example, a victim under 18 or the offender being identified as a family member alters the nature of the issue.

#### *Physical Abuse*

The other type of abuse that is commonly addressed is physical abuse. However, this is the point at which the lines become blurry. A broad definition of physical abuse includes any action or lack of action that causes harm or puts a person at risk of harm. Still, applications of this broad idea vary widely across different states and agencies. This form of abuse can include active actions such as beating or passive actions such as neglect (Rodriguez & Gonzalez, 2020).

#### *Financial Abuse*

Financial abuse is becoming an increasing focus, especially in IPV and VAA, because it con-

stitutes exploiting or exercising control over another through economic means (Dalley et al., 2017; Postmus et al., 2020). This type of abuse can come from within or outside the family system, with caregivers or others performing the exploitation. Children might be less likely to qualify as experiencing this type of abuse because they do not have the financial resources to be exploited in most cases.

### *Emotional Abuse*

Emotional abuse is the most difficult type of abuse to define even though its impact on well-being has been demonstrated to be just as significant as other types of abuse. Typically, emotional abuse is characterized either by an active pattern of shaming or intimidation or a more passive pattern of neglect on an emotional level. Although it does not leave visible marks, the traces persist throughout a person's lifetime in devastating ways (Ness, 2022).

### *Micro Level Abuse Cycle*

Before continuing, it is essential to have a basic understanding of the abuse cycle because it explains why FV has such unique characteristics and consequences compared to other categories of violence. Two levels of analysis aid in explaining the abuse cycle. Viewing the abuse cycle from a micro level show that FV in individual relationships typically follows a cyclical pattern of building tension, then a violent incident. This stage is followed by an abuser's efforts to repair the relationship, then a temporary state of calm which eventually builds tension once more (Bhandari & Sabri, 2020). This information becomes critical when discussing policy on how the criminal justice system responds to individual instances of FV.

### *Macro Level Abuse Cycle*

FV weaves a multigenerational legacy through the fabric of communities and becomes apparent when analyzing the abuse cycle from a macro level. Butler et al.'s (2020) study shows that the story of FV generally starts during a child's formative years with some type of CM, then continues to unfold in one of two ways throughout adulthood. Specifically, adult victims of CM have massively elevated risks of continued FV victimization during adulthood (Butler et al., 2020) but also have an increased likelihood of perpetrating some type of FV themselves (Bartlett et al., 2017). Through this

multigenerational transmission of violence, whole communities are shaped by violence as the criminal justice and social services systems are flooded with CM victims. While the previously cited research does support the fact that the endings of victim or victimizer are disastrously common in the story of abuse, it is important to point out that these endings are not universal. The cycle can be broken, which is why the contents of this review carry vast significance.

## **METHODOLOGY**

The following review is a non-systematic but comprehensive overview of Arizona state law and the protocols for law enforcement in Maricopa County regarding one form of FV, specifically CM. The law provides information on the rights of FV victims, while protocols outline the process that various government agencies use to ensure that victims' legal rights are respected. Specifically, this review focuses on comparing protocols for law enforcement response rather than the judicial or corrections protocols since those are more long-term. In contrast, law enforcement protocol illustrates how victim's rights are protected in real time. A review of these sources can provide a window into how the criminal justice system handles CM in the local community as well as a starting point for future research.

## **LITERATURE SEARCH STRATEGY**

This review comprehensively covers two main data sources on how the criminal justice system in Arizona addresses CM and more specifically, Maricopa County. These two sources are the Arizona Revised Statutes (A.R.S.) related to CM and the Maricopa County Multidisciplinary Protocol for the Investigation Child Abuse (MPICA). Although not comprehensively overviewed, the A.R.S. codes related to IPV and VAA, as well as the Maricopa County Domestic Violence Protocol Manual (DVPM) and Vulnerable Adult Protocol (VAP), are referenced as points of comparison for the laws and policies related to CM.

## **ORGANIZATION OF REVIEW**

To make a complex of laws and policies comprehensible to someone unfamiliar with the details of this topic, this review is organized according to the type of CM. For each type, the relevant A.R.S. codes are explained, then the relevant parts of the

Multidisciplinary Protocol are outlined, and finally, a comparison is made between the important A.R.S. codes and Multidisciplinary Protocols for IPV and VAA regarding the same type of abuse. This allows for a holistic picture of not only CM victims' legal rights but also how these rights are enforced. Comparing information on CM against that which is available for IPV and VAA allows for a solid basis of evaluation to determine how effectively current laws and policies handle CM in Maricopa County. The conclusion summarizes the important themes highlighted through this comparative process and touches on the implications of these themes for CM victims and the broader community.

