


# WHAT CAN WE DO ABOUT CHILD ABUSE?



*Prepared by:*

The Office of the Attorney General  
with the cooperation  
of Texas CASA, Inc.





My Fellow Texans:

Every child deserves the opportunity to grow up healthy and safe, and we should have no greater responsibility than the protection of our children against abuse and victimization.

Abuse makes victims of all of us; but for a child, especially, it steals the blessing of innocence, replacing it with fear and hurt that can damage young lives and take a lifetime from which to recover.

The first line of defense against child abuse is making sure people know what to do when they suspect it has occurred. This handbook is part of a coordinated effort to help you protect children who are at risk.

Your responsibilities are clear under the law, but this is about more than statutory protections; this is about doing what is right. Please study these materials and please join with all of us in doing all we can to save young lives from abuse.



Greg Abbott  
Attorney General of Texas







# INTRODUCTION

In fiscal year 2004, more than 50,000 Texas children were known to be victims of abuse and neglect. Staggering as this number is, it is an understatement: these are the children identified as victims by the Texas Department of Family and Protective Services, the state agency charged with receiving and investigating reports of child abuse and neglect. There is little doubt that many cases of abuse and neglect go unreported. Others are not reported in a manner that supports effective investigation.

TDFPS received over 200,000 reports of suspected child abuse or neglect in 2004. In many cases, the incidents or behavior reported did not meet the statutory definition of child abuse. Other reports did not contain enough information for investigators to be able to locate the child. All told, after screening, a little more than two thirds of the reports were investigated, and 50,529 victims were confirmed.

The majority of this handbook is about the definition, recognition, and reporting of child abuse. The handbook is intended for use as a training tool, to increase the likelihood that child abuse will be recognized and referred to the appropriate authorities for investigation — and to improve the timeliness and quality of bona fide reports.

Reporting must ultimately be seen in context; — it is the front end of the child protective service system. The process of bringing an abused or neglected child to the attention of appropriate authorities is vital. But at best it may prevent an abused child from suffering further harm. It is, basically, late intervention. The greater good is to prevent child abuse before it occurs. For this reason, a section has been added to this handbook on broad strategies of child abuse prevention. It is about how we — as individuals, as professionals who work with children, as communities, and as a society — can prevent and reduce child abuse.

This handbook is designed primarily for professionals such as teachers, doctors, nurses, day care workers, and police officers who regularly come into contact with children. It is imperative that people in these occupations be adequately trained in child abuse recognition and prevention. But the handbook is for parents, too, as well as other concerned adults who have the opportunity to observe and interact with children. The handbook is not specifically for the professionals who will actually investigate allegations of child abuse or assault.

A word on the use of terms: a **child**, in the relevant area of law and throughout this handbook, is anyone under the age of 18, except where otherwise noted. In fact, the overwhelming majority of children confirmed as victims of abuse or neglect are under the age of 13. Abuse and neglect occur in preteens of all ages, but very young children are at substantially greater risk than older children of being killed as a result of abuse or neglect. In Texas in 2004, 56 percent of confirmed child abuse cases involved children six or younger.

**Abusers** are referred to variously as **parents, caregivers, adults with access to the child**, or, simply, **anyone who harms a child**. In Texas in 2004, parents were the alleged perpetrators in 77 percent of

confirmed cases of child abuse or neglect. Although it is important to remember that children can be abused or assaulted by anyone, the discussion repeatedly returns to the child's primary caregivers — who are most often the child's parents — because in the majority of cases, they are the key.

The handbook is designed to be as practical as possible. A person who becomes aware of child abuse or neglect should not attempt to investigate the child's situation. But there is much that a concerned adult can do to help. From your first response to a child's disclosure of abuse, through your appropriate documentation and reporting of the circumstances you observe, and in your ongoing efforts to prevent child abuse, you can make a difference for the children and families whose lives you touch.

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# PART ONE:

## WHAT IS CHILD ABUSE?

Texas law provides a definition of child abuse. In addition, the law provides criminal sanctions for assaults, sexual assaults, and other acts that may be committed against children. The definition of child abuse, which is part of the Texas Family Code, is the basis for civil actions to protect a child from an abuser (such as removal of a child from the home). The Penal Code provides the basis for the criminal prosecution of a person who assaults or otherwise commits a crime against a child. The definition of child abuse and some relevant sections of the Penal Code can be found in the appendix to this handbook.

According to Chapter 261 of the Family Code (recodified in 1995), child abuse is an act or omission that endangers or impairs a child's physical, mental or emotional health and development. Child abuse may take the form of physical or emotional injury, sexual abuse, sexual exploitation, physical neglect, medical neglect, or inadequate supervision.

The law specifically excludes "reasonable" discipline by the child's parent, guardian, or conservator; corporal punishment is not in itself abusive under the law. An act or omission is abusive only if "observable and material impairment" occurs as a result, or if it causes "substantial harm," or exposes the child to risk of substantial harm.

Neglect, like physical and emotional abuse, hinges on substantial harm or observable and material impairment. The law excludes from its definition of neglect any failure to provide for the child that is due to lack of financial resources. A child living in poverty is not a victim of neglect under the Texas Family Code except in cases where relief has been offered and refused by the child's parent, guardian, or conservator.

Accidental injury or harm is also excluded from the definition of abuse. However, a person commits abuse if s/he places a child, or allows a child to be placed, in a situation where the child is exposed to "substantial risk" of injury or harm. The law also clearly states that a person commits abuse if s/he fails to make a reasonable effort to prevent another person from abusing a child. This provision applies to all forms of abuse, including physical and emotional abuse, sexual abuse, and neglect.



## A. RECOGNIZING physical abuse

Physical abuse typically occurs when a frustrated parent or caregiver strikes, shakes, or throws a child because of anger. Other forms of deliberate assault that may be physically abusive include burning, scalding, biting, kicking, cutting, poking, twisting a child's limbs, deliberately withholding food, binding, gagging, choking, or hitting the child with a closed fist or other instrument. Any form of corporal punishment may be abusive if it results in injury.

The indicators described below may be helpful in identifying possible child abuse victims. However, suspicious-looking injuries can occur accidentally, as the result of an unusual medical condition or birthmark, or even sometimes as the result of a non-abusive folk remedy for a medical condition. The investigation of child abuse should be performed by specially trained professionals. The indicators below can be used advisedly by persons who have frequent contact with children to identify possible victims.

Later sections of this handbook will describe a person's legal responsibility to report suspected abuse and will suggest appropriate ways that the non-investigating non-specialist might be able to help a child who may be abused.

Physical injuries resulting from child abuse can run the gamut from bruises, burns, and lacerations, to head injuries, broken bones, broken teeth, and damage to internal organs. Symptoms may include pain, swelling, internal or external bleeding, impaired mobility, delayed development, malnutrition, convulsions, coma, or even death. Any of these injuries or symptoms can occur because of accidents or medical conditions. Context, circumstances, and the exact nature of the wounds usually set apart the injuries resulting from abuse. Specially trained pro-

fessionals must make the determination whether a child has actually been abused or not.

### **No reasonable explanation for the injury**

In some cases, the injured child or an adult will attribute the injury to abuse. More often, the explanation for the injury is insufficient, incongruous, or altogether lacking. The child may try to hide the injuries by wearing unseasonable clothes. Injuries may appear on a child who has been unexpectedly absent from school or day care for several days. The child's parents may seem unconcerned about an injury and their stories may be inconsistent with the injuries or contradictory. Any of these circumstances indicate possible abuse.

### **Unusual injuries for the child's age**

Injuries that are easily explained by typical childhood activities are probably accidental. Children tend to bruise and scrape their knees and elbows, for example. Fractures found in children under the age of about four are more likely to be the result of abuse, whereas fractures found in school-age children are more likely to have occurred accidentally. Any fracture found in an infant of twelve months or younger is suspect. It is also unnatural for an infant to have multiple bruises on various parts of the body. And young children do not ordinarily suffer internal injuries, broken bones, or head injuries from falling off furniture.

### **Location of wounds**

Inflicted injuries are likely to occur on the back surface of a child's body, from the neck to the knees, or on the face. If a child's injuries have been inflicted from many directions, the pattern is not so likely to be the result of an accidental fall or collision. Wounds resulting from abuse may also take a "defensive" pattern: if the child holds up his or her arms or hands as a shield, the blows will fall on the backs of the arms or on the backs of the hands.

### **Multiple or frequent injuries**

Multiple injuries of different ages may be indicators of abuse, depending also on the nature of the injury. When a child has a broken bone, x-rays might reveal other fractures that have healed. The age of a bruise is roughly indicated by its color. The injury is initially red, turning blue after six hours or so, then black or purple after 12-24 hours; within a few days the bruise turns greenish, fading to yellow or brown in about a week.

### **Bruises that form an unusual pattern**

The outline of a hand may be visible on a child's face as the result of a hard slap. The marks of fingerpads may appear opposite the single bruise from a thumb if the child has been tightly gripped by the shoulder; choking may produce a similar pattern on the neck. Pinching may cause two crescent-shaped bruises, and fingernail marks may be visible. If the child is struck with an object, bruising may assume an identifiable shape.

### **Distinctive marks and lacerations**

An adult human's bite mark can often be identified by its size, together with its distinctive shape. Welts in various linear patterns result from whipping with a strap, ruler, or belt; belt buckles may cause unusual repeated patterns of laceration. Where scarring has occurred, frequent and excessive punishment may be suspected. Marks circling the wrists may indicate that a child has been tied up, and marks on the sides of the mouth may result from the use of a gag.

