

**AMERICAN BAR ASSOCIATION**

**CRIMINAL JUSTICE SECTION**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1           RESOLVED, That the American Bar Association urges federal, state, local, tribal and  
2 territorial governments to amend existing laws or enact new laws to clearly define child torture  
3 and make child torture a felony offense regardless of whether a serious physical injury occurs;  
4 and  
5

6           FURTHER RESOLVED, That the American Bar Association urges governments to  
7 promote training for judges, prosecutors, physicians, law enforcement, child protection  
8 authorities, and victim-witness advocates on emerging evidence-based, victim-centered and  
9 effective practices, and to utilize the Child Advocacy Care (CAC) model of collaboration and  
10 providing services to improve government responsiveness to severe cases of child abuse.



**REPORT****Executive Summary**

Child abuse is a significant problem in the United States. In fiscal year 2016 (the latest year for which there is national data), 50 states, the District of Columbia, and the Commonwealth of Puerto Rico substantiated 676,000 children as victims of child abuse and neglect.<sup>1</sup> The U.S. Department of Health and Human Services estimated that for the same year at least 1,750 children died from child abuse and neglect.<sup>2</sup>

Child torture is a documented subset of severe child abuse.<sup>3</sup> Child torture includes a combination of two or more cruel inhuman degrading treatments occurring for protracted periods of time, such as:

- intentionally starving the child,
- forcing the child to sit in urine or feces,
- binding or restraining the child,
- repeatedly physically injuring the child,
- exposing the child to extreme temperatures without adequate clothing,
- locking the child in closets or other small spaces, and
- forcing the child into stress positions or exercise.

resulting in prolonged suffering, permanent disfigurement/dysfunction, or death.<sup>4</sup>

In a number of states, some cases of child torture do not result in a category of serious physical injury that is required for a felony charge.<sup>5</sup> Amending or enacting criminal codes to include a felony charge for these cases will protect child survivors.

Furthermore, promoting education of judges, law enforcement, child protection authorities, prosecutors, and victim advocates on emerging evidence-based and effective practices to improve government responsiveness to severe cases of child abuse will also help protect child victims.

---

<sup>1</sup> U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children's Bureau, *Child Maltreatment 2016*, 18 (2018), <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf>.

<sup>2</sup> *Id.* at 53; see U.S. Gov't Accountability Office, *Child Maltreatment: Strengthening National Data on Child Fatalities Could Aid in Prevention*, GAO-11-599, at 9 (2011) ("More children have likely died from maltreatment than are reflected in the national estimate. . . . A major reason for the likely undercounting of child maltreatment fatalities is that nearly half of states report to NCANDS data only on children already known to CPS agencies—yet not all children who die from maltreatment were previously brought to the attention of CPS"), <https://www.gao.gov/assets/330/320774.pdf>.

<sup>3</sup> See Barbara L. Knox, et al., *Child Torture As A Form Of Child Abuse*, 7 J. Child Adolescent Trauma 38, 44-46 (2014), [https://pdfs.semanticscholar.org/2d88/139a3af0775d9a20333b03bb8f356cbc6615.pdf?\\_ga=2.7318258.1186776278.1539534964-179640352.1539534964](https://pdfs.semanticscholar.org/2d88/139a3af0775d9a20333b03bb8f356cbc6615.pdf?_ga=2.7318258.1186776278.1539534964-179640352.1539534964).

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., Sadie Gurman, *Woman Pleads Guilty In Denver Child Abuse Case*, Coloradoan: A Part of the USA Today Network (Aug. 8 2014) ("Prosecutors said . . . the case was among the most horrific they had ever seen, but the state's child abuse laws kept them from pursuing harsher penalties because the children, ages 2 to 6, did not suffer serious physical injuries"), <https://www.coloradoan.com/story/news/local/colorado/2014/08/08/woman-pleads-guilty-denver-child-abuse-case/13800793/>.

# 109D

## Existing American BA Resolutions and/or Standards

The American Bar Association (ABA) has a history of advocating for the importance of investigating and prosecuting those who perpetrate crimes against children.

