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## Child torture victimization: Review of criminal statutes and medico-legal issues

Stephanie Anne Deutsch<sup>a,\*</sup>, Erin O'Brien<sup>b</sup><sup>a</sup> Department of Pediatrics, Nemours Children's Health, Delaware, Wilmington, DE, United States of America<sup>b</sup> Chester County District Attorney's Office, West Chester, PA, United States of America

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### ABSTRACT

A renowned group of pediatricians and an attorney with expertise in child abuse matters proposed a medical definition of intrafamilial child torture perpetrated by a caretaker in a landmark 2014 publication in the health sciences literature. Representing one of the most widely cited publications on non-politically motivated child torture to date, this medical definition encompassing physical abuse, psychological abuse, deprivation, and neglect characterizing child torture has been broadly recognized and accepted by multidisciplinary professionals across medical, child welfare, and criminal justice sectors. While the medical community's efforts aimed to compel legislative changes, including adoption of explicit torture-specific statutes that would enable criminal justice system responses reflective of abuse severity, subsequent legal analyses have revealed tremendous variability in criminal investigations, prosecution, sentencing, and case outcomes. In this discussion piece, medico-legal issues relevant to intrafamilial child torture case prosecution are reviewed. The impact of the established medical definition on jurisdictional legal approaches and unique case challenges related to longitudinal nature of abuse, frequent psychological injury, and victim-perpetrator dynamics are explored in depth. Utilizing available legal research platforms, investigative information, health sciences literature, and prosecutor self-report, existing child torture statutes and case outcomes were compared with focus on perpetrator, victim, socio-environmental, and community influence on legal outcome. Prosecutorial challenges facing jurisdictions lacking child torture statutes are discussed with emphasis placed on the critical role played by the medical community to support diagnosis of physical and emotional impacts to the child. Finally, the process by which states can establish a jurisdictional torture statute are suggested.

### 1. Background

Modern understanding of non-political, non-militarily motivated torture perpetrated by caretakers as a distinct, severe form of child abuse has emerged over the past two decades largely due to landmark publications across the health sciences and legal literature. In 1998, Allasio and Fischer ([Allasio & Fischer, 1998](#)) detailed a single case of extensive physical abuse and neglect involving a 4-year-old male toddler whose father confessed to whipping the child with a belt; pushing him down; and hitting him with sticks, boards, a

\* Corresponding author at: Department of Pediatrics, Nemours Children's Health, Delaware, 1801 Rockland Road, Wilmington, DE 19803, United States of America.

E-mail addresses: [stephanie.deutsch@nemours.org](mailto:stephanie.deutsch@nemours.org) (S.A. Deutsch), [eobrien@chesco.org](mailto:eobrien@chesco.org) (E. O'Brien).

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rubber belt, and a ruler on multiple occasions. The child's physical examination was notable for multiple abrasions, bruises, and loop marks across his face, chest, back, abdomen, and extremities. He was described as concurrently neglected, dirty, hungry, and thirsty. Allasio and Fischer suggested need to define "the essential elements of child torture," including premeditated and ongoing nature, characteristic physical control by the perpetrator over the victim, and infliction of severe pain and suffering (Allasio & Fischer, 1998). Similarly, in a provocative 2006 case report published by Tournel and associates (Tournel et al., 2006), the phrase *child barbarity* (whose synonyms include brutality and extreme cruelty) was utilized to describe abusive circumstances in which a 3-year-old toddler sustained an incarcerated penis from inflicted hair tourniquet and perforated eyes, having been gauged by a pocketknife. Tournel et al. suggested both the unusual injuries sustained by the child victim and the perpetrator's unique motivations and *modus operandi*-repetitive injury to sites of previous insult- rendered this case exceptional from other cases of physical abuse (Tournel et al., 2006).

Establishment of a medical definition of child torture by Knox et al. in 2014 (Knox et al., 2014) greatly enhanced the ability of medical professionals to identify and diagnose the phenomenon, although subsequent critiques have challenged definitional components including the exclusion of sexual abuse (Alexander & Peña, 2016; Miller et al., 2021). Knox et al.'s exemplary compilation of clinical findings and case characteristics described 28 children with evidence of physical abuse, neglect, and psychological maltreatment perpetrated by their caretakers; in this series, 93 % of victims were beaten and sustained cutaneous injury, 75 % were terrorized through threats of harm or death, and 89 % were deprived of basic necessities (Knox et al., 2014). Knox et al. proposed torture inflicted by a child's caretaker be consistently characterized as the experience of at least two significant physical assaults or one extended incident, two or more forms of psychological maltreatment and concurrent neglect resulting in prolonged suffering, permanent disfigurement or dysfunction, or physical and emotional distress (Knox et al., 2014). Knox et al. theorized abusive dynamics in torture cases—including the perpetrator's desire for domination and control over the basic necessities of life, creation of rules, boundaries and patterns to manage behavior, and potential motivation to crush the child victim's spirit and humanity—render torture fundamentally distinct from episodic acts of impulse and unchecked anger that frequently characterize physical abuse perpetration (Knox et al., 2014). Furthermore, Knox et al. indicated a medical definition of torture may compel states to adopt explicit torture-specific statutes, enabling criminal justice system responses reflective of abuse severity and responsive to factors infrequently addressed in existing statutes, namely emotional and psychological injuries (Knox et al., 2014).

Representing one of the most widely cited publications on non-politically motivated child torture to date, Knox et al.'s medical definition has been broadly recognized and accepted by multidisciplinary professionals across medical, child welfare, and criminal justice sectors (Knox et al., 2014; Miller et al., 2021). Proposed alternative definitions, including that developed by the American Professional Society on the Abuse of Children in 2021 (Miller et al., 2021), recognize physical and/or psychological captivity of the child, control of the child's psyche to produce subservient beliefs and behaviors in service to the psychopathological needs of the perpetrator, and typical protracted duration.