### SEXUAL ABUSE

Sexual abuse has several A.R.S. codes related to its definition and prosecution. The comprehensive list of A.R.S. codes relating to sexual offenses specifically directed at children is as follows: 8-201 (Definitions), 8-821 (Taking into Temporary Custody), 13-1404 (Sexual Abuse), 13-1405 (Sexual Conduct with a Minor), 13-1406 (Sexual Assault), 13-1410 (Molestation of a Child), 13-3212 (Child Sex Trafficking), 13-3552 (Commercial Sexual Exploitation of a Minor), 13-3553 (Sexual Exploitation of a Minor), 13-3608 (Incest), and 13-707 (Dangerous Crimes Against Children). One notable inclusion in the sexual abuse portion of this review is the section of A.R.S. 8-201 related to neglect because it encompasses some of the material that falls within the research-based definition of sexual abuse laid out in this article. Some notable exclusions include A.R.S. codes related to sexual offenses which occur outside of the context of a family relationship since they fall outside the scope of this review on FV. The victim's age plays a significant role in both the definition and prosecution of sexual abuse, with distinctions being made at the ages of 12, 15, and 18 which differentiate the severity of the crime. Arizona's definition of abuse is broad in that it includes any *act, omission, or allowance of the acts of another* on the part of a child's parent or caregiver which cases or puts a child at risk of significant harm (A.R.S. 8-201, 2.). This basic definition applies to all types of abuse.

#### A.R.S. Codes:

1. A.R.S. 8-201 (Definitions): This statute serves as the definitional framework for any

Arizona law related to CM and explains that sexual abuse falls within the category of child abuse. Section 2. (a) specifically names sexual abuse, sexual conduct with a minor, sexual assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, and sex trafficking as the acts which are prohibited. Section 25. (e) defines deliberate or reckless exposure of a child to sexual conduct or content as being a form of neglect.

2. A.R.S. 8-821 (Taking into Temporary Custody): This statute provides law enforcement and child welfare investigators with the legal authority to take a child into temporary custody for up to 72 hours, excluding weekends and holidays, in order to protect them from imminent abuse or neglect. It also empowers DCS to take temporary custody of a child for up to 12 hours upon observing severe physical or emotional injuries in order to have the child evaluated by a medical professional or psychologist.
3. A.R.S. 13-1404 (Sexual Abuse): This statute defines the crime of Sexual Abuse as any intentional, non-consensual sexual contact with someone over 15 or with someone under 15 contact which only involves the female breast. It labels this a class 5 felony unless the victim is under 15, in which case the crime is prosecuted under A.R.S. 13-705 as a class 3 felony. It also states that consent is not a defense for victims 15-17 if the defendant is in a position of trust.
4. A.R.S. 13-1405 (Sexual Conduct with a Minor): This statute defines Sexual Contact with a Minor as intentional sexual intercourse or oral sexual contact with someone under 18. If the victim is under 15, it is prosecuted under A.R.S. 13-705 as a class 2 felony. If the victim is over 15, it is a class 6 felony unless the defendant held a position of trust which makes it a class 2 felony and makes the defendant ineligible for parole or pardon. This could be termed the statutory rape law.
5. A.R.S. 13-1406 (Sexual Assault): This

statute defines Sexual Assault as intentional, non-consensual sexual intercourse or oral sexual contact with a person. It is a class 2 felony, and defendants are not eligible for parole or pardon. Minimum, presumptive, and maximum sentences ranging from 5.25 years to 28 years are laid out depending on the number of times the defendant has been convicted of a felony. If specific “date rape” drugs are used non-consensually, then all minimums and maximums are increased by three years. If the assault involved intentional infliction of serious physical injury, the defendant may be sentenced to life imprisonment without the possibility of parole or pardon. If the victim is under 15, the act may be prosecuted under A.R.S. 13-705, and if the victim is 12 or younger while the defendant is 18 or older, the act must be sentenced under A.R.S. 13-705. Other aggravating or mitigating factors can be found in A.R.S. 13-701.

6. A.R.S. 13-1410 (Molestation of a Child): This statute defines Molestation of a Child as intentionally engaging in or causing a person to engage in sexual contact, other than with the female breast, with someone under 15. It is a class 2 felony prosecuted under A.R.S. 13-705.
7. A.R.S. 13-3212 (Child Sex Trafficking): Subsection A. of this statute defines Child Sex Trafficking as knowingly causing or permitting a minor to engage in prostitution or benefiting from a minor’s prostitution. It also covers transporting or financing a minor with the intent for them to engage in prostitution as well as making the means of engaging in prostitution or sexually explicit performances available to minors. This act is a class 2 felony and is prosecuted under 13-705 if the minor is under 15. Subsection B. explains that anyone over 18 commits this offense by knowingly engaging in prostitution with a minor under 15, a minor who the defendant knew or should have known was 15-17 or a minor who is 15-17. Subsection C. specifies that it is not a defense against prosecution if the victim was a peace officer posing as a minor.

This act is a class 2 felony and is always prosecuted under 13-705. For subsections A. and B., defendants are not eligible for parole or pardon. Minimum, presumptive, and maximum sentences range from 7 to 50 years and can be mitigated or aggravated by factors in A.R.S. 13-701. If a defendant has been previously convicted of this act with a victim between 15-17 according to subsection A., the current offense is still considered a class 2 felony, but the defendant is sentenced to natural life. The only defendants under this section who are eligible for parole and different sentencing guidelines are those who engaged with 15-17-year-old victims. These defendants may receive a sentence of a class 5 felony with a minimum of 180 days of jail time, 90 of which can be suspended if the defendant does not have a prior conviction regarding this statute.