### **Unusual burns on a child**

Cigarette burns are generally circular, and although they may appear on any part of the body, most often they are found on the palms, soles of the feet, or buttocks. Other suspicious burns may show the outline of the hot object used: an iron, for example, or the coils of an electric burner. A child instinctively with-

draws immediately from something hot, and a clear imprint suggests "branding," or forceful application.

### **Unusual patterns of scalding**

By the same token, a child who accidentally sits in too-hot water will naturally struggle and splash, possibly burning the hands as well as the buttocks and legs. The scalding that results will be irregular. A child who is forcibly immersed in hot water will more likely show clear markings on the reddened skin, such as "gloves" or "socks" on immersed hands or feet or an immersion line around the waist. White creases ("zebra" marks) may be visible where the skin folds. White circles may form on red buttocks ("doughnut" marks) where the child's weight presses the skin against the floor of the bath tub.

### **Suspicious-looking marks not caused by abuse**

Suspicious-looking marks can be caused by medical conditions not related to abuser. "Mongolian spots," for example, are fairly common and look very much like bruises. Non-abusive but suspicious-looking burn marks can be caused by hot seat belt buckles, car seats, or skin disorders. Some children do bruise easily, so the location of the bruises and the explanations for them should be taken into account.

Accidental wounds from falls and collisions are most likely to appear on bony prominences of the body: in addition to knees and elbows, these include shins, chin, and forehead. Trained investigators and medical professionals can usually determine whether a mark or injury has been inflicted.

### **Head injuries**

Head injuries are involved in most abuse-related deaths of small children. A serious head injury may not be externally visible. Head injuries may occur in all degrees of severity, with symptoms ranging from dizziness, vomiting, lethargy, and confusion to coma and death. It may be difficult to determine the

cause of a head injury in a small child; however, children who are too young to stand or walk are unlikely to inflict such injuries on themselves by accident. For the professionals who investigate cases such as these, inconsistencies and improbabilities in the parents' accounts of the injury are particularly important.

### **Unexplained death of a child**

Any unexplained death of a child must be investigated from the start as a homicide. Investigators must observe the scene and interview all persons with access to the child at the time of death to determine whether smothering or any other form of abuse or neglect may have occurred. It is good investigatory practice to order an autopsy in any unexplained death of a child. An autopsy cannot always determine the cause of death, however. Investigators may have to rely upon crime-scene observations and the full case history to determine whether a child has been killed by abuse or neglect or has died of a non-abuse-related medical condition such as Sudden Infant Death Syndrome (SIDS). Investigators should proceed, bearing in mind the very painful position of a non-abusive parent whose child has died of SIDS.

### **Shaken Baby Syndrome**

When a child is held by the shoulders or chest and shaken violently, often no external injury is visible.

However, the impact of the brain on the inside of the skull may prove damaging or even fatal, especially if the child is less than two years old or is shaken repeatedly. Symptoms of injury include vomiting and seizures. An infant who is violently shaken may suffer convulsions, permanent brain damage, and death. A young child who survives a severe shaking episode may be blind, deaf, or otherwise disabled as a result. Even less violent shaking of older children may cause neurological deficits, as well as learning and behavioral disorders.

### **Behavioral indicators of physical abuse**

In cases where there is little definite physical evidence of physical abuse, behavioral indicators may help tell the story. The child may frequently complain of pain without obvious injury or, alternatively, show an abnormal lack of reaction to pain. The child may display aggressive, disruptive, and destructive behavior; or at the other extreme, s/he may seem markedly passive, withdrawn, and emotionless. These vague and somewhat contradictory indicators may or may not be significant; however, when a child exhibits these characteristics to a noticeable degree, abuse is a possibility. People who come into contact with the child should be alert for other, more direct indicators, such as fear of going home or seeing parents, frequent absences from school or physical education class, and, of course, all the physical indicators described above.

## **B. EMOTIONAL INJURY of a child**

The law recognizes the existence of both physical and emotional injury. Physical abuse is almost invariably accompanied by emotional injury to some degree; it is difficult to imagine that a child could suffer "substantial harm" as the result of a deliberate assault by a caregiver and not also be psychologically harmed. Moreover, angry parents who physically assault their children are likely to assault them verbally, too.

Although many physically abused children suffer emotional injury, actual emotional abuse as defined by law has occurred only if the child's "growth, development, or psychological functioning" shows "observable and material impairment." Emotional injury is more subtle than physical injury, and the fact of emotional abuse is not as readily established. Emotional abuse, when it is not accompanied by some other form of abuse, is not often the basis

for an investigation or legal action. Yet it can be devastating. It is psychological and emotional injury that link child abuse to some of its costliest long-term effects: substance abuse, crime, suicide, and the perpetuation of violence within families.

### **Forms of verbal assault**

Emotional injury is inflicted on children by verbal assaults that may take the form of belittling, name-calling, screaming, threatening, blaming, and sarcasm. Other damaging verbal habits are referring to a child only as “it” or repeatedly telling the child that s/he is “worthless” or “bad.” The mere fact that a caregiver verbally assaults a child (e.g., calls the child names, screams at the child) on a particular occasion is not sufficient to establish emotional abuse; the assaults must be frequent, excessive and, above all, clearly and substantially damaging to the child. Because the effects of verbal assaults are subtle and their exact cause is difficult to pinpoint, substantiating emotional abuse as part of a case requires detailed observation and testimony about the abuser’s words and actions toward the child over a period of time.

### **Unpredictable responses, unreasonable demands**

A child may suffer emotional harm when subjected to extremely unpredictable or inconsistent responses from caregivers. Unreasonable expectations and demands can also be harmful. A child may suffer from being continually surrounded by negative moods and family discord. In some situations a child may be forced to make painful choices, perhaps between quarreling family members. Divorcing parents sometimes use their children as pawns in their own marital conflicts, and this can be damaging to the children. A child may suffer serious psychological harm from being rejected, terrorized, ignored, or isolated emotionally.

### **Signs of emotional injury**

Signs of emotional injury include many general symptoms that could result from causes other than emotional abuse. They include withdrawal, depression or apathy; behavior problems or “acting out;” or a child who is overly rigid in conforming to instructions from teachers, doctors, and other adults. A child’s behavior problems may be a fulfillment of the negative labels the abuser has applied to the child: a child is “no good” or “a slut” because that is what s/he has always been told about him/herself. An emotionally abused child may refuse verbal or physical communication with others, or express feelings of being bad or worthless. Symptoms such as these can be produced by emotional abuse, but because they may arise from other causes, they must always be considered in context.

### **Emotional deprivation**

Emotional deprivation occurs when a child’s parent or guardian withholds or withdraws affection and approval. The child may receive no attention at all, or may receive attention only when s/he does something “bad” (and then the attention is negative). In either case, the child feels unloved and unworthy. Emotional deprivation may occur when a child’s caregiver abuses alcohol or other substances.

However, it cannot be presumed that a child is abused just on the grounds that his or her parent(s) have alcohol or substance abuse problems; it must also be clear that the child is suffering substantial harm.

### **Indicators of emotional deprivation**

A child suffering from emotional deprivation may refuse to eat adequate amounts of food and fail to thrive.

S/he may be unable to perform normal learned functions for a given age (e.g., walking, talking). A child

who receives only negative attention may become passive and withdrawn in order to avoid abuse, or s/he may deliberately misbehave, preferring negative attention to being completely ignored. As a result, s/he may be observed to be abnormally unresponsive, sad or withdrawn, or antisocial and obviously delinquent. Another sign of emotional deprivation is constant seeking of attention and affection from other adults such as teachers and neighbors. An emotionally deprived child may also display exaggerated fears and clinging behavior. Like other indicators of emotional abuse, the symptoms of emotional deprivation must always be taken in context.

### C. THE SEXUALLY ABUSED child

Sexual abuse is defined in the Family Code as any sexual conduct harmful to a child's mental, emotional, or physical welfare as well as failure to make a reasonable effort to prevent sexual conduct with a child. A person who compels or encourages a child to engage in sexual conduct commits abuse, and it is against the law to make or possess child pornography, or to display such material to a child.

Sexual abuse may consist of a single incident or many acts over a long period of time. Boys and girls of any age can be victims of sexual abuse. The molester can be just about anyone, but most often, it is someone known to the child. The abuse may escalate over time, particularly if the abuser is a member of the child's own family. The child's non-abusing caregiver(s) may be unaware of the abuse or may be in a state of denial.

Child sexual abuse includes fondling, lewd or lascivious exposure or behavior, intercourse, sodomy, oral copulation, penetration of a genital or anal opening by a foreign object, child pornography, child prostitution, and any other "sexual conduct harmful to a child's mental, emotional, or physical

welfare." These acts may be forced upon the child or the child may be coaxed, seduced, and persuaded to cooperate. The absence of force or coercion does not diminish the abusive nature of the conduct, but, sadly, it may cause the child to feel responsible for what has occurred.

It is extremely difficult for a child to report sexual abuse. A very young child may not understand that what has happened is not normal or accepted. More importantly, the abuser almost always discourages the child from telling anyone about the abuse. The strategies for silencing a sexual abuse victim are as ruthless as they are varied. The abuser may be someone whom the child depends upon and trusts; s/he may use the child's dependency and affection to extort a promise of secrecy. A more brutal perpetrator may threaten to harm and even kill the child or other family members or pets. Or the abuser may tell the child that the family will be broken up, the child blamed, or the child taken away from home if the secret becomes known. These are not altogether unrealistic fears for the child, unfortunately.