In a 2009 editorial "A Road to Hope: The Path to Defining Child Torture to Protect the Children" Ahan proposed a medical definition of child torture reference 1) intent to cause cruel physical or mental pain and suffering, 2) infliction of serious bodily injury, emotional harm or severe mental pain or suffering, 3) some protraction in time, and 4) infliction upon another person within his or her custody or control (Ahan, 2009). Ahan suggested that any language around a threshold separating child abuse from torture be avoided as it may compel a perpetrator to cease the act before that specified level is met (Ahan, 2009). Implications were theorized to be many, including a template for enacting state legislation and epidemiologic surveillance by researchers (Ahan, 2009).

Browne similarly sought to establish a universal legal definition of child torture by caretakers that would "give rise to model legal statute" criminalizing non-political torture in the United States (Browne, 2014; Miller et al., 2021). Browne contended that a torture crime should not require proof of pain or suffering of the victim (elements that may be impacted by personal resiliency), and that no temporal requirement should exist (Browne, 2014). Browne reasoned that psychological torture as a singular abuse type experienced by the victim should be sufficient for criminal convictions (Browne, 2014; Miller et al., 2021).

## 2. Torture references in U.S. criminal statutes

Despite efforts by medico-legal professionals to enact a universal approach to child torture, criminal investigation, prosecution, and sentencing have historically varied widely by jurisdiction. Attorneys Suzanna Tiapula and Amanda Applebaum conducted one of the earliest in-depth legal assessments of torture in US criminal laws in 2011 (Tiapula & Applebaum, 2011). Physical and sexual torture references existed among animal cruelty statutes, in sentencing enhancements to murder, obscenity statutes, trafficking statutes, and even parental termination statutes but often included specific provisions related to injury extent and pain suffered by the victim (Tiapula & Applebaum, 2011). Many statutes required the torturer to have engaged in a specific number of acts or abusive pattern of acts; statutes either involved an analysis of pain (using words like "suffering," "grievous," "prolonged" as qualifiers), or required explicit motives ("for purpose of causing pain, revenge, extortion," "any sadistic purpose," "course of conduct"). At the time of publication in 2011, torture references existed in 27 state child protection statutes, with 18 listing torture specifically as a factor precluding caretaker reunification (Tiapula & Applebaum, 2011).

Macy in 2019 (Macy, 2019) conducted contemporary review of US criminal statutes and identified reference to child torture in 36 state and DC criminal codes, a marked change (Tiapula & Applebaum, 2011). Statutory reference to torture fell into one of three criteria: 1) that the state code explicitly prohibited torture, unusual cruelty, and unjustified suffering; 2) that the state code prohibited mental or physical injury (further defining injury to include torture, pain, and mental suffering); 3) or the state code banned repeated pattern of injuries. Macy identified that criminal statutes were heterogenous with widely varying sentencing potential, some contingent on the torturer having a legal custodial relationship with the victim, or limited by serious bodily injury requirement (Macy, 2019).

**Table 1**  
Torture state laws.

State	Statute/code	Elements	Grade/penalty
Alabama	Ala. Code §26–15-3	Torture, willfully abuse, cruelly beat.	Class C Felony; 1 year, 1 day – 10 years
Alaska	AS §11.41.210	Recklessly causes serious physical injury to another by repeated assaults, even if each assault individually does not cause serious physical injury.	Class B Felony; not more than 10 years
Arizona	AZ Code §13–3623	Infliction or allowing of physical injury; impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage	Class 2 – Class 5 Felony; 6 months – Life (reliant on grade, mens rea)
Arkansas	Ark. Code Ann. § 12–18-103	Extreme or repeated cruelty; conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ.	Class D Felony/Class A Misd.; Up to 1 year – Up to 6 years
California	Cal. Penal Code § 206	Intent to cause cruel or extreme pain and suffering for purpose of revenge, extortion, persuasion, or for any sadistic purpose inflicts great bodily injury.	Life Imprisonment w/o Parole
Colorado	Colo. Rev. Stat. Ann. § 18–6-401	Causes an injury to a child's life or health; 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.	Class 2 Felony – Misd.; varied by grading (up to 120 days, 8–24 years when resulting in death)
Connecticut	Conn. Gen. Stat. Ann. §53–20(b)(1)	Intentionally maltreats, tortures, overworks or cruelly or unlawfully punishes such child or intentionally deprives such child of necessary food, clothing or shelter.	Class D Felony; 1–5 years
Delaware	Del. Code State tit. 11 § 1103D* (HB 182)	Course of conduct of child abuse, maltreatment or emotional abuse of a child; deprivation of, or failure to provide, necessary care such as food, water, clothing, shelter, or medical care; torture includes unreasonable or extended confinement or restraint, cruel punishment, or intentional or reckless failure to provide for the health, safety, medical, or nutritional needs of a child.	Class B Felony
District of Columbia	D.C. Code § 22–1101	Intentionally, knowingly, or recklessly <b>tortures</b> , 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.	Felony
Florida	Fla Stat. §827.03	Commits aggravated battery on a child; willfully <b>tortures</b> , maliciously punishes, or willfully and unlawfully cages a child; or knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.	1st Degree Felony – up to 30 years
Georgia	Ga. Cod A. 16–5-70	A parent, guardian, or other person supervising the welfare of a child under the age of 18 willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized; any person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain; any person, with criminal negligence, causes a child under the age of 18 cruel or excessive physical or mental pain.	Felony; 5–20 years, 1–10 years
Hawaii	HI ST §707–710	Intentionally or knowingly causes serious bodily injury to another person.	Class B Felony
Idaho	ID. ST. §18–1501	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.	Imprisonment in the county jail for not more than one year, or imprisonment in the state prison for not less than one nor more than 10 years
Illinois	IL ST CH 720 § 5/12–3.05	Knowingly causes great bodily harm or permanent disability or disfigurement.	Class 1 Felony when committed intentionally and involved the infliction of torture
Indiana	IN ST 35–46–1-4	A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally: places the dependent in a situation that endangers the dependent's life or health; abandons or cruelly confines the dependent; deprives the	Level 6 – Level 1 Felony; depending on severity of injury to the child and type of confinement

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Table 1 (continued)