8. A.R.S. 13-3552 (Commercial Sexual Exploitation of a Minor): This statute defines Commercial Sexual Exploitation of a Minor as knowingly causing a minor to engage themselves or aid another in engaging in sexual conduct for the purposes of producing a visual depiction. It also covers causing a minor to expletively expose any of the genital areas or breasts for financial gain. In addition, it covers knowingly permitting a child under one’s custody to engage in either of these activities. The section also prohibits transporting or financing the transportation of a minor through Arizona for the purposes of causing them to engage in prostitution or any of the previously outlined activities. In addition, it covers using a visual depiction of a minor in an advertisement for prostitution. This act is a class 2 felony if the victim is over 15 with minimum, presumptive, and maximum sentences between 13 and 50 years which can be mitigated or aggravated according to A.R.S. 13-701. If the victim is under 15, it is a class 2 felony but is prosecuted under A.R.S. 13-705. The defendant is ineligible for parole or pardon in both cases.
9. A.R.S. 13-353 (Sexual Exploitation of a Minor): This statute defines Sexual

Exploitation of a Minor as knowingly creating or duplicating any visual depiction of a minor engaged in exploitive exposure or sexual conduct. It also includes distributing, transporting, exhibiting, or possessing any of these visual depictions. This act is a class 2 felony; if the victim is under 15, it is prosecuted under A.R.S. 13-705.

10. A.R.S. 13-3608 (Incest): This statute defines Incest as adults who are biologically related, marrying, engaging in sexual intercourse, or committing adultery with each other. This is considered a class 4 felony.
11. A.R.S. 13-705 (Dangerous Crimes Against Children): This statute outlines how specific types of crimes against children are sentenced depending on several factors, including the age of the defendant, the number of times a defendant has been convicted for this type of crime, the type of crime, and the age of the victim. More severe penalties are imposed for victims aged 15 and 12, for defendants over 18, and for defendants with more previous convictions.

*Maricopa County Multidisciplinary Protocol for the Investigation of Child Abuse (2016):*

While Arizona law outlines the rights of children who are victims of sexual abuse, the MPICA outlines the method by which law enforcement and other local agencies ensure these rights are respected in Maricopa County. The MPICA is divided into sections based on agency and the type of abuse specified, outlining the tasks each agency is responsible for completing. Since the primary focus of this review is the proposed interaction of law enforcement with the issue of child maltreatment, the sections of the MPICA that are included are those which pertain to protocols governing this interaction.

According to the MPICA, there are two ways the criminal justice system can become involved in a case of child abuse. The first way is an emergency call coming through dispatch to alert law enforcement. The second is a Department of Child Safety (DCS) worker making a non-emergency report to a law enforcement supervisor who coordinates a law enforcement response. Either of these two methods of entry results in a patrol officer responding to the

scene. They start by interviewing the reporter away from others to establish the facts of the incident, the imminence of the danger, the need for medical attention, and what jurisdiction will have authority. This officer is prohibited from interviewing the suspect unless they receive specific permission from their supervisor; however, the officer may conduct a brief interview with the victim to determine only basic biographical information such as name or school. If possible, the officer should avoid recording the victim's personal information using audio or video.

From that point, if the patrol officer determines probable cause to suspect that abuse has occurred, one of two courses is adopted. Either a DCS investigator is called to handle the case, or a law enforcement investigator is called to the scene to continue the investigation. In some cases, both investigators are called in. In any of these cases, the victim must be interviewed by a qualified investigator who has received training in forensically interviewing children who are victims of this type of crime. Only one in-depth interview with a trained child forensic interviewer will occur with the child, which will be audio and video recorded. The investigator's supervisor decides if it is appropriate to interview the other children in the home as well.

As this process occurs, if it is determined that there could be physical evidence at the victim's home, the patrol officer should begin applying for a search warrant. If the assault occurred within the past 120 hours, a forensic medical exam must be performed as soon as possible. The need to immediately arrest the suspect is evaluated based on the danger to the victim, the flight risk of suspect, and the danger to the community. If scene preservation or photos are deemed necessary, the patrol officer begins this process. As soon as a warrant is obtained, crime scene processing begins.

Upon arrival, the law enforcement investigator or detective starts by re-interviewing the reporter, the victim, and other witnesses. Once initial interviews are completed, the detective is responsible for researching the suspect, including any prior convictions, other police reports, DCS reports, or unreported allegations. The detective interviews the suspect with this information in mind, ensuring to record audio and video of the interview. If the suspect is not already in custody, the detective makes another evaluation based on the fac-

tors highlighted previously to decide if an arrest is necessary and if probable cause exists. The detective is also responsible throughout this process for keeping the assigned DCS investigator apprised of the relevant information on the case, such as medical records, prior convictions, etc. If a parent interferes with the interview with the victim, the law enforcement detective or patrol officer is authorized to take the child into temporary custody.