In 2013, the ABA adopted a policy 113C urging states to review their child abuse and neglect laws to potentially strengthen/adjust:

- a) Mandatory reporting requirements for child abuse and neglect;
- b) Sanctions for failure to report child abuse and neglect, and for the making of a maliciously false report;
- c) Penalties for endangering a child's life through physical abuse, sexual abuse, and severe neglect; and
- d) Whether and how to extend civil immunity to those who in good faith participate or assist in child protective investigations and other child protective actions.<sup>6</sup>

## Scope of the Problem

According to the U. S. Department of Health and Human Services (HHS), in fiscal year 2016, state Child Protective Service ("CPS") agencies received 4.1 million referrals of suspected child abuse involving approximately 7.4 million children.<sup>7</sup> In 2016, 50 states, the District of Columbia, and the Commonwealth of Puerto Rico substantiated 676,000 children as victims of child abuse and neglect.<sup>8</sup> The majority of victims consisted of three races or ethnicities – White (44.9%), Hispanic (22.0%), and African-American (24.9%).<sup>9</sup> Forty-nine states reported 1,700 child fatalities due to abuse and neglect.<sup>10</sup> HHS estimates that at least 1,750 children died due to abuse and neglect across the U.S.<sup>11</sup> In 2016, more children died from child abuse and neglect than from all childhood cancers combined.<sup>12</sup>

For the child victims that survive, consequences can last lifetimes.<sup>13</sup> Such long-term consequences may be:

- Physical (e.g., impaired brain development, poor health including cancer);

---

<sup>6</sup> Am. Bar. Assn., Resolution 113C (Adopted Aug. 2013).

<sup>7</sup> U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children's Bureau, *Child Maltreatment 2016*, 6 (2018).

<sup>8</sup> *Id.* at 18.

<sup>9</sup> *Id.* at 20.

<sup>10</sup> *Id.* at 53.

<sup>11</sup> *Id.*

<sup>12</sup> See Am. Cancer Soc'y, *Cancer Facts and Figures 2016*, 11 (2016) (estimating that 1,250 cancer deaths would occur among children ages 0-14 years in 2016), <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2016/cancer-facts-and-figures-2016.pdf>.

<sup>13</sup> U.S. Dep't of Health & Human Servs., Child Welfare Information Gateway, *Long Term Consequences of Child Abuse and Neglect* 1 (2013), [https://www.childwelfare.gov/pubpdfs/long\\_term\\_consequences.pdf](https://www.childwelfare.gov/pubpdfs/long_term_consequences.pdf).

- Psychological (*e.g.*, depression, anxiety, relationship difficulties);
- Behavioral (*e.g.*, juvenile delinquency, adult criminality, teen pregnancy, low academic achievement, alcohol and drug use, mental health problems, abusive behavior); and
- Societal (*e.g.*, direct costs associated with maintaining a child welfare system to investigate and respond to allegations of child abuse and neglect, as well as expenditures by the judicial, law enforcement, health, and mental health systems, and indirect costs associated with juvenile and adult criminal activity, mental illness, substance abuse, domestic violence, loss of productivity due to unemployment and underemployment, the cost of special education services, and increased use of the health care system).<sup>14</sup>

### *Child Torture as a Form of Child Abuse*

Child torture is a medical subcategory of child abuse including unique clinical features which require specific child assessment, diagnostic, and treatment approaches.<sup>15</sup> Child torture includes a combination of two or more cruel inhuman degrading treatments for protracted periods of time, such as:

- intentionally starving the child,
- forcing the child to sit in urine or feces,
- binding or restraining the child,
- repeatedly physically injuring the child,
- exposing the child to extreme temperatures without adequate clothing,
- locking the child in closets or other small spaces, and
- forcing the child into stress positions or exercise.

resulting in prolonged suffering, permanent disfigurement/dysfunction, or death.<sup>16</sup>

An estimated 1-2% of children evaluated for child maltreatment fall into the category of child torture.<sup>17</sup> Not all cases of child torture result in an instantly life-threatening or serious physical injury.

