

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, and consent) 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) under age sixteen (16); (3) incapacitated; (4) 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; (5) 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-6-81 and § 13A-6-82 and § 13A-6-71]. Refer to *II. Factors to Consider When Intake Information Involves Sexual Activity, B. Consent*.

Fellatio - Oral stimulation of the penis.

Forcible Compulsion (§ 13A-6-60) – Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

Incapacitated (§ 13A-6-60) The term includes any of the following:

- a. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct.
- b. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was know or should have been reasonably known to the offender.
- c. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.

Incest (§ 13A-13-3) - 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.

Person Allegedly Responsible For Abuse/Neglect (sexual abuse only)
(§ 13A-6-60, § 13A-6-62, and § 13A-6-81)

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, sodomy or any sexual activity involving children who are forced to participate.
5. Any school employee who subjects a student under age nineteen to a sex act, sodomy, sexual intercourse, 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.”

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 and 4a, Title 13A (§ 13A-6-60 through § 13A-6-82.1) 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 done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact.

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

Sodomy (§ 13A-6-60) Any sexual act involving the genitals of one person and the mouth or anus of another person.

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;

- incapacitated - a person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct or a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender; or person who is unable to communicate an unwillingness to act due to unconscious, asleep, or physically limited or unable to communicate.
- 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, 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].
- protected person – as defined in ACT #2022 – 201 (Section 15-25-1) means a person who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition that requires training or support similar to that required by a person with an intellectual disability, if any of the following apply:

“(1) The disability originates before the person attains 22 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

“(2) if the disability is attributable to an intellectual disability, the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

“(3) The disability results in significant subaverage intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

- 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].
- An individual (male or female) under the age of nineteen (19) or a protected person (male or female) under the age of twenty-two when the PARAN is a clergy member and has allegedly engaged in a sex act, or having sexual contact or soliciting, persuading, encouraging, harassing or enticing an individual with a sex act or sexual contact, distributes or transmits obscene materials or solicits a child to transmit sexual contents with an individual under nineteen years of age or a protected person under twenty-two. [Code of Alabama 1975 § 13A-6-85].

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. 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) Incapacitated or
 - b) Forcible compulsion.
2. All sexual activity (regardless of the participants’ ages) involving:
 - a) 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, 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.

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).