After all the evidence is secured, the assigned detective submits a report with all relevant information to the prosecutor's office after consulting with the DCS investigator to ensure that all necessary documents are present. If the case goes to Grand Jury, the detective presents it and calls the medical examiner to provide evidence alongside the initial responding officer. If the case goes to a preliminary hearing, the detective and initial responding officer are subpoenaed to testify. If a case requires post-filing investigation, ideally, the same detective who initially filed the case will present the requested information to the County Attorney at least 24 hours prior to the Grand Jury or preliminary hearing. If the case is not filed, the County Attorney's Office is responsible for notifying the victim's family, the detective, the initial responding officer, and the DCS investigator. Figure 2. is taken from page 9 of Appendix 2 of the MPICA and illustrates how a case of child maltreatment moves through the criminal justice system (Maricopa County Interagency Council, 2016).

In the case of sexual abuse, the majority of the definitional A.R.S. codes are dependent on consent rather than age and are nearly identical for children, vulnerable adults, and adults (A.R.S. 13-1404, 13-1406, and 13-3608) with the only difference being that dangerous crimes against children are prosecuted under A.R.S. 13-705 while crimes against adults are prosecuted under A.R.S. 13-3601 (Domestic Violence), A.R.S. 13-702 (First Time Felony Offenders), A.R.S. 13-703 (Repetitive Offenders), A.R.S. 13-704 (Dangerous Offenders), or A.R.S. 13-706 (Serious, Violent, or Aggravated Offenders). A few exceptions exist where the law differs for adults compared to children.

The first is A.R.S. 13-1425 (Unlawful Distribution of Images, State of Nudity), which serves as the corresponding statute to A.R.S. 13-3553 and bars the non-consensual distribution or display of a visual depiction of sexual conduct or contact

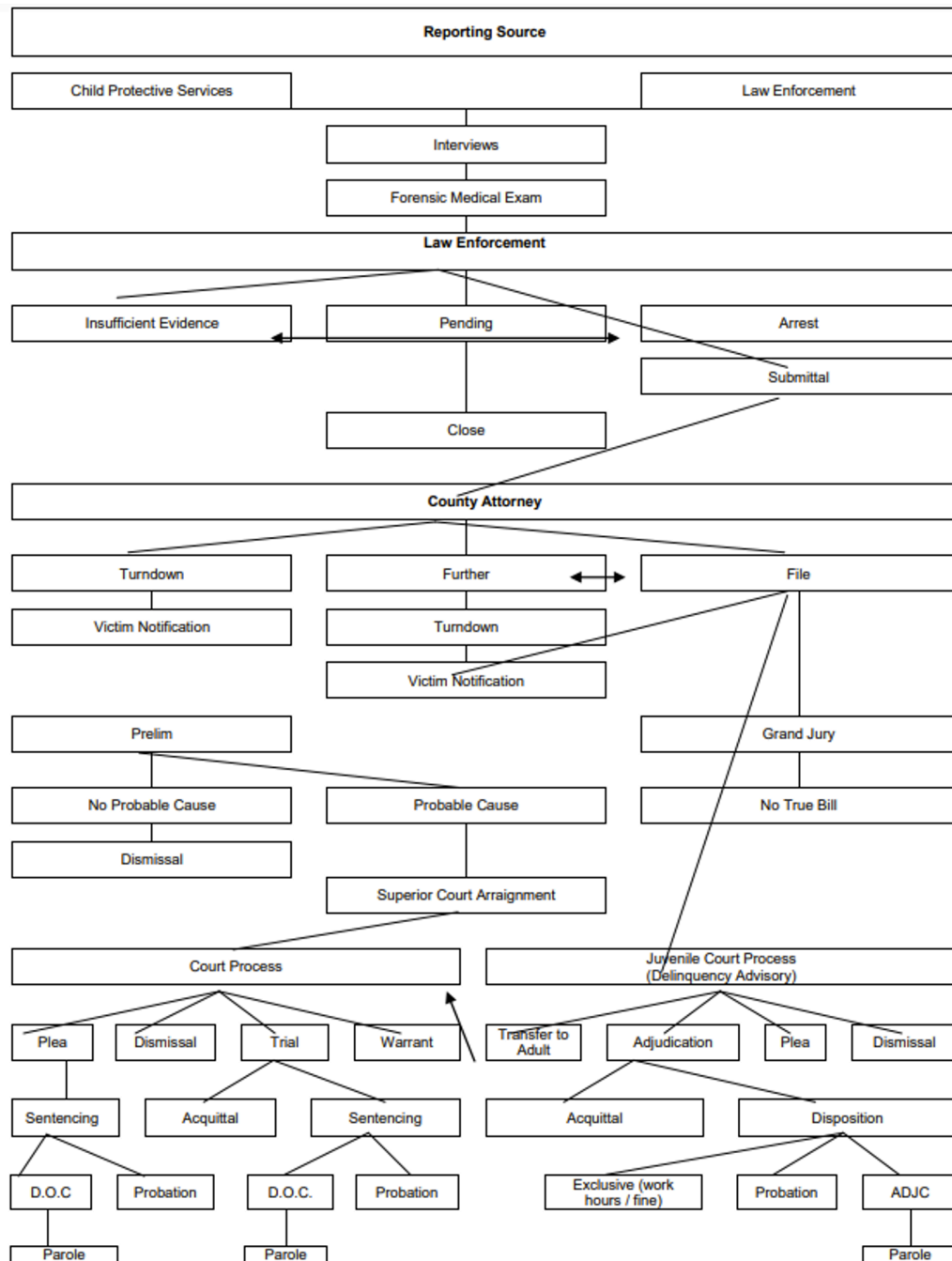
with another person. In the case of children, A.R.S. 13-3553 bars the creation of these visual depictions and their distribution, but for adults only, the distribution is prohibited. In addition, there is no equivalent statute to A.R.S. 8-821 (Taking into Temporary Custody) for adults who have experienced sexual abuse.

