

SEXUAL ABUSE GUIDELINES

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I. INTRODUCTION

Child sexual abuse, as defined in the child abuse reporting law, has its legal basis in Alabama's criminal statutes for sexual offenses. These statutes contain specific factors (i.e., age, relationship, consent, and deviation) that determine whether sexual activity constitutes child sexual abuse. Determining whether sexual activity constitutes child sexual abuse is a complex task that requires behaviorally specific and sufficiently detailed information be gathered by child welfare staff during intake and initial assessment.

A. Purpose

This document is designed to assist child welfare staff with intake and initial assessment analysis and decision-making when reports of alleged child abuse/neglect involve sexual activity.

B. Glossary

Child welfare staff shall use the following definitions when performing CA/N intake and initial assessment functions for reports involving alleged child sexual abuse. Definitions based on Alabama law include statutory citations.

Child (§ 26-14-1) – Either of the following: (a). A person under the age of eighteen (18) years. (b). A person under the age of 19 who is in need of protective services and does not qualify for adult protective services under Chapter 9 of Title 38.

Consent (§ 13A-6-60, § 13A-6-70) - Sixteen (16) is the “age of consent” for sexual activity. Consent cannot be given if the victim is (1) forced to participate (forcible compulsion); (2) physically helpless; (3) mentally incapacitated; (4) mentally defective; (5) under age sixteen (16) or (6) a student (male or female) under the age of nineteen years and the PARAN is a school employee who has allegedly engaged in a sex act with the student [Code of Alabama 1975 § 13A-6-81 (a)]. Consent cannot be given if the victim is (1) forced to participate (forcible compulsion); (2) physically helpless; (3) mentally incapacitated; (4) mentally defective; (5) under age sixteen (16) or (6) a foster child (male or female) under the age of nineteen years and the PARAN is a foster parent who has allegedly engaged in a sex act with a foster child [Code of Alabama 1975 § 13A-6-71]. Refer to *II. Factors to Consider When Intake Information Involves Sexual Activity, B. Consent.*

Deviate Sexual Intercourse (§ 13A-6-60, § 13A-6-65) - Any act of sexual gratification between persons not married to each other, involving the sexual organs of one person and the mouth or anus of another.

Fellatio - Oral stimulation of the penis.

Forcible Compulsion (§ 13A-6-60) - Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.

Incest (§ 13A-6-60, § 13A-6-40) - Sexual intercourse between two parties who are known to be, either legitimately or illegitimately, within a specified degree of relationship. Legitimate relationships are established by blood (half or whole) or adoption.

“Specified degree of relationship” includes:

- Parent and child;
- Grandparent and grandchild;
- Great-grandparent and great-grandchild;
- Brother and sister;
- Aunt/uncle and nephew/niece; and
- Step-parent and step-child while the marriage creating the relationship exists.

Intimate Parts (§ 13A-6-60 and Phillips v. State, 505 So. 2d 1075 Ala. Crim. App. 1986) - Any part of the body which a reasonable person would consider private with regard to touching another (as defined by the courts). Such parts include, but are not limited to:

- (a) genitalia or sexual organs of either sex
- (b) the genital area
- (c) groin
- (d) anus
- (e) buttocks
- (f) hips
- (g) inner thighs
- (h) breasts
- (i) belly and chest of prepubescent female children.

Masturbation - Excitation of the genital organs, usually to orgasm, by manual contact or means other than sexual intercourse.

Mentally Defective (§ 13A-6-60) - Any persons who suffer from a mental disease or defect which renders them incapable of appraising the nature of their conduct.

Mentally Incapacitated (§ 13A-6-60) - Any persons who are rendered temporarily incapable of appraising or controlling their conduct owing to the influence of a narcotic or intoxicating substance administered to them without their consent, or to any other incapacitating act committed upon them without their consent.

Person Allegedly Responsible For Abuse/Neglect (sexual abuse only)
(§ 12-6-65.1, § 13A-6-60, and § 13A-6-62)

1. Any person age sixteen (16) or older who subjects a child under age twelve (12) to sexual contact; or
2. Any person age nineteen (19) or older who subjects a child under age sixteen (16) but over age twelve (12) to sexual contact; or
3. Any person age sixteen (16) or older who subjects a child under age sixteen (16) but over age twelve (12) to sexual intercourse provided the person responsible for harm is at least two (2) calendar years older than the child victim.
4. Any person age fourteen (14) or older who commits incest, deviate sexual intercourse, or any sexual activity involving children who are forced to participate, are physically helpless, are mentally incapacitated, or are mentally defective.
5. Any school employee who subjects a student under age nineteen to a sex act, deviant sexual intercourse, or having sexual contact or soliciting a sex act or sexual contact with a student. "Consent is not a defense." See *Glossary* for definition of school employee.
6. Any foster parent who subjects a foster child under age nineteen to a sex act, soliciting a sex act, or sexual contact. "Consent is not a defense."