For many people, an allegation or disclosure of sexual abuse is indeed hard to accept. This is particularly true when the perpetrator is a family member or an otherwise law-abiding, respectable, and seemingly "nice," "normal" person. Many adults have a tendency to overlook, discount, minimize, explain away, or simply disbelieve allegations of sexual abuse. Yet children rarely lie or invent stories on their own about being sexually abused. The fact that children can sometimes be manipulated or coached should not dissuade anyone from reporting a child's revelation of sexual abuse. All responsible adults, but particularly those who work with children, should be aware that sexual abuse occurs and should be alert for the opportunity to aid a child who attempts to disclose abuse. The child's need for support and protection must come first.

### **Recognizing disclosure of sexual abuse**

Physical and psychological effects of sexual abuse are sometimes observable, but often they are not.

Physical signs may be altogether lacking and psychological symptoms may be too vague to suggest their actual cause. Very often, the only way sexual abuse is revealed is by the child's own reporting. This may be offered so obliquely and tentatively that it is simply overlooked. Adults who frequently talk to children should be alert and aware that these disclosures are often indirect ("I have a friend who.." or "What if...?"). It is also important to recognize that disclosure tends to be a process rather than an event; a child who offers a tentative hint on one occasion may need a series of conversations over time to develop the trust and confidence s/he needs to fully reveal what has happened. A full disclosure that occurs over an extended period of time should be handled by a trained professional for a number of reasons: to best attend to the child's psychological and emotional needs, to avoid tainting the child's testimony, and to adequately document the case for possible legal action.

### **Sexual assault by a stranger versus a family member**

Sexual assault of a child is a violation of the Penal Code, regardless of whether the perpetrator is a stranger or family member. Assault by a stranger and assault by a family member may involve similar criminal charges. In addition, an assault by a family member, especially one who lives in the household with the child, may be the basis for a civil action such as removal of the child from the home. In fact, assaults by strangers are much less common than assaults by persons known to the child. Perhaps the most common scenario for child sexual assault involves the male partner of a young girl's mother (the girl is assaulted by her father, stepfather, or her mother's boyfriend).

### **Physical indicators of sexual abuse**

Sexual abuse may result in physical injury (though most often it does not). A child who is physically injured as a result of sexual abuse may display difficulty in sitting or walking, report pain when urinating or defecating, or complain of stomachaches. S/he may report pain or itching in the genital area or a discharge. Injuries to a child's genitalia may or may not leave lasting marks; other physical evidence, such as semen, is certainly ephemeral. A child, therefore, needs to be examined as soon as possible if there is reason to suspect sexual abuse. The physical examination of a possible victim of child sexual abuse should be performed only by a qualified medical professional who is specifically trained to examine children who have been sexually assaulted. Other persons should not attempt any kind of physical examination; they should immediately report the abuse, using procedures outlined later in this handbook.

### **Sexually transmitted disease and pregnancy**

Other physical indicators of sexual abuse include symptoms of sexually transmitted disease (STD) as well as pregnancy. STD and pregnancy are by themselves indicators that a child is sexually active; they do not by themselves establish abuse or assault. In a preteen child, abuse is strongly indicated (except that infants may contract some STDs from their mothers at birth). In a teenager, further information is needed about the circumstances and the child's sexual partner, who might have been another minor about the same age, an older minor, or an adult. The sexual contact may have been assaultive or may otherwise qualify as "sexual conduct harmful to a child." Reasonable suspicions of this nature must be reported and may be investigated, depending on circumstances.

### **Specific behavioral indicators of sexual abuse**

Children who have been sexually abused may be identified by their frequent expressions (verbal references, pictures, pretend games) of sexual activity between adults and children or by knowledge about sexual relations beyond what is probable for their age. They may masturbate inappropriately or compulsively. Their behavior may be sexually suggestive, inappropriate, or promiscuous; or, conversely, they may show infantile behavior or extreme fear of being alone with adults of a particular sex. A very strong indication that a child has been abused is that child's sexual victimization of other children.

### **Symptoms of emotional injury**

More generalized psychological impacts of sexual abuse include withdrawal, depression, sleeping and eating disorders, self-mutilation, phobias, and psychosomatic symptoms such as stomach aches and headaches. The child may develop school problems such as frequent absence or a sudden drop in grades. The child may exhibit either poor hygiene or excessive bathing. Older children may abuse alcohol or drugs, run away, or adopt other self-destructive behaviors including suicide threats or attempts. Any or all of these behaviors can arise from causes other than sexual abuse; however, in context, any one of them could be taken as a warning that some form of harmful sexual conduct has occurred or is still occurring.

## **D. WHAT IS neglect?**

A child's parent, guardian, or conservator is responsible for either directly providing safe and adequate food, clothing, shelter, protection, medical care, and supervision for the child, or arranging to have someone else provide these needs. Neglect, as defined by the Family Code, Chapter 261, is the failure to meet this responsibility. Neglect, like other forms of abuse, must involve "observable and mate-

rial impairment" or "substantial risk" to the child, in order for the civil statute to apply. In addition, if anyone knowingly abandons or endangers a child, the Penal Code provides criminal sanctions.

### **Failing to arrange for the care of a child**

The caregiver must arrange for necessary care and supervision during any period of time when the caregiver is absent and does not intend to return. Neglect includes placing the child in or failing to remove a child from a situation where the child is exposed to "substantial risk" of harm. Neglect also includes placing a child in or failing to remove a child from a situation requiring judgment beyond the child's years or capabilities. Here again, to qualify as neglect, the acts or omissions must result in harm or substantial risk of harm to the child.

### **How long can a child be left unattended?**

The law provides few guidelines as to how long a child may be left unattended. The law does specify that a caregiver cannot leave a child under age five unattended in a car for more than five minutes, unless a person aged 14 or older is watching over the child. However, there is no set length of time a "latchkey" child of school age may be left unattended. The child's maturity, the proximity of helpful adults, and a number of other circumstances must be taken into account. As always, the ultimate guideline for determining whether a child is being left unattended too long is whether the child suffers actual harm, or is at substantial risk of being harmed, due to lack of supervision.

### **Failing to provide a child with food, clothing, or shelter**

Failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child may be considered neglect as long as the failure is not primarily caused by financial need.

Caregivers who are impoverished are not neglectful unless the child is harmed or substantially at risk of harm and relief services have been offered and refused. Lack of heating or plumbing in the home does not mean that the children in the home are neglected. On the other hand, failure to prepare meals, spoiled food in the refrigerator or cupboards, and severe infestations of insects and rodents are possible indicators of neglect. However, the totality of circumstances must be taken into account. Neglect generally involves conditions that are extreme, persistent, and substantially damaging to the child.

#### **Failing to seek, obtain, or follow through with medical care**

A parent, guardian, or conservator who fails to seek, obtain, or follow through with medical care for a child may be guilty of neglect. The need for medical care must entail a substantial risk of death, disfigurement, injury, or impairment. Caregivers who refuse medical care for religious reasons are not considered to be neglectful, but may still need to be reported. In extreme cases the court may order treatment for the child over the parents' wishes. Caregivers who cannot afford medical treatment are also not considered to be neglectful unless they have been informed of and have refused free or affordable treatment. Some parents who commit physical and sexual abuse are guilty of medical neglect because of their wish to keep the abuse secret.

#### **Failure to permit the child to return home**

The law requires the person responsible for a child to permit the child to return home, or else to arrange for the necessary care for the child, after the child has been absent from the home. The fact that the child has run away or been in residential placement does not in any way diminish the parent's, guardian's, or conservator's responsibility to care for the child, either by taking the child back into the home or by making other arrangements.

#### **Indicators of neglect**

Physical signs of neglect include obvious malnourishment, lack of personal cleanliness, torn and/or dirty clothes, insufficient clothing for warmth and protection, or need for glasses, dental care, or other medical attention. Behavioral indicators of neglect include stealing, hoarding, or begging for food and frequent absence or tardiness at school. A child that is always hungry, tired, and listless may be neglected. For the situation to indicate neglect under the law, the child's condition must not result solely from the caregiver's lack of financial resources (unless aid has been offered and refused), and the child's condition must be severe, chronic, and threatening to the child's health. The child may say that no one cares for him or her, or may describe being alone, caring for younger children, or doing dangerous things (a very young child bathing an infant, for example, or being allowed or instructed to use power tools).

#### **E. WHO ARE the child abusers?**

Child abuse can occur in any social, cultural, or economic class. Men and women abuse children in approximately equal numbers. Most often, when a child is injured, the perpetrator is someone known to the child. Most often it is the child's parent, guardian or conservator; some other household or family member; or another person with regular access to the child. This is true of both physical and sexual abuse; strangers account for only about one in five harmful acts toward children.

Abusive parents may have been abused themselves as children. They may have very limited parenting skills, believing strongly in and relying almost solely upon corporal punishment for discipline. These are likely to be parents who experience great frustration in their efforts to make their children behave as they wish. Parents with a tendency to abuse their children are even more likely to do so under the



stress that accompanies divorce, unemployment, or other family crises.

### **A special child**

In some families, one child will be singled out for abuse. The parents may describe the child as being bad or a liar, or even “evil,” a “witch,” or a “monster.” This child often has a special disadvantage such as attention deficit disorder, hyperactivity, deformity, or disability; the child may have been unplanned or unwanted; or the child may simply be considered disappointing by the parent or caregiver for some reason. Other children in the family may escape maltreatment. If the targeted child is removed from the family, another child may be selected for abuse instead.

### **Parents who hide a child’s injuries**

Parents who abuse their children may show little concern for their children’s injuries, and will often go to great lengths to protect themselves (or their abusive spouses) from blame. Abusive families may become isolated, to prevent the chance of anyone’s observing the abuse. They may move frequently, disappearing whenever anyone shows concern or suspicion. The child’s injuries may go untreated as long as possible, and when medical attention is unavoidable, the abusive parent usually will avoid going to a doctor who has attended the child for injuries in the past. The parent’s account of how the child was injured is likely to be inconsistent or improbable. Depending on the child’s injuries, abuse may be suspected when a parent takes a child to a hospital that is unnecessarily far from home, bypassing closer, equally well-equipped medical facilities.