Many of the protocols are the same, although some notable differences arise. The comparable multidisciplinary protocol to the MPICA for responding to IPV is called the Domestic Violence Protocol Manual (2015) (DVPM). This protocol has one set of standards for how all types of IPV are responded to, whereas the MPICA has different protocols for different types of abuse.

Specifically, the DVPM authorizes the responding officer to interview all parties, including the victim, suspect, and witnesses, without any specific permission from a supervisor. The DVPM also requires two officers on the scene before engagement, if possible. In addition, the DVPM requires the responding officer to determine if a Victim's Advocate should be called to the scene as soon as the situation is secure. Similarities end on this point. A stark contrast to the MPICA appears at this point because a child abuse victim receives a Victim's Advocate much later in the process, only after charges have been brought. Another difference is that DCS is only involved in the investigative process if children are present in the home. Also, the DVPM requires that the responding officers notify the IPV victim of the availability of an Order of Protection. In contrast, CM victims are not given this option (Maricopa County Attorney, 2015).

In addition, several general considerations are included in the DVPM that are entirely excluded from the MPICA. These include specific instructions for officers to avoid making any type of statement that could discourage the victim from reporting, a mandate for supportive interviewing techniques, and an emphasis on the importance of officers avoiding making decisions based on subjective evaluations of the victim's state of mind or likelihood of charges being brought. In addition, there is a specific reminder that A.R.S. 13-3601(B) mandates that any suspect arrested on scene who is over 15 must not simply be cited and released. This law also applies to CM but is not mentioned in the MPICA (Maricopa County Attorney, 2015).

Figure 2: Comparison of A.R.S. Codes and Multidisciplinary Protocols on Sexual Abuse:



The corresponding protocol for VVA is the Vulnerable Adult Protocol (VAP) (2021). It correlates more closely with the MPICA than the DVPM, containing two primary protocols for law enforcement use. The one described below is for cases of physical abuse and emotional abuse, including neglect which is stated to apply to sexual abuse.

One important note is that this protocol clarifies that if the relationship between victim and sus-

pect is one covered under A.R.S. 13-601 (Domestic Violence), including a live-in caregiver relationship, the DVPM is to be used in conjunction with the VAP. In addition, the term vulnerable plays a significant role in determining whether a crime should be handled using this protocol because A.R.S. 36-3623 defines a vulnerable adult as someone who cannot protect themselves from abuse or exploitation due to mental or physical incapacitation. If an adult does not fall within this definition

of vulnerable, the crime cannot be prosecuted or handled with the same protocols (Maricopa Association of Governments, 2021).

This protocol closely parallels the MPICA in the priorities and tasks for which law enforcement is responsible, with a few notable deviations. One of these deviations is that the responding officer is allowed to interview both victim and suspect without specific permission from a supervisor if the victim is verbal, has not been taken to the hospital, and the suspect is readily available. It also encourages but does not mandate recording interviews with the victim and suspect. In addition, Victim's Advocates are a resource that officers are required to consider utilizing for VAA victims on scene, which differs from the protocol in place for children that only assigns a Victim Advocate once charges have been brought. Once a detective arrives on scene, they are responsible for communicating with Adult Protective Services (APS) in the same way that DCS must be involved in child abuse cases (Maricopa Association of Governments, 2021).

### PHYSICAL ABUSE

Physical abuse is the second most comprehensively defined type of abuse, and the list of A.R.S. codes that pertain to it include: 8-201 (Definitions), 8-821 (Taking into Temporary Custody), A.R.S. 13-3619 (Permitting the Life, Health, or Morals of a Minor to be Imperiled by Neglect, Abuse, or Immoral Associations), 13-3623 (Child or Vulnerable Adult Abuse), 13-3601 (Domestic Violence), and 13-705 (Dangerous Crimes Against Children). It is important to note that Arizona law puts both physical and emotional abuse within the same definition of "Abuse;" however, for this review, they will be examined separately. In addition, the law makes a distinction between physical abuse that is committed knowingly vs. that which is committed intentionally, recklessly, or with criminal negligence. A.R.S. 13-3619 covers knowing instances of abuse where the person who has custody of the child understands there may be potential risk to the child but acts anyway. A.R.S. 13-3623 covers intentional, reckless, or criminally negligent instances of physical abuse where ill intent toward the child is clearer. Finally, although physical abuse, neglect, and abandonment are often separated from one another in discussions, they all fall within the

definitional framework for physical abuse in this review, so A.R.S. codes related to all three are presented below.