### *Review of Criminal Codes*

Courts have defined torture as used in child-endangering statutes as the infliction of severe pain or suffering of body or mind.<sup>18</sup> Some state codes lack a felony charge for cases of child torture not resulting in a serious physical injury as defined by statute.<sup>19</sup> In cases where the child

<sup>14</sup> *Id.* at 2-6.

<sup>15</sup> Knox et al., *supra* note 3, at 38.

<sup>16</sup> *See Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See State v. Corcoran*, No. C-160627, 2017 Ohio 7084, 14 (Ohio App., 2017), quoting *State v. Wainscot*, No. CA2015-07-056, 2016-Ohio-1153, 24 (Ohio App., 2016), quoting *State v. Surlis*, No. 23345, 2007-Ohio-6050, 5 (Ohio App., 2007)

<sup>19</sup> *See Ann Ratnayake Macy, U.S. 50 State Study: A Precarious Gap in U.S. Criminal Codes Exists for Cases of Child Torture*, J. of Child and Youth Review (to be published 2019). (*Eg.* Alaska, Arkansas, Hawaii, Illinois, Indiana, Maryland, Maine, Massachusetts, Montana, New Hampshire, New York, Oregon, Pennsylvania, and West Virginia); *see, e.g.*, Del. Code Ann. tit. 11 § 222 (26) (defining “serious physical injury” as “physical injury which creates a substantial risk of death, or which causes

# 109D

survives without serious physical injuries, the only charges that fit the elements of the crime in these states may be misdemeanors.<sup>20</sup>

For example, some states have recognized the problem and have adopted statutes to explicitly address the issue. The South Dakota statute § 26-10-1 states, “Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute [a felony], is guilty of a Class 4 felony.”<sup>21</sup>

Thirty-seven state codes contain some form of a child torture statute.<sup>22</sup> Criminal child torture statutes in the U.S. fall into one of the following categories, as applied to children:

- (1) the state code explicitly prohibits “torture” or an analogous element<sup>23</sup> such as “unusual cruelty” or “unjustifiable suffering;”
- (2) the state prohibits causing a mental or physical injury, and further defines that injury to include torture, pain, or synonymous element such as “unusual cruelty” or “unjustifiable suffering;” or
- (3) the state code bans repeated pattern of injuries that result in torture.<sup>24</sup>

The statutes are wide ranging and heterogenous.<sup>25</sup> The maximum penalties vary from five years in jail to a lifetime in prison.<sup>26</sup> Some child torture statutes only apply if the perpetrator of the

---

serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female”).

<sup>20</sup> See, e.g., Sadie Gurman, *Woman Pleads Guilty In Denver Child Abuse Case*, Coloradoan: A Part of the USA Today Network (Aug. 8 2014) (“Prosecutors said . . . the case was among the most horrific they had ever seen, but the state’s child abuse laws kept them from pursuing harsher penalties because the children, ages 2 to 6, did not suffer serious physical injuries”) (Colo. Rev. Stat. §18-6-401 includes a serious bodily injury limitation in the sentencing scheme).

<sup>21</sup> S.D. Codified Laws § 26-10-1 (2018).

<sup>22</sup> See Ratnayake, *supra* note 17.

<sup>23</sup> See generally, Waldron, Jeremy, “Cruel, Inhuman, and Degrading Treatment: The Words Themselves” 98 New York University Public Law and Legal Theory Working Papers (2008), <https://core.ac.uk/download/pdf/13524478.pdf> (“cruel,” “degrading treatment,” “causing great suffering,” and similar wording are used in the context of prohibiting torture)

<sup>24</sup> *Id.* (The term torture is also cited in the following other contexts: animal cruelty, sentencing enhancements to murder, capital/non-capital punishment sentencing guidelines, obscenity statutes, sadomasochist statutes, human trafficking statutes, and pararenal termination/reunification determinations statutes. These statutes were purposefully excluded from the analysis due to relevance and application to limited circumstances.)