### **Child molesters**

The child molester is sexually attracted to children (usually children of a certain age) and assaults them to obtain sexual gratification. While anyone of any age, race, or gender can be a child molester,

this person is typically an adult heterosexual male. Most often, molestation is not a “stranger” assault, and may not involve force. Many child molesters relate quite well to children and seek out professions, jobs, or volunteer positions that give them access to children. They often make or collect child pornography.

Their methods of seduction may include bribes and the use of pornography depicting sex between adults and children the age of the intended victim. The relationship with the child may develop over a period of weeks or months, becoming increasingly coercive and invasive. Child molesters repeatedly offend and may molest or attempt to molest literally hundreds of children before being caught. The victims, while frequently befriended by the child molester, are generally not related by blood or marriage.

### **Spouse abusers, violent families**

In many families where spousal abuse occurs, the children are also abused. In most such families, it is the male partner who is violent toward other family members. In 2003, according to the Texas Department of Safety, 78 percent of all family violence offenders were male. Even if they are not abused, the children in these families are harmed by witnessing the violent assaults on their mothers. In addition, they may be injured during an incident of parental violence or traumatized by fear. They may blame themselves for not preventing the violence, or think that they have caused it. They may be neglected.

Studies have shown that adjustment difficulties evident in children who witness spousal violence are similar to problems found in children who are abused. Any intervention involving spousal violence should include attention to the needs of any children in the family. Legislation passed in 1995 requires TDFPS to direct its employees to document indications of domestic violence and to make available

information about community services for adult victims of domestic violence. New laws also provide that when a child has a non-abusive parent remaining in the home, the child should not be removed from the home, rather, CPS should seek a protective order against the abuser.

#### **Abused children who become abusers**

Some abusers are themselves children. Children can become aggressive toward other children for a number of reasons. They may be copying adults who are role models for them (parents, for example). Or they simply may not have learned how to play with

smaller children. When an older child victimizes younger children or animals, the older child has frequently been abused, too. If the children are anywhere near the same age and size, the incident, however one-sided, is unlikely to qualify as abuse or assault, but this depends on the context. If the aggression is severe or sexual in nature, it may be regarded as abusive and/or assaultive. It may, in fact, be a turning point for the older child; that child may be at the point of discovering that he prefers to play the role of the more powerful aggressor in a scene that is all too familiar to him.

# PART TWO

## WHAT CAN WE DO ABOUT CHILD ABUSE?

The definitions and indicators provided in the first part of this handbook can help you to recognize abuse when you see it. When you do become aware of child abuse, what can you do about it? Better yet, how can child abuse be prevented from occurring in the first place? This part of the handbook will focus on what we can do about child abuse, starting with how to act when you recognize abuse, what you must do to inform authorities about abuse you come to know of, how our law enforcement and child protective agencies intervene to protect children who have been abused, and what we can do, individually and collectively, to prevent abuse before it happens.

### A. RESPONDING TO an abused child

Professionals who may come into contact with abused children include law enforcement officers, medical professionals, child care workers, teachers, and other school staff. Others who may know abused children are neighbors, relatives, and parents of the child's friends. Child abuse cuts across all walks of life: a child of any race, social background, or economic class — even your own child — may be abused.

Regardless of your relationship to the abused child, your responses, attitudes, and actions can be critical to his or her overall experience and eventual healing. Without attempting to investigate or intervene inappropriately, you can help. Your first responsibility when you recognize abuse of any kind is to report your suspicions. But your words and actions at the time of discovery or disclosure can be the first step toward opening the channels of communication and healing.

#### **A child who has or may have physical injuries**

Ask the child's permission before looking at a bruise or other mark, especially if s/he attempts to hide it. However, the child may complain about the injuries or about pain in hopes that you will see or guess what is happening. That way, the child will

not have to betray a trust or reveal a secret. It is a good idea to look at injuries in the presence of another responsible adult. Teachers and child care workers should have another staff person present when looking at a child's injuries. Never attempt to examine a child's private body areas. And reserve judgment: a number of innocent circumstances can produce marks that appear to be results of abuse but are not. Reasonable suspicions should be reported for possible investigation by appropriate authorities.

#### **Ask about what happened**

It is appropriate to ask the child a few questions to see if there is a simple explanation for suspicious-looking marks or injuries. Your role is not to interview the child but to listen and report to the appropriate authorities, who will then investigate. Try to use open-ended questions like "How did that happen?" rather than leading questions like "Did someone hit you?" or "Did Mommy [Daddy] burn you?" Questions should be age-appropriate in both vocabulary and meaning. Young children are easily misled or confused; they may not understand the implications of what you or they themselves say about abuse.

Repeat what the child says, in the child's own words, to make sure you have understood. Don't pressure

the child to talk. Avoid prompting for answers. If the child does not answer the question “When?” don’t prompt with “Was it last week?” If the child does not answer the question “Who?” don’t prompt with “Did your mom do it?”

### **Documenting what you see and hear**

It is a good idea to make notes on your observations of possible abuse or neglect. Write down the date, time, place, and events that caused you to become suspicious. If you do not know who the child is, note the license plate and make of the parent’s car; if possible, or any other information to help investigators find the child. If your report is based on a conversation with a child, write down what you asked or said to the child, in your words as you remember them. Write down anything the child said (his or her words) or comments by family members or other persons who are directly involved. Your notes should be a record of the facts and as far as possible, should not contain judgments or conclusions.

**Your purpose should not be to investigate or build a case but to simply record what you saw and heard. Then immediately report what you have observed to the appropriate authorities.** You should keep your notes secure and confidential. Any notes you take may be subpoenaed in a subsequent legal proceeding.

### **The “outcry witness” in a child abuse proceeding**

The first adult (18 years or older) that a child (12 years or younger) discloses to, is called the “outcry witness,” and may have an especially important role to play in subsequent legal proceedings. If you are an “outcry witness,” what you say the child told you is not excludable as hearsay, but is admissible evidence in a trial involving an offense against a child. This exception applies only to the first person the child approaches; if you immediately pass the child on to another person such as a counselor or clergy-

man, important testimony could be lost. It is, therefore, important not to cut a child’s disclosure short, and to pay close attention to the child’s exact words. The actual investigation of an allegation of child abuse, and any in-depth interviews, should be performed by qualified professionals. Other concerned persons, including the first person the child approaches, should carefully avoid putting words in the child’s mouth. The confiding child should be encouraged with open-ended, rather than leading, questions.

### **Respect the child’s trust**

Be careful not to communicate skepticism about what the child is saying. It is difficult for children to tell about any kind of abuse, and they are usually afraid of being disbelieved. They may even have been told they will be disbelieved. Do not express shock or blame, but also do not minimize or try to excuse the abuser’s behavior. If the child does not wish to answer a particular question or be questioned further, respect the child’s wishes. Let the child know you are available to talk and listen at any time. **Do not promise the child that you will keep a secret about abuse.** Tell the child that some things cannot be secrets because “we have to get help.” Tell the child what you plan to do next, while reassuring him or her that telling was the right thing to do. While it may be a good idea to reassure the child, depending on the circumstances, you should not promise protection that you cannot deliver. If the child needs immediate protection, make sure this concern is communicated promptly to the investigating authorities.

### **Respect the child’s privacy**

Do not talk about what you have seen and heard with people who do not need to know. Do report your reasonable suspicions. If someone else (especially another child) has alerted you to an injury, do not mention this to the injured child; s/he may be self-conscious over being talked about. A child who

is abused is liable to be extremely sensitive about what other people think about the situation. This goes double for the child who discloses sexual abuse. Reassure the child that s/he is not changed, visibly different, “dirty,” or “weird” as a result of the abuse. You can help by your support and understanding.

### **Respect the child’s feelings**

Although you may tell a child that the abuse was wrong, do not say that the person responsible for the abuse is bad. The abuser is often someone to whom the child is strongly attached. The child may actually want to protect the abuser as much as s/he wants to cry out for help. Older children may feel guilty or responsible, or that they deserved the abuse. Many situations that appear to involve neglect are due to financial need, homelessness, or other related problems; take care not to embarrass a child or a family with your offers of clothing or food. Do not blame the child for tardiness, sleepiness in class, or other mishaps that may be the result of neglect that is beyond the child’s control. And do not permit other children to humiliate a child because of his or her clothes, hygiene, lack of food or money, or other condition that indicates neglect or poverty.

### **Disclosure of sexual abuse**

Disclosures of sexual abuse may be even more indirect and vague than disclosures of physical abuse. A concerned adult should choose a quiet and private moment to invite further confidence. A person who has been approached should remain calm and reassure the child that s/he is believed, has done the right thing in telling, and is not in any way to blame. Don’t say: “Why didn’t you...?” “Why did you...?” “Are you sure...?” or “I’m sure he didn’t mean...” Do say “It’s not your fault.” Remember that an older child, understanding all too well the implications of the disclosure, may be evasive when pressed. Children of all ages are likely to be concerned about being

blamed, about retaliation by the abuser, or about the harm they may do to the abuser by disclosing.

### **Is your own child abused?**

If your child discloses abuse to you, the cautions and recommendations provided above apply to you with even greater urgency. If you are the child’s parent, your reaction will be extremely important to the child’s psychological well-being. Because the abuser may be someone in your own family, even a spouse, you may be tempted to minimize the abuse or deny its existence. You must focus on the high potential for damage to the child and the fact that this damage can be avoided and repaired if the abuse is stopped and the child receives appropriate treatment. The child is not likely to be lying and the child is never the cause of the abuse. If you must deal with a family that has just learned about the abuse of a child, be aware of how threatening this disclosure may be, and remember that the child’s welfare must be the first priority at all times.