#### *A.R.S. Codes:*

1. A.R.S. 8-201 (Definitions): Section 1. of this statute explains abandonment as referring to a failure on the part of the parent to provide reasonable support, supervision, and regular contact with their child for a period of 6 months or more without just cause. Section 2. of this statute pertains to physical abuse. It explains the term "abuse" as any act or omission that causes physical injury or serious emotional damage that is evidenced by severe mental or behavioral issues diagnosed as being caused by the actions of the person who has custody of the child. Section 25. explains neglect as unwillingness or inability to provide a child with supervision, basic necessities, and medical care on the part of the person who has custody of the child. Neglect also includes allowing a child to enter or remain in an area where toxic substances are present and exposing a child to substances prior to birth. Acts of neglect qualify as acts of physical abuse. Section 34. defines serious physical injury as any injury medical doctor diagnoses as creating a reasonable risk of death, serious permanent disfigurement, significant physical pain, serious impairment of health, or protracted impairment of an organ or limb.
2. A.R.S. 8-821 (Taking into Temporary Custody): This statute performs the same function as described in the sexual abuse section of the review.
3. A.R.S. 13-3619 (Permitting the Life, Health, or Morals of a Minor to be Imperiled by Neglect, Abuse, or Immoral Associations): This statute explains that a person who has custody of a child under 16 knowingly causing the life, health, or moral welfare of a child to be imperiled by neglect, abuse, or immoral associations is a class 1 misdemeanor.
4. A.R.S. 13-3632 (Child or Vulnerable Adult Abuse): This statute defines physical abuse

as a person who has care or custody of a child intentionally, recklessly, or negligently placing or permitting a child to be placed into a situation where the person or health of the child is either put at risk or harmed. There are two basic levels at which physical abuse can occur, namely in circumstances likely to produce death or serious physical injury or in circumstances that are not likely to produce death or serious physical injury. In the first set of circumstances, physical abuse caused negligently is a class 4 felony; when caused recklessly, it is a class 3 felony; and when caused intentionally, it is a class 2 felony which is prosecuted under 13-705 if committed against a child under 15. In the second set of circumstances, when physical abuse is committed negligently, it is a class 6 felony; when committed recklessly, it is a class 5 felony; and when it is committed intentionally, it is a class 4 felony. This statute's language encompasses actions, such as beating a child, and omissions, such as neglect, which both fall within the definitional framework for physical abuse used in this review.

5. A.R.S. 13-3601 (Domestic Violence): This statute is incredibly broad and encompasses many crimes ranging from assault to harassment to stalking and many others, with the defining feature being the relationship between victim and offender. Anyone who is either a household member, family member (through legal or biological means), partner or ex-partner or has a child in common with the defendant, falls under this statute. This can range from stepsibling relationships to grandparent/grandchild relationships to live-in caregiver relationships.
6. A.R.S. 13-705 (Dangerous Crimes Against Children): This statute performs the same function as described in the sexual abuse section of the review.

*Maricopa County Multidisciplinary Protocol for the Investigation of Child Abuse (2016):*

Many elements of the MPICA are the same in both the sexual abuse and the physical abuse or neglect sections; however, there are some significant differences. The first difference between

the MPICA sections on sexual abuse and physical abuse or neglect lies in the patrol response. The responding officer is authorized to conduct an interview with the suspect to establish their side of the story if the officer receives a supervisor's permission, the suspect is on scene, and the suspect is already aware of the investigation. Another difference is that the responding officer is also authorized to interview the victim if they are verbal, but only using specific questions regarding who, what, when, and where. Using a child interview qualified investigator is still encouraged for the full-length interview. Once the investigation begins, the physical abuse and neglect protocol departs from the sexual abuse protocol because children who are victims of sexual abuse are always brought to the hospital. In contrast, children who experience physical abuse sometimes do not get hospitalized.

More differences continue to appear between protocols as it is permissible to interview the suspect without extensive research or video/audio recordings. There is also no mention of taking a child into temporary custody, as is mentioned in the sexual abuse protocol. However, that is within the legal purview of the officer's role in this situation, according to A.R.S. 8-821. The case presentation is identical to cases of sexual abuse.

*Comparison of A.R.S. Codes and Multidisciplinary Protocols on Physical Abuse:*

Unlike sexual abuse, different A.R.S. codes define and prosecute physical abuse perpetrated against independent adults and physical abuse perpetrated against children or vulnerable adults. A.R.S. 13-3601 (Domestic Violence) is the statute that explains which crimes fall within the category of domestic violence when perpetrated in the context of specific types of family relationships, including physical abuse against adults. The crimes which qualify under both the A.R.S. 13-3601 and the definitional framework in place for this review regarding physical abuse include assault (A.R.S. 13-1203) and aggravated assault (A.R.S. 13-1204). A.R.S. 13-3601.01 (Domestic Violence; Treatment) and aggravated domestic violence A.R.S. 13-3601.02 (Aggravated Domestic Violence).