State	Statute/code	Elements	Grade/penalty
Iowa	IA ST § 726.6	dependent of necessary support; or deprives the dependent of education as required by law. A person who is the parent, guardian, or person having custody or control over a child knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety; 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; 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; willfully deprives a child or minor of necessary food, clothing, shelter... when the person is reasonably able to ... and which deprivation substantially harms the child or minor's physical, mental or emotional health.	Class D Felony; Class C Felony if serious bodily injury to child; Class B Felony if results in death of child
Kansas	KS ST 21-5602	Knowingly torturing, cruelly beating, cruelly striking or cruelly kicking; knowingly inflicting cruel and inhuman corporal punishment; or knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary.	Severity Level 5 (child at least 6 years of age); Severity Level 3 (child under 6 years of age)
Kentucky	KY ST § 508.100	Intentionally abuses another person or permits another person of whom he has actual custody to be abused and thereby: Causes serious physical injury; Places him in a situation that may cause him serious physical injury; or 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.	Class C Felony; Class B Felony where child under 12 years of age
Louisiana	LA R.S. 14:93	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.	Up to 10 years, with or without hard labor; Up to 20 years with hard labor if child is 8 years old or younger
Maine	ME ST T. 17-A § 208	Intentionally, knowingly or recklessly causes: bodily injury to another that creates a substantial risk of death or extended convalescence necessary for recovery of physical health; bodily injury to another that causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ; bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, the manner or method inflicted, the observable physical condition of the victim or the use of strangulation.	Class B Crime; Class A when serious permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ
Maryland	MD CRIM LAW § 3-601	A parent, family member, household member, or other person who has... responsibility for the supervision of a minor may not: cause abuse to the minor that: results in the death of the minor; or causes severe physical injury to the minor; or engage in a continuing course of conduct which includes three or more acts of abuse.	Felony of the 1st Degree; Imprisonment not more than 25 years; Imprisonment not more than 40 years if causes death of child 13 years of age or older; Imprisonment not more than life if causes death of child under 13
Massachusetts	MA ST 265 § 13 J	Causes bodily injury; Causes substantial bodily injury; having care and custody of a child, wantonly or recklessly permits bodily injury to such child or wantonly or recklessly permits another to commit an assault and battery upon such child, which assault and battery causes bodily injury; Whoever, having care and custody of a child, wantonly or recklessly permits substantial bodily injury to such child or wantonly or recklessly permits another to commit an assault and battery upon such child, which assault and battery causes substantial bodily injury.	Felony - Not more than 5 years; Not more than 15 years; Not more than 2.5 years; Not more than 5 years
Michigan	MI ST 750.85	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.	Felony punishable by life or any term of years
Minnesota	MN ST § 609.3775	The intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner.	Felony; not more than 25 years imprisonment

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Table 1 (continued)

State	Statute/code	Elements	Grade/penalty
Mississippi	MS ST § 97–5-39	Whether bodily harm results or not, if the person intentionally, knowingly or recklessly: Burn any child; physically torture any child; strangle, choke, smother or in any way interfere with any child's breathing; poison a child; starve a child of nourishments needed to sustain life or growth; or use any type of deadly weapon upon any child.	Felony; not less than 5 years nor more than life
Missouri	MO ST 568.060	Knowingly causes a child who is less than eighteen years of age: to suffer physical or mental injury as a result of abuse or neglect; or to be placed in a situation in which the child may suffer physical or mental injury as the result of abuse or neglect.	Class D Felony, not less than one year; Class A Felony if the child dies from the conduct; Class A Felony, not less than 15 years if the child suffers serious emotional or physical injury, the child is less than 14 years of age, and the injury is the result of sexual abuse
Montana	MT ST 45–5-202	Purposely or knowingly causes serious bodily injury to another or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another.	Not to exceed 20 years
Nebraska	Neb.Rev.St. § 28–707	Knowingly, intentionally, or negligently causes or permits a minor child to be: placed in a situation that endangers his or her life or physical or mental health; cruelly confined or cruelly punished; deprived of necessary food, clothing, shelter, or care; placed in a situation to be sexually exploited; placed in a situation to be sexually abused.	Class I misdemeanor if committed negligently and does not result in serious bodily injury; Class IIIA Felony if committed knowingly or intentionally and does not result in serious bodily injury or if committed negligently and results in serious bodily injury; Class IIA Felony if committed negligently and results in death; Class II Felony if committed knowingly or intentionally and results in serious bodily injury; Class IB Felony if committed knowingly or intentionally and results in the death of the child
Nevada	N.R.S. 200.508	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.	Category B Felony if substantial bodily or mental harm is not caused, 1–6 years; if substantial bodily or mental harm caused, Category B Felony, 2–20 years; Class A Felony if substantial harm caused, child less than 14, and harm caused by sexual exploitation
New Hampshire	NH ST § 631:1	Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.	Class A Felony
New Jersey	N.J.S.A. 2C:24–4	Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm as defined: (1)inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical	2nd Degree Crime (if duty of care), otherwise 3rd Degree Crime

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Table 1 (continued)

State	Statute/code	Elements	Grade/penalty
New Mexico	N. M. S. A. 1978, § 30-6-1	well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation. A person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be: placed in a situation that may endanger the child's life or health; tortured, cruelly confined or cruelly punished; or exposed to the inclemency of the weather.	3rd Degree Felony; 2nd Degree Felony if second or subsequent offense; 1st Degree Felony if results in child's death or great bodily harm
New York	NY PENAL § 120.10	A person is guilty when: with intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or in the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants.	Class B Felony
North Carolina	N.C.G.S.A. § 14-318.4	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 injury 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.	Class B2 Felony
North Dakota	NDCC, 14-09-22	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.	Class C Felony; Class B Felony if child under 6 or if victim suffers permanent loss or impairment of the function of a bodily member or organ; Class A Felony if child is under 6 and suffers permanent loss or impairment of the function of a bodily member or organ
Ohio	OH ST § 2919.22	No person shall do any of the following to a child under eighteen years of age or a child with a mental or physical disability under twenty-one years of age: Abuse the child; Torture or cruelly abuse the child; Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child; Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.	3rd Degree Felony; 2nd Degree Felony if serious physical harm to the child or prior conviction
Oklahoma	OK ST T. 21 § 843.5	Any person who shall willfully or maliciously engage in child abuse - 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 years of age by a person responsible for a child's health, safety or welfare, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by any person.	Felony – punishable by up to life imprisonment or up to one year in county jail
Oregon	OR ST § 163.185	A person intentionally causes serious physical injury to another by means of a deadly or dangerous weapon; or intentionally or knowingly causes serious physical injury to a child under six years of age.	Class A Felony
Pennsylvania	18 Pa.C.S. 2702	Attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older; or attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older.	2nd Degree Felony; 1st Degree Felony