<sup>25</sup> *Id.*; see Ala. Code § 26-15-3 Torture, Willful Abuse, Etc., Of Child (2018); AZ Code § 13-3623. Child Or Vulnerable Adult Abuse; Emotional Abuse (2018); Cal. Penal Code § 206 Torture (2018); COLO. REV. STAT. §18-6-401 Child Abuse (2018); Conn. Gen. Stat. Ann. § 53-20 Cruelty To Persons (2018); D.C. Code § 22-1101 Cruelty To Children Definition (2018); Del. Codestate Tit. 11§ 1103B (2018); Fla. Stat. § 827.03. Abuse, Aggravated Abuse, And Neglect Of A Child (2018); Ga. Code Ann. 16-5-70 Cruelty To Children (2018); Id. Code Ann. 18-1501. Injury To Children (2018); Kan. Stat. § 21-5602 Abuse Of A Child (2018); Ky. Rev. Stat. Ann. § 508.120 (2018); La. Rev. Stat. Ann. § 14:93 Cruelty To Juveniles (2018); Mich. Comp. Laws Serv. § 750.85 Torture (2018); MINN. STAT. § 609.37725 Malicious Punishment Of Child (2018); Miss. Code Ann. §97-5-39 Contributing To The Neglect Or Delinquency Of A Child (2018); Felonious Abuse And/Or Battery Of A Child; Mo. Stat. § 568.060 Abuse Or Neglect Of Child (2018); Neb. Rev. Stat. § 28-707 Child Abuse Penalties (2018); Nev. Rev. Stat. § 200.508 Abuse, Neglect Or Endangerment Of Child (2018); N.J. STAT. ANN. § 2C:24-4 - Endangering Welfare Of Children (2018); N.M. Stat. § 30-6-1 Abandonment Or Abuse Of A Child (2018); N.C. Gen. Stat. § 14-318.4 Child Abuse A Felony (2018); N.D. Cent. Code § 14-09-2225 – Abuse Of Child – Penalty (2018); Ohio Rev.

acts has legal custody of the child.<sup>27</sup> Others criminalize all acts of torture against children regardless of whether the perpetrator had legal custody of the child,<sup>28</sup> or range in between legal custody and at least an informal custody agreement.<sup>29</sup> Additionally, in certain states, the application of the child torture statute is limited by a serious bodily injury requirement.<sup>30</sup> Lastly, while a child is usually considered a person under the age of eighteen years, some state statutes limit the application of the child torture provisions to only younger children.<sup>31</sup>

For states that lack a felony charge for cases of child torture not resulting in serious bodily injury or for states with significant loopholes within their child torture statutes, the Michigan statute, Mich. Comp. Laws § 750.85, is an example of an effective statute. Furthermore, it not only protects child victims, but also other vulnerable populations such as the elderly, disabled, and domestic violence victims.

*Mich. Comp. Laws Serv. § 750.85 Torture; Felony*

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

(2) As used in this section: (a) "Cruel" means brutal, inhuman, sadistic, or that which torments. (b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority. (c) "Great bodily injury" means either of the following: (i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c. (ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds. (d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following: (i) The intentional infliction or threatened infliction of great bodily injury. (ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the

---

Code Ann. § 2919.2225 Endangering Children (2018); Okla. Stat. Tit. 21 Ann. § 843.5 Child Abuse (2018); ;RI Gen L § 11-9-5.3 (2018). S.C. CODE ANN. § 63-5-70 Unlawful Conduct Toward A Child (2018); S.D. Codified Laws § 26-10-125 Abuse Of Or Cruelty To Minor (2018); TENN. CODE ANN. § 39-15-402 Aggravated Child Abuse And Neglect (2018); Texas Penal Code § 22.0425

Injury To A Child, Elderly Individual, Or Disabled Individual (2018); Utah Code Ann. § 76-5-10925 Child Abuse-- Child Abandonment (2018); VA Stat § 40.1-10325 Cruelty And Injuries To Children (2018); Vt. Stat. Ann. Tit. 13 § 1304 Cruelty To Child (2018); Wash. Rev. Code 9A.36.120 Child 25abuse in the first degree (2018); W. Va. Code, § 61-8D-3 (2018); Wis. Stat. Ann. § 948.0325 Physical Abuse Of A Child (2018); WY Stat 6-2-50325 Child Abuse; Penalty (2018).

<sup>26</sup> *E.g.*, Conn. Gen. Stat. Ann. § 53-20 Cruelty To Persons (2018).