The previously explained laws explain the sentencing repercussions of a domestic violence conviction, including mandatory treatment programs and an increased mandatory sentence for third and fourth

convictions. The unique characteristic of domestic violence charges is that they are brought in conjunction with other charges based on the existence of a family relationship between the perpetrator and the victim. The charges remain identical (assault or aggravated assault) to what they would be if perpetrated outside a family, but the domestic violence charge dictates additional sentencing guidelines.

The final statute which is relevant to physical abuse within an IPV context specifically is A.R.S. 13-3611 (Refusal or Neglect to Provide for Spouse), which states that it is a class 1 misdemeanor to fail to provide for a spouse's basic needs if one has the ability to do so and no misconduct on the spouse's part has justified this failure. However, this law does not fall within A.R.S. 13-3601, so it does not carry the sentencing guidelines found in other domestic violence convictions.

Giving children and vulnerable adults essentially the same rights is mirrored by sexual abuse, which also uses A.R.S. 13-3632. However, the law changes again when physical abuse is perpetrated against a vulnerable adult. This type of violence is prosecuted under A.R.S. 13-3632 using exactly the same standards that are applied to children except for one specific variety of physical abuse: neglect. Neglect of a vulnerable adult is prosecuted under A.R.S. 46-455 and is a class 5 felony; however, there is also an option for settling the issue in civil court rather than criminal court, which is not an option in cases of child neglect.

As previously noted, there is only one protocol within the DVPM for responding to all types of domestic violence, so it does not change depending on the type of abuse. On the other hand, the VAP has two distinct protocols. One protocol is used for physical and emotional abuse, including neglect, while the other protocol is used for financial abuse. Both the relevant protocols for physical abuse within the DVPM and the VAP are described in the Sexual Abuse section of this review.

## FINANCIAL ABUSE

Arizona law does not recognize financial abuse as a crime in reference to children. Adults who are not deemed vulnerable also do not have any financial abuse statutes named within A.R.S. 13-3601 as falling within the scope of domestic violence law. Arizona laws on this crime within an FV context

limit its definition to only include victims who qualify as vulnerable adults (A.R.S. 46-471).

### *Maricopa County Multidisciplinary Protocol for the Investigation of Child Abuse (2016)*

Because no statutes define financial abuse in reference to children as a crime, there are no protocols within the MPICA for addressing this potential issue.

### *Comparison of A.R.S. Codes and Multidisciplinary Protocols on Financial Abuse*

Since the law does not recognize financial abuse as a crime in reference to children or adults who do not qualify as vulnerable, it follows that there is no protocol in the DVPM for investigating financial abuse. The closest law which resembles financial abuse between non-vulnerable adults in a family context is A.R.S. 13-3610 (Abandonment of Spouse), which explains that it is a class 1 misdemeanor to leave one's spouse destitute when the individual is able to provide for their support.

The two statutes in place pertaining to financial abuse of vulnerable adults are A.R.S. 46-471 (Definitions) and A.R.S. 46-456 (Duty to a Vulnerable Adult). A.R.S. 46-471 explains financial exploitation as any use or withholding of financial resources belonging to a vulnerable adult through deception or intimidation, depriving the vulnerable adult of possessing those resources. A.R.S. 46-456 explains that anyone who holds a position of trust in a vulnerable adult's life is responsible for using the adult's financial resources solely for the adult's benefit. It also outlines that anyone who has assumed the duty of care, a joint tenant, a fiduciary relationship, a confidential relationship, or a beneficiary for the vulnerable adult holds a position of trust. Should a person financially exploit the vulnerable adult under their care, it constitutes a civil offense which can result in the perpetrator being responsible for reimbursing up to twice the amount of money taken along with legal fees. The VAP outlines a process for investigating financial abuse, which is similar to other forms of abuse. However, since there is no point of reference for comparison within the MPICA or DVPM, the details of this protocol fall outside the scope of this review.

## EMOTIONAL ABUSE

It is important to review the A.R.S. codes related to emotional abuse as the final piece of a complex legal system while keeping in mind the

previously explained information regarding how the criminal justice system interacts with different forms and types of abuse. The two primary statutes which pertain to emotional abuse of children by family members are A.R.S. 8-201 (Definitions) and A.R.S. 13-3623 (Child or Vulnerable Adult Abuse). Each plays a definitional role and a proscriptive role in the legal framework.