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Table 1 (continued)

State	Statute/code	Elements	Grade/penalty
Rhode Island	RI ST § 11–9-5.3	Whenever a person having care of a child, as defined whether assumed voluntarily or because of a legal obligation, including any instance where a child has been placed by his or her parents, caretaker, or licensed or governmental child placement agency for care or treatment, knowingly or intentionally: Inflicts upon a child serious bodily injury (physical injury that creates a substantial risk of death; causes protracted loss or impairment of the function of any bodily parts, member or organ, including any fractures of any bones; causes serious disfigurement; or evidences subdural hematoma, intercranial hemorrhage and/or retinal hemorrhages); Inflicts upon a child any other physical injury.	1st Degree Child Abuse if serious bodily injury, 10–20 years; 2nd Degree Child Abuse, 5–10 years
South Carolina	SC ST § 63–5-70	Unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child to: place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or willfully abandon the child.	Felony, up to 10 years
South Dakota	SD ST § 26–10-1	Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault.	Class 4 Felony; Class 3 Felony, if child under 7 years of age
Tennessee	TN ST § 39–15-402	A person who commits child abuse (any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury; any person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare; a parent or custodian of a child eight (8) years of age or less who knowingly exposes such child to or knowingly fails to protect such child from abuse or neglect resulting in physical injury or imminent danger to the child) and: the act of abuse, neglect or endangerment results in serious bodily injury to the child; a deadly weapon, dangerous instrumentality, controlled substance or controlled substance analogue is used to accomplish the act of abuse, neglect or endangerment; the act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim.	Class B Felony; Class A Felony if the child is less than 8 years of age, or is vulnerable because the child is mentally defective, mentally incapacitated or suffers from a physical disability
Texas	TX PENAL § 22.04	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, elderly individual, or disabled individual: serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury.	1st Degree Felony when committed knowingly or intentionally; 2nd Degree Felony when conduct is engaged in recklessly
Utah	UT ST § 76–5-109.2	An actor commits aggravated child abuse if the actor: inflicts upon a child serious physical injury (any physical injury or set of injuries that: seriously impairs the child's health; involves physical torture; causes serious emotional harm to the child; or involves a substantial risk of death to the child); or having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child.	2nd Degree Felony if done knowingly or intentionally; 3rd Degree Felony if done recklessly; Class A misdemeanor if done with criminal negligence
Vermont	13 V.S.A. § 1304	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, or to endanger his or her health.	Not more than 2 years; Not more than 10 years if child suffers death or serious bodily injury or is subjected to sexual abuse
Virginia	VA Code Ann. § 18.2–371.1	Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child.	Class 4 Felony; Class 6 Felony, if the willful act or omission was so gross, wanton, and culpable as to show a reckless disregard for human life
Washington	WA ST 9 A.36.011	A person commits this offense against a child under 13 if the person: commits the crime of assault in the first degree (with intent to inflict great bodily harm: assaults another	Class A Felony

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Table 1 (continued)

State	Statute/code	Elements	Grade/penalty
		with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or transmits HIV to a child or vulnerable adult; or administers, exposes, or transmits to or causes to be taken by another, poison or any other destructive or noxious substance; or assaults another and inflicts great bodily harm), against the child; or intentionally assaults the child and either: recklessly inflicts great bodily harm; or 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.	
West Virginia	WV ST § 61-8D-3	If any parent, guardian or custodian shall abuse a child and by such abuse cause such child bodily injury (substantial physical pain, illness or any impairment of physical condition); If any parent, guardian or custodian shall abuse a child and by such abuse cause said child serious bodily injury (bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ); Any parent, guardian or custodian who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury.	Felony, less than one year to 5 years where bodily injury caused; Felony, 2 to 10 years where serious bodily injury caused; Felony, 1–5 years where substantial risk of death or serious bodily injury caused (misdemeanor if no prior crimes of this nature, up to one year to 5 years); penalties increased for second and subsequent offenses
Wisconsin	WI ST 948.03 WI ST 948.04	Whoever intentionally causes great bodily harm to a child is guilty; whoever intentionally causes bodily harm to a child is guilty of a Class H felony; 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; Whoever recklessly causes great bodily harm to a child is guilty; Whoever recklessly causes bodily harm to a child is guilty; Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty. Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty; A person responsible for the child's welfare is guilty if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.	Class C felony when great bodily harm caused; Class H felony when bodily harm caused; Class F where high probability of great bodily harm caused; Class E felony when recklessly caused great bodily harm to child; Class I felony when recklessly caused bodily harm; Class H felony when recklessly creates a high probability of great bodily harm. Class F felony when causes mental harm or fails to prevent mental harm
Wyoming	WY ST § 6–2–503	A person is guilty of child abuse, if: the actor is an adult or is at least six (6) years older than the victim; and the actor intentionally or recklessly inflicts upon a child under the age of sixteen (16) years: physical injury; mental injury; or torture or cruel confinement.	Felony, not more than 10 years; Aggravated Child Abuse Felony, not more than 25 years if: in the course of committing the crime of child abuse, 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

At least two states, including Delaware and Minnesota, have specifically enacted laws criminalizing child torture in the years since Macy published her comprehensive analysis (Delaware Code, Chapter 5 (§1103 (d)), 2022; Minnesota Statute, Chapter 609 (609.377), 2021). Other states continue to rely on traditional assault statutes, which focus on the infliction of physical injury and the severity of said injury; contemporary relevant statutes, elements, and criminal penalty are detailed in Table 1.

