

## **CHILD ABUSE AND NEGLECT AND CHILD SEXUAL ABUSE**

### **I. PURPOSE**

To provide guidelines for reporting suspected incidences of child abuse and neglect and child sexual abuse.

### **II. SCOPE**

This policy applies to all SCS personnel.

### **III. DEFINITIONS**

Child abuse or neglect - For the purposes of reporting, exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker.<sup>3</sup>

Child sexual abuse – means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that constitutes certain criminal offenses and acts as provided in TCA § 37-1-602(a)(3)(A)-(C). Additionally, for the purposes of the reporting, investigation, and treatment provisions of TCA §§ 37-1-603 through 615, “child sexual abuse” *also* means the commission of any act specified in TCA § 37-1-602 (a)(3)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child’s home, or other person responsible for the care and custody of the child. (See attached list and statutory definitions)

### **IV. POLICY STATEMENT**

All personnel shall be alert for any evidence of child abuse or neglect, or child sexual abuse. Individuals who know or have reasonable cause to suspect that any child has been abused, neglected or sexually abused are responsible for immediately reporting such knowledge or suspicions directly to:

1. The judge having juvenile jurisdiction over the child;
2. The office of the chief law-enforcement official where the child resides; or
3. The Sheriff of the county where the child resides; or
4. The Department of Children Services.<sup>1,2</sup>

School personnel shall also immediately notify the principal or Regional Superintendent (where appropriate). Upon notification, the principal or Regional Superintendent (where appropriate) shall confirm that a report was made to one (1) of the four (4) identified above and notify SCS Office of Security that a report of child abuse, neglect, or sexual abuse was made.

**Abuse Occurring on School Grounds or While Under School Supervision or Care**

If the suspected child abuse, neglect or sexual abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal/principal's designee or Regional Superintendent (where appropriate) shall provide to the parent or legal guardian of the child the following:

1. A verbal notification coordinated with the department of children services, within 24 hours from the time the report was made, that a report has been made; and
2. Any other information relevant to the future well being of the child while under the supervision or care of the school.

Notice shall not be given to any parent or legal guardian if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

A report of child abuse or child sexual abuse shall include:

1. The name, address and age of the child;
2. The name and address of the parents or persons having custody of the child;
3. The nature and extent of the abuse or neglect; and
4. Any evidence to the cause or any other information that may relate to the cause or extent of the abuse or neglect.<sup>1</sup>

The person reporting shall be immune from liability<sup>4, 12</sup> and his identity shall remain confidential except when the juvenile court determines otherwise.<sup>5, 13</sup> In addition, there shall be no retaliation by school personnel against a person who reports child abuse.

The Superintendent shall develop reporting procedures, including sample indicators of abuse, neglect and sexual abuse, and shall disseminate the procedures to all school personnel.<sup>1,2</sup> Nothing in the reporting procedures shall eliminate the staff member's legal responsibility to directly make a report to the authorities stated above.

## **INVESTIGATIONS**

School administrators and employees have a duty to cooperate, and provide assistance and information in child abuse and sexual abuse investigations<sup>67</sup> including permitting child abuse review teams to conduct interviews while the child is at school. The principal may control the time, place and circumstances of the interview, but may not insist that a school employee be present, even if the suspected abuser is a school employee or another student. The principal shall not be in violation of any laws by failing to inform parents that the child is to be interviewed, even if the suspected abuser is not a member of the child's household.<sup>8</sup> The principal also cannot insist that a parent be present.

### **Reasonable Accommodation During Investigation of Child Sexual Abuse**

If a student is the suspected victim of child sexual abuse as defined by TCA 37-1-602(a)(3) and the alleged abuse occurred while the student was under the supervision or care of the school, then the school shall make reasonable accommodations to separate the alleged victim of child sexual abuse from the alleged perpetrator.

## **REASSIGNMENT OF VICTIM OF CHILD SEXUAL ABUSE**

If available and appropriate, the Board shall, upon request of the parent of the victim of child sexual abuse, reassign the student victim when:

1. The abuse occurred while the student was under the supervision or care of the school; and
2. The perpetrator of the abuse is:
  - a. Substantiated by the department of children's services;
  - b. Adjudicated by a juvenile court to have committed the child sexual abuse; or
  - c. Criminally charged.

### **Refer also to policy 7005 Mandatory Reporting Procedures for Criminal Offenses.**

Any person who knowingly fails to make a report of child abuse, neglect, or sexual abuse as provided by law commits a Class A misdemeanor.<sup>2,14</sup>

Mandatory annual training on this policy shall be conducted for all principals and designated staff.

## V. RESPONSIBILITY

- A. School administrators and employees are responsible for reporting evidence of child abuse or neglect and for cooperating and providing assistance and information in child abuse investigations.
- B. The Superintendent is responsible for developing and disseminating reporting procedures to all school personnel.