#### *ARS Codes:*

1. A.R.S. 8-201 (Definitions): As previously mentioned, this statute contains one definition for abuse, which is applied to sexual, physical, and emotional abuse. Section 2. of this statute explains that the term abuse encompasses causing or allowing another to cause serious emotional damage that is evidenced by severe anxiety, depression, withdrawal, or aggressive behavior, which can be diagnosed by a professional as caused by the acts or omissions of the person who has custody of the victim.
2. A.R.S. 13-3623 (Child or Vulnerable Adult Abuse): Section B of this statute explains that anyone who puts the person or health of a child at risk of injury or abuse is guilty of a class 4 felony if the act was committed intentionally, a class 5 felony if it was committed recklessly, and a class 6 felony if done with criminal negligence. It points to A.R.S. 8-201 for definitions of the term "abuse."

#### *Maricopa County Multidisciplinary Protocol for the Investigation of Child Abuse (2016):*

Notably, there is no protocol in the MPICA to outline a response for law enforcement to the emotional abuse of children. Unlike financial abuse, which simply does not have a statute and therefore does not have a protocol, emotional abuse does have a statute but still no protocol for enforcement. This lack of protocol renders the law virtually powerless.

#### *Comparison of A.R.S. Codes and Multidisciplinary Protocols on Emotional Abuse:*

Because there are no protocols in place for law enforcement response to the emotional abuse of children, comparing the laws in place serves as the only point of connection between different forms

of the same type of FV in this case. Although the term emotional abuse is not specifically used, several codes are mentioned in A.R.S. 13-601, including those for threatening or intimidating (A.R.S. 13-1202), assault (A.R.S. 13-1203), disorderly conduct (A.R.S. 13-2810), cruelty to animals (A.R.S. 13-2910), harassment (A.R.S. 13-2921), and stalking (A.R.S. 13-2923), which outline the same contents as are found in the research-based definitional framework for emotional abuse for this review. These offenses are considered domestic violence charges and can be prosecuted under A.R.S. 13-3601, although they will receive different sentences depending on the individual charge.

In addition to these differences, there is also a large departure from the narrow definition provided for emotional abuse of children when the law defines emotional abuse of vulnerable adults. A.R.S. 13-3623 provides a complete explanation of what constitutes emotional abuse of a vulnerable adult, differentiating it from emotional abuse perpetrated against a child. Section D. explains that emotional abuse of vulnerable adults is constituted of intentionally subjecting or permitting the vulnerable adult to be subjected to a pattern of ridiculing or demeaning, derogatory remarks, verbal harassment, or threats of harm on a physical or emotional level. It is a class 6 felony. On the other hand, for a caregiver's behavior to qualify as emotional abuse when the victim is a child, the child must be diagnosed with a serious mental health condition that was probably caused by the caregiver. The disparity is glaring.

#### **CONCLUSION**

Several key points of similarity and difference present themselves throughout this review in the way that Family Violence is handled by Arizona state law and Maricopa County protocol, with age being the defining variable. The primary differences which the review highlighted began in the sexual abuse section. When IPV occurs, it is required for at least two officers to respond to the scene, whereas only one is required in CM cases. In cases that fall within the scope of the DVPM, a victim's advocate must immediately be called to the scene. Children do not receive a victim's advocate until after charges have been brought to the prosecutor. In addition, the DVPM provides significant instruction to officers who respond on

acceptable methods for interacting with victims, specifying that no discouragement for disclosure should be given. This language is entirely absent from the MPICA. Yet another difference is that in cases of child abuse, officers are encouraged to interview the suspect to get the other side of the story using very neutral language and no previous research into the potential offender's history. The DVPM contains much more interrogatory tones.

The financial abuse section provides a stark portrayal of the fact that it is viewed as impossible to financially abuse a child. While this may seem like a positive at first glance, it reveals an entirely different level of vulnerability for children since they do not have any financial resources to exploit. The emotional abuse section provides another prime example of the differences in how abuse is addressed based on age. There is no mention of emotional abuse in the MPICA, and there are extensive laws and policies on this topic related to IPV and VAA victims. In addition, the legal definition of what constitutes emotional abuse is distinct for children compared to vulnerable adults, even though the two stand on equal legal footing otherwise. The definition of abuse for vulnerable adults hinges on the actions committed against the victim. In contrast, the definition for children hinges on the severity of the mental consequences for the victim.

It is telling to consider the differences in how the same fundamental actions are handled with the victim's age as the only independent variable. Were a man to yell, "Get over here now, or I will knock the living daylight out of you!" at his adult wife, he would be facing a probable intimidation or assault charge, which carries the possibility of a felony conviction. On the other hand, this behavior is completely legal to commit against children unless a mental health professional diagnoses the child with a significant mental disorder that is explicitly stated to have been caused by the parent's behavior. Many consider it standard child discipline to spank children, sometimes even with implements such as belts or paddles. However, were a mentally handicapped adult to be struck for their misbehavior by a caregiver, it would result in immediate criminal charges of assault or aggravated assault, depending on the use of a weapon or implement. Disturbing as these results may be, they reveal an opportunity for Arizona and Maricopa County to lead the way in protecting children's rights by researching

more ways in which people can be treated equitably regardless of age. Every four minutes in this county, a child is exposed to Family Violence of some kind (Maricopa County Attorney's Office, 2022), and the cycle will continue unless the systems in place are improved to ensure that all ages of victims receive the help they deserve.

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