### 3. Gaps in traditional assault statutes: implications for perpetrators

Many felony child abuse statutes, or the corresponding statutes used in prosecuting crimes of child torture, require proof of either “serious” or “grievous” physical or bodily injury or the intent to cause such an injury (Table 1). The nature of child torture perpetration and the resultant physical injuries often do not meet the elements of traditional felony assault statute definitions. Because injuries sustained during torture victimization, particularly those caused by starvation, food deprivation, and long-term neglect or

confinement, occur and compound over time, establishing all statutory elements may require treating the entire course of abusive acts as a single felony "assault." For example, legally a perpetrator who confined or restrained a child for a lengthy duration (months or even years) and subjects the child to long-term neglect and food restriction or deprivation, all consistent with child torture, would likely be charged and convicted, in many states, of the same crime as an offender who seriously injures a child in a single fleeting incident. In many states lacking child torture legislation, a perpetrator who causes a fracture with criminal intent in two distinct criminal episodes may face two separate and distinct felony child abuse charges. Conversely, the individual who confines, restrains, and starves the child consistently over an extended period of time (consistent with torture) would still face only a single criminal charge related to the resultant injuries to the child.

When torture is fatal, perpetrators may be charged with murder, or a related offense, in the child's death. Murder charges, varied in specific definition across jurisdictions, often similarly include specific intent requirements that may not be supported by, and defense attorneys argue are refuted by, the nature of torture. For example, premeditation, or the specific intent to kill, is an element of many homicide statutes. Many argue that when the abuse occurs longitudinally without a significant escalation, the conduct negates the intent needed to prove that required intent. As Browne detailed in a notable Virginia child torture case, a grand jury failed to indict on attempted murder charges because the parents' actions (sporadically providing the child food) negated the intent to kill by starvation (Browne, 2014).

Further, while "torture" is included as an aggravator in many homicide statutes, the act of physically abusing or starving a child to death over time may result in a conviction to a lesser degree of homicide in those cases where criminal charges are filed. As a case in point, in March 2017 in Pennsylvania, police recovered the body of A.J.F., a nearly 3-year-old boy, inside a Philadelphia apartment. The Medical Examiner found the child to be severely emaciated, dehydrated, and partially mummified, with multiple blunt impact injuries and anti-freeze in his blood. Investigators determined that the perpetrator, a former paramour of the child's mother, caused the child's injuries over time. The defendant was charged with and pled guilty to only third-degree murder in the child's death (Lambe, 2021). In Pennsylvania, sustaining a charge of first-degree murder could be difficult as the prolonged nature of the child's abuse and death may negate any specific intent to kill at the time of his death.

Existing laws in states that lack a torture-specific statute (or the elements thereof) may not include or may implicitly or explicitly exclude certain fundamental aspects of this type of abuse. In all criminal cases, the burden of proof beyond a reasonable doubt applies to each element of a criminal statute. Thus, where the infliction of physical injury or attempt to inflict physical injury is required, the state must rely upon existing statutory definitions of injury, which often require proof of physical impairment or substantial pain (Table 1). When the behavior is parsed to fit existing statutes, prosecutors may be unable to establish the requisite intent. Statutory gaps and the difficulty in securing justice in cases of child torture are well recognized and acknowledged by prosecutors in multiple jurisdictions. A press analysis of child torture cases in Colorado acknowledged the inherent difficulty in prosecuting cases of child death and child torture under existing child abuse laws (The Denver Post, 2012).

#### 4. Prosecutorial challenges with child torture cases

Cases in which the child victim exclusively or primarily experienced emotional, psychological, or mental abuse present specific prosecutorial challenges. States lacking torture laws often fail to account for these types of injury or abuse in their criminal code (Table 1).

Emotional abuse historically has been under-recognized by the legal system, and criminal assault statutes rarely included this type of abusive or coercive control as an element. Multiple states now consider coercive control, defined as mental or emotional abuse, a form of domestic violence and have codified it as such (Queram, 2021; Connecticut General Assembly, Chapter 815 (§46b-1), 2022); however, proof that coercive control caused a specific outcome without quantifiable or physical evidence is difficult (Cross, 2022). Avenues of proof of emotional and psychological abuse in child torture cases may be limited as child victims often lack regular medical or mental health assessment and treatment. Alternatively, such assessments and treatment may be in the presence or company of perpetrators, and health care professionals may take and document the history from a parent or caregiver instead of the child, particularly when the child is hesitant. This results in creation of a health record that supports the perpetrator's false narrative. Perpetrators' explanations that the child victim suffers from behavioral or psychiatric issues may initially be accepted by health care professionals; perpetrators may also lean on behavioral or psychiatric issues as justification for their abusive actions (Knox et al., 2014). Perpetrator caregivers may further this narrative in communications with schools, child welfare, and law enforcement, strengthening a record that contradicts or complicates the eventual discovery or disclosure of torture by the victim child.

The inability to specifically attribute psychological diagnoses to mental abuse presents issues of proof at trial. While mental health records are privileged and legally protected from disclosure, a parent or legal guardian often has access. In these scenarios, the child victim becomes the only available witness to present testimony or evidence on the psychological abuse—subject to cross-examination by attorneys representing those accused of their abuse with access to records and evidence law enforcement and prosecutors may be hesitant or unable to obtain. Particularly involving cases of emotional or psychological abuse, concerns may exist that the evidence is too limited or the burden on the child victim is too great to successfully prosecute the crime, however egregious.