<sup>27</sup> *E.g.*, N.M. Stat. § 30-6-1 Abandonment Or Abuse Of A Child (2018).

<sup>28</sup> *E.g.*, Miss. Code Ann. §97-5-39 Contributing To The Neglect Or Delinquency Of A Child; Felonious Abuse And/Or Battery Of A Child (2018).

<sup>29</sup> *E.g.*, N.J. Stat. Ann. § 2C:24-4 Endangering Welfare Of Children (2018). (Has Legal Custody Or Assumed Responsibility To Care For Child).

<sup>30</sup> *E.g.*, Del. Code State Tit. 11§ 1103B Cruelty To Children Definition (2018).

<sup>31</sup> *E.g.*, Texas Penal Code § 22.04 Injury to a Child, Elderly Individual, or Disabled Individual (2018).

# 109D

personality. (iii) The threat of imminent death. (iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality. (3) Proof that a victim suffered pain is not an element of the crime under this section. (4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

## Education for Multidisciplinary Professionals

Multidisciplinary child protection professionals such as judges, pediatricians, prosecutors, law enforcement, child protection authorities, victim-witness advocates will better protect children from severe abuse and neglect if educated on emerging evidenced-based or effective practices, and collaborate using the Child Advocacy Care (CAC) model.

Common barriers to an effective government response include lack of a multidisciplinary team approach to dealing with child abuse, inadequate or non-existent protocols for child fatalities, inadequate training in the collection and presentation of forensic evidence, and lack of understanding of latest social research related to trauma and childhood development<sup>32</sup> lack of understanding of the latest medical research such as child torture,<sup>33</sup> lack of understanding of the latest case law such as *Ohio v. Clark*,<sup>34</sup> and lack of training in emerging areas such as legally securing digital evidence from computers, smart phones, tablets, and other electronic devices.

Children are unable to protect themselves and will always need highly trained and competent investigators, prosecutors, victim/witness specialists, social workers, forensic interviewers, child protective service workers, doctors, sexual assault nurse examiners, psychologists, psychiatrists, scientific forensic experts, and computer forensic examiners to protect them.

In addition to training to enhance government responsiveness to child abuse, the ABA also urges governments to adopt the Child Advocacy Center (CAC) model, and seek accreditation by the National Children's Alliance. CACs are community-based, child-friendly, multidisciplinary services for children and families affected by sexual abuse or severe physical abuse, and provide a hub for collaborating on child abuse cases. CACs bring together, often in one location, child protective services investigators, law enforcement, prosecutors, and medical and mental health

---

<sup>32</sup> See U.S. Cent. For Disease Control and Prevention, Adverse Childhood Experiences (ACEs) (*Apr. 1, 2016*), <https://www.cdc.gov/violenceprevention/acestudy/index.html> (children with high ACEs score may have PTSD).

<sup>33</sup> See Barbara L. Knox et al., *Child Torture As A Form Of Child Abuse*, 7 J. Child Adolescent Trauma, 38 (2014) (CPS had not substantiated abuse for half of the study's participants due to lack of understanding of dynamics of child torture).

<sup>34</sup> See *Ohio v. Clark*, 135 S. Ct. 2180, 2182 (2015) (statements made by a very young child are rarely if ever testimonial: "young children have little understanding of prosecution . . . [and] it is extremely unlikely that a 3-year-old child . . . would intend his statements to be a substitute for trial testimony. ...[A] young child in these circumstances would simply want the abuse to end, would want to protect other victims, or would have no discernible purpose at all. [In fact,] "[s]tatements by very young children will rarely, if ever, implicate the Confrontation Clause").



professionals to provide a coordinated, comprehensive response to victims and their caregivers, and lead to better outcomes.<sup>35</sup>

### **Conclusion**

To improve government responsiveness to cases of severe child abuse, the ABA urges governments to take the following actions. First, jurisdictions should amend existing laws or enact new laws to ensure that a felony charge exists for cases of child torture that does not result in a severe physical injury. In addition, jurisdictions should educate judges, prosecutors, law enforcement, child protection authorities, and victim-witness advocates on emerging evidence-based and effective practices to address child abuse and encourage the implementation of the Child Advocacy Care (CAC) model of collaboration.