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### Legal References:

- 1. TCA 37-1-403
- 2. TCA 37-1-412
- 3. TCA 37-1-102(b)(1)
- 4. TCA 37-1-410
- 5. TCA 37-1-409
- 6. TRR/MS 0520-1-3-.08(2)(e)
- 7. TCA 37-1-403(h)
- 8. TCA 37-1-611(b)
- 9. Tenn. Op. Atty. Gen. No. 87-101  
(June 9, 1987)
- 10. TCA 37-1-602
- 11. TCA 37-1-605
- 12. TCA 37-1-613
- 13. TCA 37-1-612
- 14. TCA 37-1-615
- 15. TCA 49-6-1601

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### Cross References:

- 1. 6027 Searches and Interrogations
- 2. 7005 Mandatory Reporting Procedures for Criminal Offenses

## **Contact Numbers for Reporting Child Abuse and Neglect and Child Sexual Abuse**

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Known or suspected cases of child abuse and/or neglect can be reported to one of the following authorities:

### **Department of Children's Services (State Local Office)**

Central Intake

170 North Main

Memphis, TN 38103

(901) 578-4001

1-877-237-0004

1-877-54ABUSE (1-877-542-2873)

### **Bartlett Police Department**

3730 Appling Road

Bartlett, TN 38133

(901) 385-5558

### **Collierville Police Department**

478 Keough Road

Collierville, TN 38017

(901) 853-3207

### **Germantown Police Department**

1930 S. Gemantown Road

Germantown, TN 38138

(901) 754-7222

### **Memphis Police Department**

201 Poplar Avenue

Memphis, TN. 38103

(901) 636-3700

### **Millington Police Department**

4836 Navy Road

Millington, TN 38053

(901) 872-3333

**Shelby County Government - Juvenile Court**

616 Adams Avenue  
Memphis, TN 38105  
(901) 405-8400

**Shelby County Sheriff's Department**

201 Poplar Avenue, 9<sup>th</sup> Floor  
Memphis, TN 38103  
(901) 222-5500 or  
(901) 222-5686

## **Criminal Offenses Constituting Child Sexual Abuse and Definitions**

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### **Definitions**

#### **37-1-602 Part Definitions – Harm to child’s health or welfare – “Child Sexual Abuse”**

**(3) (A)** "Child sexual abuse" means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that prior to November 1, 1989, constituted the criminal offense of:

- (i)** Aggravated rape under § 39-2-603 [repealed];
- (ii)** Aggravated sexual battery under § 39-2-606 [repealed];
- (iii)** Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];
- (iv)** Begetting child on wife's sister under § 39-4-307 [repealed];
- (v)** Crimes against nature under § 39-2-612 [repealed];
- (vi)** Incest under § 39-4-306 [repealed] [now § 39-15-302];
- (vii)** Promotion of performance including sexual conduct by minor under § 39-6-1138 [repealed];
- (viii)** Rape under § 39-2-604 [repealed] [now 39-13-503];
- (ix)** Sexual battery under § 39-2-607 [repealed] [now 39-13-505]; or
- (x)** Use of minor for obscene purposes under § 39-6-1137 [repealed];

**(B)** "Child sexual abuse" also means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that on or after November 1, 1989, constituted the criminal offense of:

- (i)** Aggravated rape under § 39-13-502;
- (ii)** Aggravated sexual battery under § 39-13-504;

**(iii)** Aggravated sexual exploitation of a minor under § 39-17-1004;

**(iv)** Criminal attempt as provided in § 39-12-101 for any of the offenses in (a)(3)(B)(i)-(iii);

**(v)** Especially aggravated sexual exploitation of a minor under § 39-17-1005;

**(vi)** Incest under § 39-15-302;

**(vii)** Rape under § 39-13-503;

**(viii)** Sexual battery under § 39-13-505; or

**(ix)** Sexual exploitation of a minor under § 39-17-1003;

**(C)** "Child sexual abuse" also means one (1) or more of the following acts:

**(i)** Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;

**(ii)** Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;

**(iii)** Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

**(iv)** The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:

**(a)** Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

**(b)** Acts intended for a valid medical purpose;

**(v)** The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

**(vi)** The sexual exploitation of a child, which includes allowing, encouraging, or

forcing a child to:

(a) Solicit for or engage in prostitution; or

(b) Engage in an act prohibited by § 39-17-1003; and

(D) For the purposes of the reporting, investigation, and treatment provisions of §§ 37-1-603 -- 37-1-615 "child sexual abuse" also means the commission of any act specified in subdivisions (a)(3)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child;

### **39-13-502. Aggravated rape.**

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Aggravated rape is a Class A felony.

### **39-13-504. Aggravated sexual battery.**

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

**39-17-1004. Offense of aggravated sexual exploitation of a minor.**

- (a) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:
    - (A) Sexual activity; or
    - (B) Simulated sexual activity that is patently offensive.
  - (2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).
  - (3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.
  - (4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.
- (b) (1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901(10), or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:
    - (A) Sexual activity; or
    - (B) Simulated sexual activity that is patently offensive.
  - (2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).
  - (3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the

- person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.
- (4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that a promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.
- (c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.
- (d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

**\*39-12-101. Criminal attempt. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
- (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;
  - (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
  - (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
- (b) Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

**39-17-1005. Offense of especially aggravated sexual exploitation of a minor. —**

- (a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:
  - (1) Sexual activity; or
  - (2) Simulated sexual activity that is patently offensive.
- (b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.
- (c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.
- (d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.
- (e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.
- (f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

**\*39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- (b) False imprisonment is a Class A misdemeanor.

### **39-13-503. Rape.**

- (a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act;
  - (2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
  - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (4) The sexual penetration is accomplished by fraud.
- (b) Rape is a Class B felony.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

### **39-13-505. Sexual battery.**

- (a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act;
  - (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
  - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (4) The sexual contact is accomplished by fraud.
- (b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.
- (c) Sexual battery is a Class E felony.
- (d) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

### **39-17-1003. Offense of sexual exploitation of a minor. —**

- (a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:
  - (1) Sexual activity; or
  - (2) Simulated sexual activity that is patently offensive.

- (b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).
- (c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.
- (d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, which are possessed, is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.
- (e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.