The 6th Amendment to the Federal Constitution, and corresponding state constitutions or statutes, guarantee any criminal defendant the right to confront the witnesses against him; this right generally requires prosecutors to present the testimony of the victim child. While laws exist in many states to specially accommodate child victims, these accommodations are limited by constitutional constraints. In Crawford v. Washington, the United States Supreme Court held that use of out-of-court statements, even those deemed reliable by the Court, violate the confrontation clause when the statements are "testimonial" in nature (Crawford v. Washington, 2004). Forensic interviews, considered best practice in multi-disciplinary child abuse investigations, have been deemed

testimonial in many jurisdictions as the statement occurs in the context of a criminal investigation (Crawford v. Washington, 2004). Thus, these statements cannot be used as an alternative to the child's in-person court testimony, although they may be admissible to buttress the child's testimony. While other accommodations for child victims, including testimony via closed-circuit television or the appointment of a guardian ad litem, exist federally and in most states, these accommodations still require the child to be sworn and provide testimony; they often require specific judicial findings of trauma to the child for their use (Ahan, 2009).

The inherent legal difficulties in prosecuting crimes of child torture compound when multiple perpetrators participate in the abuse. The criminal justice system requires specificity and, where possible, attribution of actions to a perpetrator. Child victims who testify must confront their perpetrators and comply with Constitutional and evidentiary constraints. Victims must describe events with specificity and attribution to an individual perpetrator, where possible. In scenarios where one (or more) perpetrators commit physical acts against the child and the other(s) participate via mental or emotional abuse, traditional assault laws will penalize the assailant committing the physically assaultive abuse, potentially to the exclusion of the other perpetrator(s).

Additionally, constitutional limitations on admissible evidence necessarily impact charging decisions. The United States Supreme Court has held that the Confrontation Clause prohibits the use of one defendant's statement against another unless the co-defendant testifies and is subject to cross-examination (Bruton v. US, 1968). The inherent difficulty in prosecuting offenses solely on the basis of the child's testimony or injuries may require prosecutors to offer leniency or immunity to one perpetrator in an attempt to secure a conviction against the offender whose behavior is deemed most egregious (Bruton v. US, 1968). These concerns exist in all child torture cases but, when the law fails to criminalize the attributable abusive acts of one perpetrator, the potential that this perpetrator escapes legal responsibility is drastically increased.

In jurisdictions lacking a child torture statute, or a statute criminalizing non-physical abuse of a child, legal implications for offenders may vary widely and unjustly; societal biases may impact decision-making. For example, where multiple caregivers are involved and the abusive actions fall into "traditional" gender roles with male perpetrators inflicting physical abuse and female perpetrators emotionally abusing the child victim, female offenders may attempt to exploit gaps in the law and common prejudices to escape or minimize their culpability. Jurors and judges may consider the defendant's education level, income, and upbringing to assuage perceptions of the abuse. In jurisdictions where corporal punishment is accepted or protected, perpetrators often attempt to minimize the extent of the abuse and legally justify their actions by attempting to segment their actions into individual acts of punishment directed at "misbehavior" or "disobedience." Offenders blame their child victims for perceived dishonesty and misbehavior and disavow the abuse disclosures as retribution for just punishments (Knox et al., 2014). Where there are multiple perpetrators, female offenders may claim fear of or loyalty to the co-defendant for their own actions, with varying degrees of success.

## 5. Impact of child torture laws on legal decision-making

Codifying child torture as a distinct criminal offense allows the behavior to be named and documented and provides data to analyze for patterns and commonalities (Knox et al., 2014; Miller et al., 2021). Providing accurate data, in both the medical and criminal justice realms, may allow researchers to identify root causes, protective and risk factors, informing prevention efforts. Specifically criminalizing these offenses prevents these crimes from being siloed, legally, into multiple separate criminal offenses that fail to accurately capture the nature or impact of the abuse and excludes from liability certain behavior. Additionally, a child torture statute distinct from existing child abuse laws reduces potential misunderstandings and misperceptions by a judge or jury about the realities of the criminal and inhuman treatment of the child victim.

The government must meet legal burdens within constitutional limits; the burden of "beyond a reasonable doubt" in a criminal case includes all elements of the charged offenses. This burden extends to the acts, any requisite result, and the specific intent as defined in the law. As discussed previously, the Constitution guarantees all criminal defendants enumerated right, including the right against self-incrimination and to confront all witnesses against themselves. Taken as a whole, these guarantees combine to make child torture cases extremely difficult to prove in states that lack a statute criminalizing child torture or the elements thereof. The prosecutor must present any and all available, admissible evidence to meet this necessarily high burden, including, when possible, testimony from the child victim. However, the experience of myriad physical and emotional trauma, both predating and resulting from their torture victimization, can impact the child victim's ability to effectively testify. This difficulty is compounded when the child victim's testimony is limited by evidentiary rulings or where acts by one perpetrator are specifically criminalized under the law and acts by another perpetrator are not, despite the traumatic impact of the totality of abuse to the child.

These constitutional constraints dictate that the only evidence patently admissible against a defendant in a criminal case is that which is relevant to the charged offenses. Evidence of other criminal acts not charged in the indictment are inadmissible absent a legal exception or judicial decision. Furthermore, evidence of other "bad" behavior by the perpetrator that could negatively influence the jury, even if not criminal per se, also may not be admitted without an affirmative judicial action. Any evidence that may entice a jury to convict on sympathy or prejudice is unduly prejudicial in the eyes of the law; this evidence must be excluded to protect a defendant's right to a fair trial. Where states lack laws specifically criminalizing child torture or its elements and existing laws do not include psychological or emotional abuse, evidence of verbal abuse, emotional abuse, or psychological torment may be entirely inadmissible at trial, however extensive. Correspondingly, where existing laws fail to include a course of conduct element or acknowledge the longitudinal nature of this type of abuse, only evidence of those acts that occur within the specified timeframe are included.

Exceptions to this rule exist, varying in their scope and breadth across jurisdictions (Federal Rules of Evidence, Rule 404(b), 2011). In a criminal trial, prosecutors need specific permission from the court and a corresponding legal justification to introduce evidence of any "other crimes, wrongs or acts" by offenders. To meet the legal burden to introduce this evidence, the government must allege a specific need or legal rationale for the proffered information and the court must find that the evidence is both relevant and more

probative than prejudicial. At the conclusion of trial, the court must then instruct the factfinder that the evidence (in most circumstances) may only be considered for the stated purpose and may not be considered a factor in the determination of the defendant's guilt or non-guilt.