Respectfully submitted,

Lucian Dervan  
Chair, Criminal Justice Section  
January 2019

---

<sup>35</sup> See Smith, D. W., Witte, T. H., & Fricker-Elhai, A. E. *Service Outcomes In Physical And Sexual Abuse Cases: A Comparison Of Child Advocacy Center-Based And Standard Services*, 11 *Child Maltreatment*, 354–360 (2006); Jones, Lisa M. Et Al., *Do Children's Advocacy Centers Improve Families' Experiences Of Child Sexual Abuse Investigations?*, 31 *Child Abuse & Neglect*, 1069-85 (2007); Walsh, Wendy A., Et Al., *Which Sexual Abuse Victims Receive A Forensic Medical Examination?: The Impact Of Children's Advocacy Centers*, 31 *Child Abuse & Neglect*, 1053-1068 (2007).

# 109D

## GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Lucian Dervan, Chair

1. Summary of Resolution(s).

This resolution urges federal, state, territorial and tribal legislatures to amend existing laws or enact new laws to clearly define child torture and make child torture a felony offense regardless of whether a serious physical injury occurs, and to promote training for all court and medical personnel in these cases on emerging evidence-based, victim centered and effective practices, and to utilize the Child Advocacy Care (CAC) model of collaboration and providing services to improve government responsiveness to severe maltreatment of children that does not inflict serious bodily injury.

2. Approval by Submitting Entity. This resolution was passed by the Criminal Justice Council at the Fall Meeting in Washington, DC, on November 3, 2018.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 2013, the ABA adopted a policy 113C urging states to review their child abuse and neglect laws to potentially strengthen/adjust:

- a) Mandatory reporting requirements for child abuse and neglect;
- b) Sanctions for failure to report child abuse and neglect, and for the making of a maliciously false report;
- c) Penalties for endangering a child's life through physical abuse, sexual abuse, and severe neglect; and
- d) Whether and how to extend civil immunity to those who in good faith participate or assist in child protective investigations and other child protective actions.<sup>36</sup>

This resolution builds on subsection (c) urging states to strengthen/adjust penalties for child torture which endangers a child's life through severe abuse.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

---

<sup>36</sup> Am. Bar. Assn., Resolution 113C (Adopted Aug. 2013).

6. Status of Legislation. (If applicable)

A number of states have successfully enacted statutes that appropriately penalize child torture, but many states have not and there is no law in those states that protect children from acts of child torture.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Section would advocate enactment of appropriate legislation across the country.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

Standing Committees

Ethics and Professional Responsibility

Special Committees and Commissions

Center on Children and the Law

Commission on Civic Education in the Nation's Schools

Commission on Domestic and Sexual Violence

Commission on Lawyer Assistance Programs

Commission on Youth at Risk

Sections, Divisions

Civil Rights and Social Justice

Family Law

Health Law

Judicial Division

Litigation

Senior Lawyers Division

State and Local Government Law

Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Ann Ratnayake Macy, Esq.

601 I street NW

# 109D

Washington DC 20001  
T: (202)-930-5145  
E: [ann.ratn@nccasp.org](mailto:ann.ratn@nccasp.org)

Kevin Scruggs, Director  
Criminal Justice Section  
American Bar Association  
1050 Connecticut Ave NW, 4<sup>th</sup> Floor  
Washington, DC 20036  
T: (202) 662-1503  
E: [kevin.scruggs@americanbar.org](mailto:kevin.scruggs@americanbar.org)

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Stephen Saltzburg  
2000 H Street, NW  
Washington, D. C. 20052  
T: 202-994-7089  
E: [ssaltz@law.gwu.edu](mailto:ssaltz@law.gwu.edu)

Neal Sonnett  
2 South Biscayne Blvd., Suite 2600  
Miami, Florida 33131-1819  
T: 305-358-2000  
Cell: 305-333-5444  
E: [nrslaw@sonnett.com](mailto:nrslaw@sonnett.com)

## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

This resolution urges federal, state, territorial and tribal legislatures to amend existing laws or enact new laws to clearly define child torture and make child torture a felony offense regardless of whether a serious physical injury occurs, and to promote training for all court and medical personnel in these cases on emerging evidence-based, victim-centered, using the Child Advocacy Care (CAC) model of collaboration to improve government responsiveness to severe maltreatment of children that does not inflict serious bodily injury.