Physically Helpless (§ 13A-6-60) - Any person who is unconscious or, for any other reason, is physically unable to communicate unwillingness to an act.

Sexual abuse is generally defined as:

The employment, use, persuasion, inducement, enticement or coercion of any child to engage in or assist any other person to engage in:

- sexual conduct (e.g., intercourse, molestation, exploitation, prostitution) which violates any provision of the Code of Alabama, 1975, Chapter 6, Article 4, Title 13A (§ 13A-6-60 through § 13A-6-70) or
- the simulation of such conduct for the purpose of producing any visual depiction (obscene/pornographic photographing, filming, or depicting of a child for commercial purposes) of the sexual conduct (§ 13A-12-200.1, the Alabama Anti-Obscenity Enforcement Act).

Sexual Conduct (§ 13A-12-200.1) - Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sadomasochistic abuse, bestiality, or the fondling of the sex organs of animals; OR any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion.

Sexual Contact (§ 13A-6-60) - Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.

Sexual Intercourse (§ 13A-6-60 and § 13A-12-200.1) - This term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. Intercourse includes penetration that is genital-genital, oral-genital, anal-genital, or oral-anal, and whether between persons of the same or opposite sex or between a human and an animal. “Penetration” is not statutorily defined; however, for purposes of defining sexual intercourse, Alabama case law indicates that some element of entrance by one person’s sexual organ into another person’s sexual organ is required. Related terms include:

Coition, copulation – sexual intercourse

Coitus – sexual intercourse to the point of orgasm and ejaculation of semen

II. FACTORS TO CONSIDER WHEN INTAKE INFORMATION INVOLVES SEXUAL ACTIVITY

Child welfare staff who receive intake information and conduct initial assessments involving sexual activity must consider the following factors when making intake and initial assessment decisions.

A. Age

A child, for abuse/neglect reporting and CA/N initial assessment purposes, is any person under the age of nineteen (19) years (§ 26-14-1). The ages of both the child and the person allegedly responsible for abuse/neglect must be considered when determining whether the report is considered child sexual abuse. The Code of Alabama provides clearly defined ages for children and persons allegedly responsible for abuse/neglect when sexual contact and sexual intercourse are involved. Therefore, when intake information involves sexual activity, the definition for the person allegedly responsible for abuse/neglect may vary from the standard DHR definition that requires the person be at least age fourteen (14) years.

B. Consent

Sixteen (16) is the “age of consent” for sexual activity. Consent for sexual activity cannot be given by a child under age sixteen (16) or when any of the following conditions exist:

- forced to participate (forcible compulsion) - physical force that overcomes earnest resistance or a threat, express or implied, that places children in fear of immediate death or serious physical injury to themselves or another person;
- physically helpless - children who are unconscious or for any other reason are physically unable to communicate unwillingness to an act;

- mentally incapacitated - children who are rendered temporarily incapable of appraising or controlling their conduct due to the influence of a narcotic or intoxicating substance administered to them without their consent, or to any other incapacitating act committed upon them without their consent;
- mentally defective - children who suffer from a mental disease or defect which renders them incapable of appraising the nature of their conduct.
- a student (male or female) under the age of nineteen when the PARAN is a school employee and has allegedly engaged in a sex act, deviant sexual intercourse, or having sexual contact or soliciting a sex act or sexual contact with a student. [Code of Alabama 1975 § 13A-6-81 and 13A-6-82].
- a foster child (male or female) under the age of nineteen when the PARAN is a foster parent and has allegedly engaged in a sex act, having sexual contact, or soliciting a sex act or sexual contact with a foster child. [Code of Alabama 1975 § 13A-6-71].

The presence of any of the conditions listed above constitutes a crime in situations where the person allegedly responsible for abuse/neglect is at least age fourteen (14) years old at the time of the alleged incident. Law enforcement must be notified about all reports involving any of these conditions.