Practically, where a state lacks a statute specifically criminalizing torture (or its elements), the government may be forced to limit or edit evidence and witnesses to meet the definitions in existing laws. Thus, the factfinder may not hear or understand the full import of the abuse and the credibility of the witnesses, particularly child victims who may be impacted by their inability to testify to aspects of the abuse, which they deem most significant. States without a separate statute specifically addressing torture may be forced to limit prosecution, even prosecution under aggravated child abuse statutes, only to cases in which serious physical injury is present.

Rendering a diagnosis of child torture with comprehensive medical record documentation or authorship of medical reports can significantly impact case trajectory; thorough evaluation and documentation of medical examination findings may importantly corroborate evidence including that found in scene investigation or through victim and witness testimony regarding a perpetrator's specific abusive actions. For example, documentation of characteristic scars or patterned lesions resulting from cigarette burns, being struck by objects, or the radiologic detection of occult injuries and other skeletal or soft-tissue abnormalities may critically support specific disclosures of abuse (Goldfeld et al., 1988). Serial medical assessment of the child victim may be prudent, particularly in circumstances concerning starvation; lab monitoring for refeeding syndrome is often necessary, and serial physical examinations, weight assessments, and photo-documentation of body habitus over time may compellingly illustrate nutritional recovery and belie assertions of underlying medical conditions (Knox et al., 2014). Besides assessment of physical injury, standardized performance of neuropsychological and mental health evaluations for suspected child torture victims—stable in safe placement following recovery from their abusive environment—may facilitate diagnosis of psychiatric or other behavioral health conditions related to their experience (Goldfeld et al., 1988; Knox et al., 2014).

Comprehensive evaluation of child torture requires multidisciplinary coordination, including thorough medical and mental health assessment, scene investigation, and history gathering from the child victim, witnesses, and potential perpetrators (Knox et al., 2014). Without a thorough investigation that includes medical evaluation and documentation of corroborating evidence, prosecutors may be hamstrung in their ability to seek perpetrator accountability without further trauma to the victim(s). Assuming the child is deemed competent and emotionally available, asking a child victim to detail years of ongoing horrific maltreatment perpetrated most often by those legally mandated to care for and nurture them is herculean; requiring them to do so while segmenting their abuse and testimony into only those acts legally sanctionable and not those deemed irrelevant under the law may present an insurmountable hurdle. As previously noted, the victim child's medical and mental health treatment records compiled while under perpetrator control may buttress defense arguments regarding corporal punishment, justification, or medical explanation of the child's condition. A thorough and non-biased investigation that includes compilation of all available evidence and documentation as well as consultation with knowledgeable medical professionals, including those with specific expertise in child abuse assessments where accessible, is critical.

## 6. Developing a child torture law: model legal statutes and the legislative process

Ahan suggested, in addition to developing a child torture definition, states face three options regarding how to enforce a new statute: 1) keep torture within their child abuse statutes as an element of child abuse, 2) use child torture as a sentencing enhancement or aggravating factor, or 3) make child torture a new crime (Ahan, 2009). Macy proposed a model statute, largely influenced by the language and structure of Michigan's existing statute (Macy, 2019; Queram, 2021; Connecticut General Assembly, Chapter 815 (§46b-1), 2022).

While language will vary across states, as jurisdictions often codify new statutes using terminology and definitions found in existing statutes and court decisions, the structure and elements of Macy's proposed model statute can provide guidance to states willing to consider legislation that specifically names and criminalizes this sub-category of child abuse. Key to any criminal child torture statute is the inclusion of all potential facets of the conduct, including physical and sexual abuse; neglect; confinement; and mental, emotional, or psychological abuse.

Certainly, challenges exist in drafting this type of statute. As with any criminal statute, the provisions must not be vague or overbroad but must still be expansive enough to cover the ever-broadening range of depravity unique to child torture offenses. Including an element of mental pain or suffering is a necessity as it encompasses one of the most significant elements of this criminal behavior but creates the potential for legal challenges to the statute and to the type of evidence available to sustain the government's evidentiary burden. Michigan's statute defines severe mental harm as that which is "not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood" (Michigan 750.85 (2)(d)). Such a definition, broadly encompassing the many ways in which such abuse may be substantiated, still requires some form of objective comparison to prior mental state, a potentially unattainable burden where the perpetrators controlled the child's prior care and treatment. Abuse definitions predicated on nature of the physical injury may similarly present challenges when significant delays exist between physically abusive incident(s) and discovery or report, and evidence of prior injury has healed or the physical abuse by perpetrators has transitioned into emotional or psychological abuse or neglect.

All criminal statutes must provide sufficient notice of what conduct is prohibited to pass Constitutional muster under the 5th and 14th Amendments. Supreme Court jurisprudence dating back to 1875 (United States v. Reese, 1875) dictates that "If the legislature undertakes to define by statute a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime." Over time, this "void-for-vagueness" concept evolved into a two-prong analysis: 1) the law must provide sufficient notice that a person of ordinary intelligence has fair notice of the conduct prohibited and 2) the law must not be so standardless that it authorizes or encourages seriously

discriminatory enforcement ([United States v. Williams, 2008](#)). The Supreme Court has held that this doctrine is even more critical when analyzing speech as protected under the First Amendment ([United States v. Williams, 2008](#)). Coercive control laws, criminalizing emotional and psychological abuse in the context of interpersonal violence as discussed above, face potential vagueness challenges analogous to those that must be considered in the drafting and application of a child torture statute. Sheley ([Sheley, 2010](#)) analyzed the need for coercive control statutes to punish this type of complex psychological abuse in the context of potential due process challenges. Sheley opined that certain terms found in the U.K. statutes such as “serious effect” or “substantial adverse effect,” would almost certainly fail a challenge for vagueness as they potentially criminalize otherwise legal conduct and lend themselves to selective enforcement ([Sheley, 2010](#)). Similarly, such challenges certainly must be considered in the context of legislation prohibiting child torture. Utilizing Knox’s definition of medical child torture as a model for legislation and incorporating medical consultation with a child abuse pediatrician whenever possible into the investigation and prosecution of these cases could drastically reduce the success of this type of challenge.