## **B. THE RESPONSIBILITY to report child abuse**

Anyone “having cause to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse or neglect” must report the case immediately to a law enforcement agency or to the Texas Department of Family and Protective Services, under Chapter 261 of the Texas Family Code. Failure to report suspected child abuse or neglect is a class B misdemeanor punishable by imprisonment for up to 180 days and/or a fine of up to \$2000. Indicators listed in Part One of this handbook are examples of adequate cause to believe a child is at risk.

The law does not require the person reporting to be certain that a child is being abused or neglected before reporting, only to have reason for believing it. It is a good idea to talk to the child to see if there is a

simple or plausible explanation for the appearance of injury or neglect. But a concerned adult should stop well short of trying to investigate or intervene in the suspected abuse. Reasonable suspicions of abuse must be reported to the appropriate authorities. And any time a child discloses abuse to an adult, the adult has reason to make a report. This is true even if the adult feels skeptical about what the child has said: the disclosure should be reported, so that appropriate authorities can judge the need for investigation.

### How to report child abuse

A person wishing to report suspected child abuse or neglect can call any state or local law enforcement agency or Child Protective Services (CPS), a department of the Texas Department of Family and Protective Services (TDFPS). TDFPS has a toll-free 24-hour Abuse Hotline: 1-800-252-5400. TDFPS also has an on-line form at: [www.txabusehotline.org](http://www.txabusehotline.org). In an acute case, when a child appears to be in immediate danger of serious harm, it is best to call 911 (where that service is available) or the nearest police or sheriff's department, to ensure the fastest possible response time to protect the child.

The person reporting should provide, whenever possible, the child's name, description, age, address, license plates, make of car, or other information that might help authorities locate the child. It is critical that the report be made as soon as possible. The more time that elapses between the incident and the report, the more difficult it is to investigate.

### Professionals who work with children

Current law requires that professionals such as teachers, doctors, nurses, and child day-care workers make a report within 48 hours. Prior to September 1, 1995, professionals were also required to submit written reports. As of September 1, 1995, written reports are no longer required. **Professionals whose personal communications may other-**

**wise be privileged or confidential are required, without exception, to report suspected abuse.** Such professionals include attorneys, clergy, social workers, counselors, medical practitioners, and mental health professionals. A teacher who reports suspected child abuse to his or her principal, school counselor, or superintendent does not thereby satisfy his or her legal obligation under the Texas Family Code. Local school district policy cannot conflict with or supersede the state law requiring a teacher to report child abuse to a law enforcement agency or TDFPS.

### The person reporting is protected under law

The person reporting should be prepared to identify him or herself. An anonymous report is better than nothing, but may result in an abbreviated investigation because the Texas Family Code requires corroboration of an anonymously reported case prior to completing a full investigation. Someone in a position to observe the abuse is likely to be drawn into the investigation in any case. And the law does offer protection; the identity of the person making a report of child abuse or neglect to CPS is confidential and may be disclosed only upon order of the court or to a law enforcement officer conducting a criminal investigation of the report. In addition, the person reporting is immune from civil or criminal liability as long as the report is made in "good faith." "Good faith" means the person making the report took reasonable steps to learn facts that were readily available and at hand. The person reporting is also protected from liability if s/he testifies or participates in judicial proceedings that result from the report.

### Exceptions: reports made in bad faith

A person cannot escape prosecution by reporting his or her own abuse of a child: the law does not offer immunity from civil or criminal liability in this case. A person who acts in bad faith or with malicious purpose in reporting alleged abuse or neglect

is also not immune from civil or criminal liability. In addition, a bad faith or malicious report by a spouse or parent may be used as evidence in a suit affecting the parent-child relationship.

### **Protecting and reporting about one's own child**

A child's parent or guardian has a legal obligation to protect the child. Anyone who permits his or her child to be in a situation where s/he may be harmed may be prosecuted for child abuse. The fact that the abuser is your husband, wife, or other family member does not affect your obligation to report the abuse, nor does it shield you from being involved in legal proceedings resulting from the abuse. This is also true when parents discover that one of their older children is abusing a younger one (an indication that the older one may also have been abused at an earlier time). In that case, both children need help. If an abuser in your family is violent and you are frightened for your own safety as well as that of your children, call 911, a local battered women's shelter, 1-800-252-5400, or your local law enforcement agency.

### **Will there be an investigation?**

When a verbal report of suspected abuse is made to Child Protective Services, TDFPS records are checked and law enforcement personnel are notified. Whether or not the case will be investigated is then determined. Not every report gives rise to an investigation. The report may describe a situation that does not qualify as abuse; for example, corporal punishment and poverty, both frequently reported as abuse, are not likely to be investigated unless there is reason to believe that a child has actually been harmed.

Nor will an investigation occur if there is insufficient information to locate the child. Concerned persons often report truancy, running away, excessive discipline that does not leave physical injury, an older child being made to stay home and babysit

younger children, and situations which are potentially but not actually abusive; however CPS has no authority to investigate these cases. If the report suggests that a child has been abused or neglected or is at substantial risk of being abused, and the child can be located, an investigation is initiated.

### **Who investigates**

Child Protective Services (CPS) in TDFPS performs the civil investigation into whether child abuse, as defined by Chapter 261 of the Texas Family Code, has occurred and assesses the risk of further abuse occurring. Law enforcement agencies conduct criminal investigations if it appears that a person should be charged with assault, sexual assault, or any other criminal misconduct against a child. CPS is responsible for determining what civil actions should be taken on behalf of the child, if any. For example, the child may be removed from the home and placed in protective custody, and parental rights may ultimately be terminated. The investigating law enforcement agency is responsible for referring cases for criminal prosecution when appropriate. The Licensing Division of TDFPS investigates child day care or residential facilities licensed by the agency. In addition, a state agency with responsibility for licensing facilities under its jurisdiction is required to conduct investigations into possible abuse within the facilities it licenses or certifies. Reports alleging abuse or neglect within these facilities may be made directly to the responsible agency.

### **Finding out what happened**

CPS may inform a person who reports child abuse about the status of the resulting investigation, if any.

If the person reporting receives no information on the status of the case, s/he may call Child Protective Services and request the information. The information made available to the reporter will be limited, however. Do not try to question a child about his or

her conversation with investigators, but you may want to reassure the child that it's okay to talk to the caseworker if the opportunity and the need arise. If the child is in your care at any time, you need to know if there is anyone who should not have contact with the child.

### **What if nothing happens?**

When the outcome of a report is "allegations unfounded," it does not mean that the abuse did not happen; it means that there was insufficient evidence to support charges or child protective services. The CPS case may remain open while services are provided. Other persons or other reports may still be under investigation by law enforcement. A person who reports abuse should remember that even if the report does not bring decisive action, such as removing the child, it may help establish a pattern that will eventually be clear enough to help the child. Often, it is an accumulation of evidence over time that makes the difference. Continue to document new incidents or injuries or other additional evidence of abuse and make a second report if you have reason to suspect continuing abuse.

### **What if an alleged abuser confronts a person who reports?**

A person whose own child is the subject of reported abuse or neglect may request access to confidential information contained in the report, but CPS edits the information to protect the identity of the informant and any other person whose safety might be jeopardized by the disclosure. A person who makes a report of suspected child abuse is under no obligation to admit having done so. The report is confidential by law. An appropriate response for a person who is confronted by an alleged abuser would be, "It isn't important who made the report. The important thing is that the child is safe, and that children who do need help get help." Confronting or warning the suspected abuser is never advisable,

and may actually jeopardize the child's safety. It is best to remain calm and acknowledge the accuser's anger in an unprovocative manner. An irate parent or guardian's actions may be reported to the CPS caseworker, if appropriate, or to law enforcement. In extreme cases, anyone who is threatened can call 911 or the local police or sheriff's department.

## **C. INVESTIGATION and prosecution**

The investigation is performed by CPS and/or law enforcement, depending on the circumstances of the case. CPS assesses the risk of maltreatment and determines what civil action, if any, should be taken regarding the custody of the child while law enforcement agencies investigate whether criminal charges should be brought. Investigators interview the child, the family, and any other possible witnesses. The child may need a physical examination. Witnesses may include medical professionals, and both medical records and physical evidence may also be entered into the case when relevant. Legal action may include removing the child from the home, either temporarily or permanently, or the filing of criminal charges, or both. The law prohibits anyone from interfering with an investigation of child abuse or neglect.

### **Interviewing the child**

It is important that the entire investigative process be conducted in a manner that does not revictimize the child. The initial interview of the child may take place at a Child Advocacy Center, the offices of a law enforcement agency, or CPS. It may include videotaping of the child's statement. The interviewer should consider the child's age and ability to describe the incident and should be sensitive to the child's point of view. In some cases involving allegations of sexual abuse of a very young child, anatomical dolls (preferably, ethnically appropriate) may be used, though usually dolls are used only when



necessary for eliciting a young child's disclosure. If possible, repeated interviews should be avoided, and the child should be interviewed only by persons specifically trained to interview children about abuse. Correctly conducted, the interview can be the beginning of the healing process for the child.

### **CACs: Child Advocacy Centers**

Child Advocacy Centers were created as a way to better protect and treat victims of child abuse. In the past, these child victims were subjected to numerous interviews in institutional settings such as police stations, social workers' offices, and prosecutors' offices. Child victims were shuffled from agency to agency, having to recount their trauma to each new stranger. The various agencies did not always communicate effectively. A Child Advocacy Center (CAC) provides a non-threatening, homelike setting where victims of abuse can be interviewed, and where professionals from the prosecutor's office, Child Protective Services, and law enforcement can meet to review child physical and sexual abuse cases. These professionals, plus medical and mental health professionals, make up the Multi-disciplinary Team. This team meets regularly in a spirit of cooperation to share vital information and proceed in the child's best interest. To find a CAC near you, call 1-800-255-2574 or visit [www.cactx.org](http://www.cactx.org).