Note: Reports involving a student who is 18 years of age but under the age of 19 and determined not to be in need of protective services should not be accepted and referred to law enforcement for investigation if the PAR is a school employee. Refer to Glossary for definition of a school employee.

C. Deviation

Deviation refers to deviate sexual intercourse which is defined as any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another (§ 13A-6-65). All reports involving deviation where the alleged PARAN is age of 14 or older shall be considered CA/N reports and assessed as such. Refer to *CA/N Intake, IV. Analysis And Decision-Making, A. CA/N Reports*, 2nd bullet which states “persons allegedly responsible for abuse/neglect are at least age fourteen (14) years or older when the CA/N incident occurred.” Reports involving deviation where the alleged PARAN is under age fourteen are assessed as a CPS Prevention referral (refer to *CPS Prevention Policies And Procedures, I. Introduction, A. Children And Cases To Whom The Policy Applies*).

State law provides that consent of children age sixteen (16) years and older is no defense in cases involving deviate sexual intercourse; therefore, it is not necessary to consider age

and whether the child consented or was able to consent to the sexual activity when deviation is present.

D. Relationship

The relationship between the child and the person allegedly responsible for abuse/neglect must be considered when sexual activity involves sexual intercourse. The relationship between the individuals can be established legally or genetically. When intake information involves a child who is married to the person allegedly responsible for abuse/neglect, the only sexual activity that constitutes a CA/N report is situations involving forcible compulsion.

From a genetic perspective, the relationship between individuals can be either legitimate or illegitimate, and established by blood (half or whole) or adoption. Sexual intercourse between individuals within a specified degree of relationship is considered incest and **always** constitutes a CA/N report regardless of consent.

“Specified degree of relationship” includes:

- Parent and child;
- Grandparent and grandchild;
- Great-grandparent and great-grandchild;
- Brother and sister;
- Aunt/uncle and nephew/niece; and
- Stepparent and stepchild while the marriage creating the relationship exists.

III. SEXUAL ACTIVITY THAT CONSTITUTES A CA/N REPORT

Intake information involving the following sexual activities constitutes a CA/N report that requires initial assessment.

1. All sexual activity where any of the following conditions are present:
 - a) Physical helplessness;
 - b) Mental defectiveness;
 - c) Mental incapacitation; or
 - d) Forcible compulsion.

2. All sexual activity (regardless of the participants’ ages) involving:
 - a) Deviate sexual intercourse; and
 - b) Incest.

3. Sexual contact involving:
 - a) persons allegedly responsible for abuse/neglect who are age sixteen (16) years or older and children who are under age twelve (12) years; and
 - b) persons allegedly responsible for abuse/neglect who are age nineteen (19) years or older and children who are over age twelve (12) years, but under age sixteen (16) years.
 - c) persons allegedly responsible for abuse/neglect who are school employees engaging in a sex act, deviant sexual intercourse, or sexual contact or soliciting a sex act or sexual contact with a student under age nineteen. [Code of Alabama 1975 § 13A-6-81 and 13A-6-82].
 - d) Persons allegedly responsible for abuse/neglect who are foster parents engaging in a sex act, having sexual contact, or soliciting a sex act or sexual contact with a foster child. [Code of Alabama 1975 § 13A-6-71].

4. Sexual intercourse involving persons allegedly responsible for abuse/neglect who are age sixteen (16) years or older and children who are over age twelve (12) years, but under age sixteen (16) years **provided** that the person allegedly responsible for abuse/neglect is at least two (2) calendar years older than the child.

NOTE: Consensual sexual activity between unrelated children ages sixteen (16) years and older does **not** constitute a CA/N report unless the activity involves deviate sexual intercourse.

IV. ADDITIONAL INTAKE AND INITIAL ASSESSMENT RESPONSIBILITIES FOR REPORTS INVOLVING SEXUAL ACTIVITY

Receiving CA/N reports and conducting CA/N assessments is only applicable to children under age nineteen (19) years. In addition to the guidelines described above, child welfare staff with intake and initial assessment responsibilities must also gather sufficient information to determine if:

- there may be other forms of abuse/neglect (e.g., inadequate supervision) present which require assessment; and
- if the children engaging in sexual activity are unsafe or at risk of serious harm even though the activity does not constitute a CA/N report (e.g., sexual activity involving children under age fourteen (14) when that activity appears to extend beyond curiosity and normal childhood experimentation).