The drive to pass new criminal legislation most often occurs after a well-publicized or tragic event. New legislation requires a sponsor(s) and voting support in the legislature for passage, and this combination most often comes together in the wake of an event that exposes existing gaps in the law. In 2021, a Minnesota family whose son suffered torture at the hands of a medical caregiver testified before the state senate about their son’s abuse and the failure of existing laws that allowed the perpetrator to escape commensurate punishment ([Andera, n.d.](#)). The prosecutor assigned to the child’s case provided testimony on how the nature of the abuse, mental and psychological torture that caused no substantial physical injury to the child, left her with few legal options to pursue charges and accountability for the offender ([Minnesota Statute, Chapter 609 \(609.377\), 2021](#)). As a direct result of the family’s efforts, Minnesota’s child torture law passed the same year.

While the drive for this type of legislation most often occurs in the wake of tragedy or system failure, new laws cannot be applied retroactively and thus cannot be used to respond to those tragedies or hold particular offenders accountable. Perpetrator actions that would qualify as a predicate or qualifying offense related to torture that occurred prior to the torture-specific law being enacted would be charged under existing criminal offenses, thus limiting potential for immediate impact of the statutory change.

As noted, Macy’s proposed model statute largely follows the structure of the Michigan statute, enacted in response to a disturbing spousal abuse case in 2005 ([Macy, 2019](#)). In speaking about the House bill that would later become Michigan’s torture statute, a legislator noted that “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” ([Cross, 2022](#)).

In January 2019, the American Bar Association adopted a resolution urging federal, state, local, tribal, and territorial governments to amend existing laws or adopt new laws to clearly define child torture and make the conduct a felony regardless of whether a serious injury occurs ([Ahan, 2009](#)). The resolution recommended training for judges, prosecutors, physicians, law enforcement, child protection authorities, and victim advocates on evidence-based and victim-centered practices, including use of the Child Advocacy Center model, to improve government responsiveness to severe cases of child abuse ([American Bar Association, 2019](#)). As discussed, substantial challenges exist in legally defining child torture and framing a statute that will encompass the universe of abuse inherent to these cases, provide adequate notice of the scope of prohibited behavior, and allow investigators and prosecutors the tools to investigate and effectively prosecute these crimes. Governments should utilize the resolution’s mandate for training to build awareness and understanding of the complex dynamic of this abuse and the need for thorough investigations incorporating all multidisciplinary entities, particularly the need for a comprehensive medical evaluation with a child abuse pediatrician whenever practicable.

Development and passage of legislation, specifically child torture legislation, often takes years. For example, Delaware recently signed House Bill 182 into law after a nearly decade long effort by multidisciplinary team members to improve the jurisdiction’s response to crimes against children. The state’s Committee on Child Torture was initially in May 2014 after child torture emerged as a recurring theme from reviews of near-death cases in the state due to child abuse and neglect, with four victims of torture having been identified between 2009 and 2012. Additionally, between 2010 and 2013, torture was suspected for an additional four children whose victimization did not meet criteria for near death under existing Delaware code. The committee was tasked at that time with researching and developing best practices and trainings to help professionals recognize and appropriately respond to child torture cases and ultimately failed to recommend a child torture statute. The committee did develop a checklist for use by investigators highlighting the common elements of child torture as defined by Knox et al. ([Knox et al., 2014](#)) and the Child Protection Accountability Commission (CPAC) voted to dissolve the Child Torture Committee in May 2016. In late 2022, CPAC again raised the issue of a distinct child torture statute after a spike in child torture cases across the state during the pandemic, noting that existing law failed to appropriately address the longitudinal nature of torture crimes against children (examples of which included consumption of human feces/vomit/urine, handcuffing of victims to poles and banisters, forced position holding, locks outside of doors and windows, and submersion of feet in noxious chemicals). Formulated through research into model statutes and equivalent statutes in other jurisdictions, a draft child torture statute was proposed in early 2023. This new statute, signed into law in July 2023, defines torture as one or more instances of child abuse; emotional abuse; or deprivation/failure to provide necessary care such as food, water, clothing, shelter, or medical care occurring over a period greater than 24 h—actions of which are done with malice or extreme indifference to the well-being of the child ([Delaware Code, Chapter 5 \(§1103 \(d\)\), 2022](#)). This statute does not require proof the child suffered physical pain or physical injury.

Similarly, Pennsylvania House Bill 1836 ([Pennsylvania General Assembly, 2021](#)), proposed in the 2021–2022 legislative session, received legislative support in the wake of the arrests of three adults charged with the abuse of multiple children, which included physically abusing the children, locking them in an attic for extended periods of time, starving the children, and forcing them to urinate and defecate in buckets. This bill defined torture as “a course of conduct against a child” that included one or more of 12 subcategories

of behavior, including multiple forms of physical abuse, deprivation of food or water, restricting bodily functions, terrorizing or threatening harm to the child, restraining the child, forced or prolonged exercise or activity, and sexual abuse or exploitation. Ultimately, after opposition by the American Civil Liberties Union (Randol, 2021) and lacking widespread understanding of the necessity of such legislation, House Bill 1836 failed to advance.

## 7. Conclusion

Medico-legal issues in intrafamilial child torture cases are significant and multiple, including varying criminal statutes, investigative processes, sentencing, and case outcomes. Unique victim-perpetrator and investigative dynamics present significant legal challenges, particularly involving cases with victimization of long duration or without serious or permanent physical injury to the child. Significant progress has been made in recent years to overcome medico-legal obstacles, increase multidisciplinary professional awareness of intrafamilial child torture and enact torture-specific legislation that mitigates societal biases. Continued collaboration across medical and legal communities is needed to improve understanding and recognition of child torture, effectively address risk and protective factors, promote health and safety of child victims and enhance prevention efforts, while ensuring perpetrators of torture are held appropriately accountable under the law.

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Data will be made available on request.

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