### **Obtaining medical care or an examination**

CPS can cause an examination to be conducted as part of an abuse investigation even if the child's parent or guardian does not consent to it. In that case, CPS petitions the court to order the examination.

A licensed physician, dentist, or psychologist who has reason to suspect abuse or neglect can examine a child with or without consent. A peace officer who has taken lawful custody of a child and who has reasonable grounds for believing that the child needs immediate medical care can consent to the medical

care. This does not extend to requesting or consenting to an examination for abuse or neglect, but the doctor providing the immediate medical care is empowered to expand the care into an examination for abuse. Teachers and school staff members can authorize or provide medical care only with written parental consent obtained in advance, and only to the extent granted by the written consent. CPS or the police can take emergency possession of the child if circumstances warrant.

### **Physical examination of a sexual abuse victim**

When there is reason to believe the child has been recently assaulted, the physical examination is performed as soon as possible after sexual abuse has been reported. The examining physician or team should be informed that the child may have been sexually abused so that recommended procedures may be followed to ensure the least chance of further trauma to the child and the greatest chance that evidence of the assault will be fully and effectively documented. Preferably, the examiner should be trained in the collection of evidence and crisis intervention, as well as normal and abnormal pediatric anatomy. For nurses, Sexual Assault Nurse Examiner (SANE) training or its equivalent is recommended.

It should be noted that most sexually abused children do not have injuries that can be observed during an examination, especially if the examination occurs weeks or months after the abuse. And rarely does an examination produce physical evidence.

**Absence of injury or evidence does not at all disprove the allegation of abuse.** The child's parent, guardian, or conservator may be present for the examination, provided that s/he is supportive and is not implicated in the abuse.

### **Assessment of risk to the child**

CPS estimates the severity and the immediacy of the risk to the child at the time the report is received. The risk (when it is determined that protective services are in fact needed) is rated as Priority One or Priority Two. A Priority One case is one in which the child is in immediate and serious danger. These are cases where a child has died and there are other children in the family; a child has a serious injury, a child has been sexually abused and is in immediate danger of further abuse, or a child is otherwise in extreme distress or danger. CPS must act on a Priority One case within 24 hours. Priority Two reports, to which CPS must respond within ten days, involve physical punishment that is excessive but not life-threatening, a child who has been sexually abused but who is temporarily protected, neglect that is impairing development, or a lack of supervision that is detrimental to the child.

### **Civil actions by CPS**

If it is determined that the child can safely remain in the home despite a risk of maltreatment, CPS offers services to preserve the family while reducing the risk of maltreatment or neglect. If the child cannot safely remain in the home, the family may voluntarily place the child with a relative, or else the child may be placed in substitute care with a foster family. During this period, CPS works toward reunification of the family or a permanent placement outside the home. If permanent placement is needed, CPS may seek termination of parental rights and work toward adoption or long-term substitute care for the child.

### **CASA: the court appointed special advocate**

The judge may appoint a specially trained volunteer to act as the child's advocate when the child has been removed from his or her home because of abuse or neglect. The "CASA," who usually has only

one case at a time, follows the case through every stage while getting to know the child, the family, and the circumstances of the alleged abuse or neglect. The court also appoints an attorney to represent the child's legal interests, but these "attorneys ad litem" may carry heavy caseloads and may not be specifically trained in the dynamics of child abuse. The CASA's goal is to advocate for the best interests of the child and to find a safe, permanent home as quickly as possible. The CASA's recommendation to the court on behalf of the child usually carries substantial weight in determining the final disposition of the case.

### **Deciding whether to press charges**

Once a criminal investigation is complete, including collection and analysis of all physical evidence, the case is presented by the investigating law enforcement agency to the prosecutor's office. It is up to the District Attorney, Criminal District Attorney, or County Attorney to determine whether there is enough evidence to prosecute and what the charges will be. If there is sufficient evidence to support a felony charge, the case is presented to a Grand Jury of 12 citizens for possible indictment.

If an indictment is returned, the case goes to the district clerk, who assigns the case to a district court.

Misdemeanor suspects are indicted when charges are filed in county court.

### **Preparation for trial**

Two things must occur before the case is ready to go to trial: the defendant must have an attorney who will represent him or her throughout the process, and the defense attorney must be given time to prepare the defendant's case. This process of gathering information can take several months. Someone reporting suspected abuse may be contacted by the defense attorney and does have the right to speak to

the defense attorney. However, s/he is not required to do so. When the defense attorney and prosecutor are ready to go to trial, the case is put on the court docket. A case can be settled without going to trial based on a plea agreement recommended by the prosecutor, agreed to by the defense and accepted by the judge.

### **If the case goes to trial**

If the case goes to trial, witnesses are contacted by the prosecutor's office and the trial procedures are explained. The prosecutor will usually sit down with the victim and/or family before trial to go over the case with them, explain what they may expect, and possibly even show them the courtroom. A Victim Witness Coordinator from the prosecutor's office will sometimes accompany victim witnesses to the trial to ensure their rights. Some prosecutors also offer a Court School to help children and their families learn about the court process. Testimony is given by the child, and in some instances the parent, and anyone else who might have information pertinent to the case.

### **If you are a witness in a legal proceeding**

In some cases it may be advisable for a witness to seek legal advice for him/herself. Be sure the person you consult has the relevant expertise. If you are a witness, you may also refer to the prosecutor for advice and counsel. If you have kept notes about what you have seen and heard, you should review them before you testify, and show them to the prosecutor before the trial. You should be prepared for some unexpected or unusual interpretations of your statements. If you do not know the answer to a question, say so. Take your time before answering a question. If you do not understand a question, ask that the question be restated so that you do understand it. Try to stick to facts; do not offer your opinion unless you are specifically asked to do so. Always be completely truthful. A person who will appear as an expert witness prepares for trial with the assistance of the attorney who will call the witness.

### **Crime Victims' Compensation**

Passed by the Texas Legislature in 1979, the Texas Crime Victims' Compensation Act creates a fund and establishes statutory eligibility guidelines for the provision of certain benefits to victims of crime. The money in the fund comes from criminals who break the law and pay court costs. An innocent victim who suffers physical and/or emotional harm as a result of a violent crime may qualify for an award to help pay for medical expenses and counseling. Children who are abused and neglected are victims of crime and, therefore, may be eligible for compensation.

The Crime Victims' Compensation Fund is administered by the Office of the Attorney General. The OAG's Crime Victim Services Division staff work with victims and claimants to make sure all available resources, including the fund, work in the best interests of victims. Victims are entitled to information about the fund and to referral, upon their request, to available social service agencies that may provide additional help.

The fund is authorized to award cash payments to or on behalf of a claimant or victim for monetary losses incurred as a result of a violent criminal action, such as child abuse. It may also refer a claimant or victim to a state agency for vocational or other rehabilitative services or provide counseling services for a claimant or victim or contract with a private entity to provide counseling services.

The fund may not award more than \$50,000 for each victim and crime unless the personal injury is catastrophic and results in a total and permanent disability to the victim. An additional \$75,000 may be awarded under these conditions. Specifically, the fund may reimburse expenses for medical and counseling needs, lost wages and support, child care, crime scene clean-up, replacement costs for seized property for criminal investigations, and funeral and burial expenses.

Every law enforcement agency in the state of Texas is required to provide crime victims with information about the Crime Victims' Compensation program and an application. Applications are also available from prosecutors' offices. Hospitals and medical centers may also have the application forms, or you may obtain them directly from the Crime Victim Services Division of the Office of the Attorney General by calling 1-800-983-9933. Please see the appendix for a review of the application process and for a copy of the statute which enables the fund.

### **What are the rights of the victims?**

Child abuse and neglect are crimes that victimize our youngest citizens. As victims of crime, children have rights they can exercise at every stage of the criminal justice process. Notice of these rights should be provided to parents or guardians of child abuse and neglect victims by law enforcement when the initial report is made and by the prosecutor's office after the indictment or information is filed. At the pre-trial stage, victims and their guardians have the right to:

- be protected from further harm or threats for cooperating with prosecution efforts
- have the victim's safety considered in the setting of bail
- information about relevant court proceedings
- information about a defendant's right to bail and the procedures in a criminal investigation and the criminal justice system
- provide pertinent information on the impact of the offense prior to the defendant's sentencing
- information about the Crime Victims' Compensation Program
- information on parole procedures and to be notified upon the release of the defendant
- be provided with a separate and secure waiting area for witnesses at a trial

- a prompt return of property held as evidence when it is no longer required
- have employer notified if testimony requires absence from work
- have counseling regarding acquired immune deficiency syndrome if the offense creates the need
- be present at all court proceedings related to the offense, subject to judge's approval
- be informed of all of these rights and to have them explained.

Failure to provide these rights does not create a liability on the part of those responsible for them.

### **Victim impact statements**

The victim may submit a written victim impact statement. This statement documents the emotional, physical and financial impact the crime has had on the victim and his or her family. For cases where the defendant is sentenced to the Texas Department of Criminal Justice or the Texas Youth Commission, victims have the right to participate in the parole or release process and be notified prior to any release of the defendant, if they request it. More information about rights of victims may be obtained from your law enforcement agency, prosecutor, or by calling the Crime Victims' Compensation Division in the Office of the Attorney General at 1-800-983-9933.