### 2. Summary of the Issue that the Resolution Addresses

Child abuse is a significant problem in the United States. In fiscal year 2016 (the latest year for which we have national data), 50 states, the District of Columbia, and the Commonwealth of Puerto Rico substantiated 676,000 children as victims of child abuse and neglect.<sup>37</sup> The U.S. Department of Health and Human Services estimated that for the same year at least 1,750 children died from child abuse and neglect.<sup>38</sup>

Child torture is a documented subset of severe child abuse.<sup>39</sup> Child torture includes a combination of two or more cruel inhuman degrading treatments occurring for protracted periods of time, such as:

- intentionally starving the child,
- forcing the child to sit in urine or feces,
- binding or restraining the child,
- repeatedly physically injuring the child,
- exposing the child to extreme temperatures without adequate clothing,
- locking the child in closets or other small spaces, and
- forcing the child into stress positions or exercise.

resulting in prolonged suffering, permanent disfigurement/dysfunction, or death.<sup>40</sup>

---

<sup>37</sup> U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children's Bureau, *Child Maltreatment 2016*, 18 (2018), <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf>.

<sup>38</sup> *Id.* at 53; see U.S. Gov't Accountability Office, *Child Maltreatment: Strengthening National Data on Child Fatalities Could Aid in Prevention*, GAO-11-599, at 9 (2011) ("More children have likely died from maltreatment than are reflected in the national estimate. . . . A major reason for the likely undercounting of child maltreatment fatalities is that nearly half of states report to NCANDS data only on children already known to CPS agencies—yet not all children who die from maltreatment were previously brought to the attention of CPS"), <https://www.gao.gov/assets/330/320774.pdf>.

<sup>39</sup> See Barbara L. Knox, et al., *Child Torture As A Form Of Child Abuse*, 7 J. Child Adolescent Trauma 38, 44-46 (2014), [https://pdfs.semanticscholar.org/2d88/139a3af0775d9a20333b03bb8f356cbc6615.pdf?\\_ga=2.7318258.1186776278.1539534964-179640352.1539534964](https://pdfs.semanticscholar.org/2d88/139a3af0775d9a20333b03bb8f356cbc6615.pdf?_ga=2.7318258.1186776278.1539534964-179640352.1539534964).

<sup>40</sup> *Id.*

# 109D

In a number of states, a felony abuse charge requires a serious physical injury.<sup>41</sup> Some cases of child torture do not result in a category of serious physical injury required by these statutes. Amending or enacting criminal codes to include a felony charge for these cases will protect child survivors. Furthermore, promoting education of judges, law enforcement, child protection authorities, prosecutors, and victim advocates on emerging evidence-based, victim-centered and effective practices, and to utilize the Child Advocacy Care (CAC) model of collaboration to improve government responsiveness to severe cases of child abuse will also help protect child victims.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

The resolution urges these jurisdictions to enact laws that clearly define torture and make child torture a felony regardless of whether serious physical injury occurs. The resolution will close the gap in certain state criminal codes which allow cases of severe child abuse to be potentially treated as a misdemeanor, and urges jurisdictions to improve government responsiveness to child abuse by providing training on emerging issues in child protection, and by utilizing the Child Advocacy Care (CAC) model of collaboration and providing services.

### 4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

N/A

---

<sup>41</sup> See, e.g., Sadie Gurman, *Woman Pleads Guilty In Denver Child Abuse Case*, Coloradoan: A Part of the USA Today Network (Aug. 8 2014) (“Prosecutors said . . . the case was among the most horrific they had ever seen, but the state’s child abuse laws kept them from pursuing harsher penalties because the children, ages 2 to 6, did not suffer serious physical injuries”), <https://www.coloradoan.com/story/news/local/colorado/2014/08/08/woman-pleads-guilty-denver-child-abuse-case/13800793/>.