### **Texas child fatality review teams**

Child Fatality Review teams are multi-disciplinary, multi-agency panels that review child deaths on the local level from a public health perspective. Team members include law enforcement, prosecutors, medical examiners, physicians, justices of the peace, public and mental health professionals, EMS, child protective services, child advocates, and educators. These teams are uniquely qualified to understand what no single agency or group working alone can: how and why children are dying in their community.

By sharing information, team members discover the circumstances surrounding children's deaths. They identify gaps and breakdowns in agency services designed to protect children and work to revise procedures and professional investigation protocols. Because of the team's efforts, child fatalities are more accurately recorded and needed prevention initiatives can be developed. The ultimate result of a child death review system is an improved response to child fatalities and a reduction in the number of preventable deaths.

#### D. PREVENTING child abuse and neglect

The United States spends hundreds of millions of dollars identifying abused children and providing them with medical and protective services in hopes that the abuse will not be repeated. The effort is worth every penny it costs; but how much better it would be if child abuse and neglect could be prevented. A truly comprehensive and effective policy on child abuse would, whenever possible, prevent injury before it occurs. It would strengthen families before protective intervention became an issue.

The substance of this handbook so far — recognizing children who have been abused, reporting the abuse, and initiating child protective services — amounts to tertiary child abuse prevention. That is to say, these processes may prevent an abused child from being harmed further. No part of the system described so far can fully address the causes that produce harm in the first place. And yet, there is much that can and should be done.

Primary child abuse prevention is preparing communities and parents for the job of non-abusive child rearing. Parents with adequate knowledge and parenting skills, living in supportive communities, can provide children with the kind of safe and nurturing environment they need to grow into healthy,

self-sufficient adults. For high-risk families in great need of information and assistance, secondary prevention (outreach and early intervention) is needed before the family reaches the point of abuse, damage, and disintegration. Finally, tertiary prevention helps to rebuild the lives of families in which abuse and neglect occur.

#### Educating parents

Most parents treat their children the way they remember their own parents treating them. They may have no idea how to shape their children's behavior other than by yelling at them and hitting them. They may have no idea of the damage that they can inflict on a child — by shaking, for example. They may be unprepared for the amount of work and stress involved in caring for a small child. All of these factors contribute to child abuse, and all can be reduced by helping parents learn about the job and the realities of parenting. They can learn new ways to try and make a baby stop crying — and new ways to relieve their own feelings of helplessness and rage when a baby won't stop crying. Parents can be taught how to structure a child's environment or schedule to make good behaviors easier and more natural for the child. They can learn how to reinforce positive behavior with praise and rewards. And parents need to learn about effective forms of discipline other than yelling and hitting.

#### Reasonable expectations

Parents may become frustrated when they try to demand behavior that the child is too young to achieve.

The children most likely to be abused are infants and toddlers: children under two years of age who are naturally both helpless and demanding. The parent may tell the child to stop crying, not wet or soil its diapers, or sit still for long periods of time — none of which is possible for the child's level of development.

The parent may then conclude that the child is “bad,” and try to “teach him a lesson.” Also at risk are children who are mentally retarded, hyperactive, or have other physical and behavioral problems requiring extra patience and skill. Abuse can sometimes be prevented if parents are taught what to expect for their children’s ages and levels of development.

### **Is spanking okay?**

Texas law allows the use of force, but not deadly force, against a child by the child’s parent, guardian, or other person who is acting in loco parentis. Most parents do, in fact, use corporal punishment (in the form of spanking) at least occasionally, and most do not, in fact, consider it abusive. Experts disagree about the advisability of ever spanking a child. Some say that, combined with other methods of discipline, mild spanking of a small child is harmless and effective. Others claim that other methods of discipline work as well as spanking or better, and that spanking is not necessary. Many child advocates and experts in child development contend that all forms of corporal punishment, including spanking, are harmful. Most believe that spanking an infant is always inappropriate. The law does not attempt to arbitrate between the different views on the best method of disciplining a child. What we do know is that severe corporal punishment can be extremely damaging and dangerous, and this is what the law prohibits as abuse.

### **When is discipline abusive?**

Some parents who become abusive believe that what they are doing is in the best interests of the child and are confused about when an attempt at discipline crosses the line and becomes abuse. Whether an action is abusive really depends on the circumstances of the individual case. However, the following guidelines may help:

- Striking a child above the waist is more likely to be considered abusive; disciplinary spanking is usually confined to the buttocks.
- Spanking with the bare, open hand is least likely to be abusive; the use of an instrument is cause for concern. Belts and hair brushes are accepted by many as legitimate disciplinary “tools,” and their use is not likely to be considered abusive, as long as injury does not occur. Electrical or phone cords, boards, yardsticks, ropes, shoes, and wires are likely to be considered instruments of abuse.
- It is best not to hit a child in anger. Abusive punishment is most likely to occur when the parent is out of control.
- Finally, and most important, punishment is abusive if it causes injury. A blow that causes a red mark that fades in an hour is not likely to be judged abusive; on the other hand, a blow that leaves a bruise, welt, or swelling, or requires medical attention, probably would be judged abusive.

Another abusive form of discipline that does not involve hitting is severe isolation or confinement of a child. Many parents use “time out,” loss of privilege, or confinement to special area as a punishment or as a time for the child to reconsider his or her choices. But when the child is tied up, gagged, locked in a closet, shut out, starved, or otherwise seriously deprived, the punishment is excessive and may constitute abuse.

### **Helping families**

Sometimes, abusive parents know that what they are doing is violent and dangerous, but they just have trouble putting on the brakes. Caring for a small child is hard work, especially if the child is colicky, sickly, prone to cry a lot, or hyperactive. The

decline of the “extended” family has contributed to child abuse. When there are no relatives available to help in times of need, the parents lack an important part of the natural family support system. The extended family can help in so many ways: babysitting, advice on child rearing, housework, and general moral support. Any time the community or even a concerned individual can help out in these ways, it’s easier for parents to cope instead of lashing out. Professionals who work with children can help by referring parents to “Mother’s Day Out” and latchkey programs, parenting classes, and parent support groups. Parents Anonymous exists specifically to aid parents who may become abusive. If you are uneasy about your own behavior toward your child, you can call the Parents Anonymous toll-free hotline at 909-621-6184.

### **Services for at-risk youth and parents of adolescents**

When adolescents begin to test limits and challenge parental authority, conflicts can result in abuse. The Department of Family and Protective Services funds programs around the state to help families deal with the special challenges involved in parenting adolescents. The Services to At-Risk youth (STAR) program contracts with local agencies to provide counseling, parent training, and (in some instances) emergency shelter.

### **Preventing child sexual abuse**

Children should be taught at an early age that there are certain places on their bodies that no one should touch. Children need to learn to trust their own instincts and to assert their rights regarding their own bodies when a touch doesn’t feel right. They should learn that certain parts of their bodies are private.

They should not be punished or shamed for the natural curiosity that occurs between the ages of two

and five. However, by age five, children may have begun to develop a sense of modesty. Adults should be aware that molestation can occur at the hands of older children; play areas and rest rooms should be supervised. A child who plays aggressively or displays overtly sexual behavior may have learned it from television or video; but these behaviors are also indicators of sexual abuse. Children should know that when anyone touches them in a way they do not like, they have a right to actively resist and should tell someone they trust. It is not uncommon for a program on appropriate touch to trigger a disclosure from an abused child.

### **Protecting children from child molesters**

Parents and professionals who work with children should recognize that child molesters characteristically seek out contact with children and may obtain access to them through jobs and volunteer programs.

Child molesters are not casually identifiable by their appearance or behavior. Administrators, supervisors, and organizers should be careful to check references thoroughly both when hiring and when accepting offers of volunteer help with children’s activities. Precautions should apply to all persons with access to children, including parents who volunteer to help. Organizations can adopt rules to protect the children under their care. Isolated, out-of-sight, one-on-one contact between an adult and a child should be strictly limited, for example. The child’s sleeping, bathing, and dressing arrangements should insure privacy for the child. Guidelines are needed for appropriate discipline of children.

### **State laws help protect against child abusers**

In recent years, the Texas Legislature has greatly strengthened parole, supervision and notification requirements for child abusers and sex offenders. In particular:

- sex offenders are required to register with local enforcement agencies; specific information, including name, address, eye color and shoe size, is considered public information.
- the state Department of Public Safety maintains a searchable database of registered sex offenders, found at: <https://records.txdps.state.tx.us>; more than 43,706 sex offenders were registered in Texas as of July, 2004.
- the law allows courts to remove suspected child abusers from the home for up to ten days while an investigation takes place.
- child sex offenders have tightened parole standards and are required to undergo mandatory counseling.
- sex offenders are not permitted in “child safety zones,” including near schools, play grounds and other areas.
- registered sex offenders are required to submit DNA samples to the Combined DNA Index System (CODIS) for use in future criminal investigations.

In addition, state law has set strict standards for community and victim notification. The laws mandate notification through publication in local newspapers when a convicted sex offender moves into the community. In addition, a victim must be notified when a perpetrator is scheduled for release on bail or parole, when a prisoner escapes, or when an offender is released to community supervision.

Along with the Department of Public Safety records, the Texas Department of Criminal Justice Rehabilitation Tier of Programs includes a Sex Offender Treatment Program. The Office of the Attorney General’s Fugitive Unit works aggressively to arrest and incarcerate convicted child sex offenders who violate terms of their probation.

### **The need for therapeutic intervention**

Once child abuse or neglect has occurred, therapeutic intervention is frequently required for the victimized child, the abusers, and others who may have been affected by the abuse. Therapeutic intervention may serve to prevent serious, lasting emotional and behavioral problems for the victim and family. Without this intervention, the likelihood of abused children becoming adult perpetrators is increased. Therapy can help children acquire a sense of control over their lives and help them avoid being victimized and feeling helpless. Without therapy, abusers are likely to continue assaulting their own children, their grandchildren, or other children. Spouses of abusers may never gain the tools to protect their children from further abuse, without therapeutic intervention. Therapy may take many forms, but it is a necessary element for the prevention of child abuse and neglect.

### **What can we do about child abuse?**

Parents account for most cases of child abuse, and the precipitating causes are often stress and poor parenting skills. Any concerned adult can help out on an individual basis by supporting the parents and families they know — lending a sympathetic ear, recommending parenting classes, or babysitting from time to time. Professionals have many opportunities to educate parents through posters, conferences, and individual contacts. Schools, clinics, and day-care centers can offer support groups and classes or circulate newsletters or other educational materials. Organizations can also adopt precautionary procedures regarding all adults who have access to the children in their care. Sound supervisory guidelines can help prevent child-on-child abuse. Children can be taught at school, at home, at church, and in day care centers to resist and disclose abuse. When all else fails and abuse occurs, intervention and counseling can help break the cycle of violence and protect the children of the future.



## E. WHY does it matter?

Child abuse prevention is a fundamental first step in crime prevention and violence reduction. Most abused and neglected children grow up to be peaceful and productive citizens. But within the criminal justice system, mistreated children are significantly overrepresented. The National Institute of Justice found that child abuse victims are 40 percent more likely than non-abused children to become delinquents and adult criminals.

Abused and neglected children are 53 percent more likely to be arrested as juveniles and 38 percent more likely to be arrested as adults. Physically abused children are more likely to be aggressive toward their peers and adults, and are more likely to have poor impulse control, than non-abused children. The more frequent and serious the abuse, the greater the risk that the child will grow up to be troubled in these ways if no one intervenes.

The cost of child maltreatment is self-perpetuating; one study found that 90 percent of maltreating mothers were themselves abused as children. Child abuse victims are six times as likely as non-victims to become abusive parents. But this cycle of violence can be broken. Child abuse and neglect can be

prevented. The damage to an abused child can be repaired. The Texas Crime Victims' Compensation Fund, administered by the Office of the Attorney General, provides benefits to innocent crime victims who lack means to pay for counseling, medical care, and other forms of relief.

Abused and neglected children are victims of crime. They and their families must deal with the emotional, physical, and financial aftermath of violence and maltreatment. We can help them, and help break the cycle of violence, if we can learn to recognize, report, and prevent child abuse. As teachers, medical practitioners, and other professionals who work with children, but also as parents and concerned citizens, we have daily opportunities to fulfill a fundamental human and societal responsibility: to protect our children.

# CIVIL AND CRIMINAL STATUTES

FAMILY CODE

## ART. 261.001. DEFINITIONS.

In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency

with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.

(4) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

## **SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES**

### **SEC. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT.**

(a) A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile proba-

tion officers, and juvenile detention or correctional officers.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.

(d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:

- (1) as provided by Section 261.201; or
- (2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

#### **SEC. 261.102. MATTERS TO BE REPORTED.**

A report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect.

#### **SEC. 261.103. REPORT MADE TO APPROPRIATE AGENCY.**

(a) Except as provided by Subsection (b) and Section 261.405, a report shall be made to:

- (1) any local or state law enforcement agency;
- (2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(b) A report may be made to the Texas Youth Commission instead of the entities listed under Subsection (a) if the report is based on information provided by a child while under the supervision of the commission concerning the child's alleged abuse of another child.

#### **SEC. 261.104. CONTENTS OF REPORT.**

The person making a report shall identify, if known:

- (1) the name and address of the child;
- (2) the name and address of the person responsible for the care, custody, or welfare of the child; and
- (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

#### **SEC. 261.106. IMMUNITIES.**

(a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in

an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities.

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

**SEC. 261.109. FAILURE TO REPORT; PENALTY.**

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report as provided in this chapter.

(b) An offense under this section is a Class B misdemeanor.

**FAMILY CODE**

**CHAPTER 54. JUDICIAL PROCEEDINGS**

**SEC. 54.031. HEARSAY STATEMENT OF CHILD ABUSE VICTIM.**

(a) This section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a violation of any of the following provisions of the Penal Code, if a child 12 years of age or younger is the alleged victim of the violation:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct); or

(3) Section 43.25 (Sexual Performance by a Child).

(b) This section applies only to statements that describe the alleged violation that:

(1) were made by the child who is the alleged victim of the violation; and

(2) were made to the first person, 18 years of age or older, to whom the child made a statement about the violation.

(c) A statement that meets the requirements of Subsection (b) of this section is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the juvenile court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court or in any other manner provided by law.

**CODE OF CRIMINAL PROCEDURE  
CHAPTER 38. EVIDENCE IN  
CRIMINAL ACTIONS**

**ART. 38.072. HEARSAY STATEMENT  
OF CHILD ABUSE VICTIM**

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child 12 years of age or younger:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

Sec. 2. (a) This article applies only to statements that describe the alleged offense that:

- (1) were made by the child against whom the offense was allegedly committed; and
- (2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense.

(b) A statement that meets the requirements of Subsection (a) of this article is not inadmissible because of the hearsay rule if:

- (1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:
  - (A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child testifies or is available to testify at the proceeding in court or in any other manner provided by law.

**PENAL CODE**

**SEC. 21.11. INDECENCY WITH A CHILD.**

(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

- (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
- (2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

- (1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

## PENAL CODE

### SEC. 21.11. INDEGENCY WITH A CHILD.

(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

**SEC. 22.01. ASSAULT.**

(a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

- (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;
- (2) a member of the defendant's family or household, if it is shown on the trial of the offense that the defendant has been previously convicted of an offense against a member of the defendant's family or household under this section; or

*Text of subsec. (b)(3) as added by Acts 2003, 78th Leg., ch. 294, Sec. 1*

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code; Section 51.02(13), Family Code; or Section 51.02(14), Family Code, or an employee of that person:

- (A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or
- (B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract.

*Text of subsec. (b)(3) as added by Acts 2003, 78th Leg., ch. 1019, Sec. 1*

(3) a person the actor knows is a security officer while the officer is performing a duty as a security officer.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

- (1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or
- (2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:



(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant or a security officer if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer.

(e) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Household" has the meaning assigned by Section 71.005, Family Code.

*Text of subsec. (e)(3) as added by Acts 2003, 78th Leg., ch. 1019, Sec. 2*

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

*Text of subsec. (e)(3) as added by Acts 2003, 78th Leg., ch. 1028, Sec. 1*

(3) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of this section, a defendant has been previously convicted of an offense against a member of the defendant's family or a member of the defendant's household under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

### **SEC. 22.011. SEXUAL ASSAULT.**

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section; and

(2) the victim was a child of 14 years of age or older.

(f) An offense under this section is a felony of the second degree.

#### **SEC. 22.02. AGGRAVATED ASSAULT.**

(a) A person commits an offense if the person commits assault as defined in Sec. 22.01 and the person:

(1) causes serious bodily injury to another, including the person's spouse; or

(2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the offense is committed:

(1) by a public servant acting under color of the servant's office or employment;

(2) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(3) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime; or

(4) against a person the actor knows is a security officer while the officer is performing a duty as a security officer.

(c) The actor is presumed to have known the person assaulted was a public servant or a security officer if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer.

(d) In this section, "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

**SEC. 22.021. AGGRAVATED SEXUAL ASSAULT.**

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.

**SEC. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL.**

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(b) An omission that causes a condition described by Subsections (a)(1) through (a)(3) is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 65 years of age or older.

(3) "Disabled individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(d) The actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual.

(e) An offense under Subsection (a)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a felony of the second degree.

(f) An offense under Subsection (a)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a state jail felony.

(g) An offense under Subsection (a) when the person acts with criminal negligence shall be a state jail felony.

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); or

(3) notified in writing the Department of Protective and Regulatory Services that he would no longer provide any of the care set forth in Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k)(1) It is a defense to prosecution under this section that the act or omission consisted of:

(A) reasonable medical care occurring under the direction of or by a licensed physician; or

(B) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(2) It is an affirmative defense to prosecution under this section that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy. It is an affirmative defense to prosecution for a person charged with an act of omission under this section causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect.

**SEC. 22.041. ABANDONING OR ENDANGERING CHILD.**

(a) In this section, "abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

(1) a state jail felony if the actor abandoned the child with intent to return for the child; or

(2) a felony of the third degree if the actor abandoned the child without intent to return for the child.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child

under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of this section that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

**SEC. 22.10. LEAVING A CHILD IN A VEHICLE.**

(a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

(1) younger than seven years of age; and

(2) not attended by an individual in the vehicle who is 14 years of age or older.

(b) An offense under this section is a Class C misdemeanor.





# REPORT YOUR SUSPICIONS OF CHILD ABUSE

## **Physical Abuse:**

“Physical injury that results in substantial harm to the child.”

The law excludes physical punishment that does not result in injury.

## **Emotional Abuse:**

“Emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning.”

## **Sexual Abuse:**

“Sexual conduct harmful to a child’s mental, emotional, or physical welfare.”

## **Neglect:**

“Leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child.” The law excludes failure to provide due to financial need, unless relief has been offered and refused.

Call the Texas Department of Family and Protective Services **24-hour Texas Child Abuse Hotline 1-800-252-5400** or go to **[www.txabusehotline.org](http://www.txabusehotline.org)**.

- You must provide enough information to locate the child.
- Your report may include: name, address, license plate number, make of car.
- Is a child in immediate danger of serious bodily harm?  
Call 911 or local law enforcement immediately.

## NOTES

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