

Mandatory Child Abuse Reports:
Legal and Ethical Implications for Counselors

In 2002, about 896,000 children were found to be victims of child abuse or neglect (NCCAN, 2004a). State child protective service (CPS) agencies received referrals concerning the possible maltreatment of approximately 4.5 million children—more than half of those referrals were made by professionals in contact with children, while 44% of the reports were made by nonprofessionals such as friends and neighbors (NCCAN, 2004a). State laws since the 1960s have required certain professionals to report suspected cases of child abuse and neglect (Kalichman, 1999). Counselors are one of about 40 different professionals named in various states' statutes as mandatory reporters.

For many counselors, the decision of whether or not to report a suspected case of child abuse is experienced as an ethical dilemma. Mandatory reporting statutes conflict with the core ethical standard of confidentiality, an essential characteristic of counseling relationships. Since counseling professionals are bound (and desire) to uphold this standard unless legally required to disclose, a difficult issue for many professionals is determining when a “suspicion” of child maltreatment is strong enough that the law requires a report to be made. This chapter will explore some of these ethical issues that are faced when a counselor knows or suspects that child abuse or neglect is occurring. First, state statutes regarding mandatory child abuse reports will be summarized, focusing specifically on Tennessee's statutes. Since knowledge of the law is critical to one's ability to act both legally and ethically, this section is a significant portion of this chapter. Then, applicable codes from the American Counseling Association's Code of Ethics will be presented. The ethical issues summarized above will be explored in more detail in relation to state laws and the ACA code, and legal rulings will be cited. The chapter will conclude with guidelines for reporting suspected child abuse.

What the Law Says

By the late 1960s, every state had enacted laws mandating that certain individuals (typically physicians) report child maltreatment. In 1974, Federal legislation addressed the issue of child abuse and neglect with the enactment of the Child Abuse Prevention and Treatment Act (CAPTA, P.L. 93-247). CAPTA provides a minimum definition of child abuse and neglect on which state statutes are based, and state definitions must meet the minimum standards in order to

receive Federal child protection funds (NCCAN, 2003). Most recently amended and reauthorized by the Keeping Children and Families Safe Act of 2003, CAPTA defines child abuse and neglect as, “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm” (42 U.S.C.A. § 5106g). A child is defined as any person under the age of 18, or, except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides ((42 U.S.C.A. § 5106g).

Based on the CAPTA definition of child abuse and neglect as a minimum standard, states have enacted their own mandatory reporting laws. Although each state provides its own definition of child abuse and neglect, four major types of child maltreatment are generally recognized: neglect, physical abuse, sexual abuse, and emotional abuse (NCCAN, 2004b). In addition to defining maltreatment, state mandatory reporting laws delineate *who* is required to report, *when* reporting is required (including the degree of certainty that must be attained), and if privileged communication exists for any types of professional relationships. State statutes also provide immunity from civil and criminal liability for individuals making “good faith” reports (CAPTA requires states to provide provisions for immunity), and statutes typically outline the sanctions for failing to report.

Tennessee statutes

Tennessee’s relevant statutes for mandatory child abuse reports are found in Tennessee Code Annotated, Title 37, Chapter 1, Parts 1, 4, and 6 (Tenn. Code Ann., 2003). As far as *who* is required to report in Tennessee, *all* persons (not just certain professionals) must report knowledge of harm to a child (Tenn. Code Ann. § 37-1-403(a1)). Privileged communications are *not* applicable in cases of child abuse (i.e., husband-wife privilege, psychiatrist-patient privilege, or psychologist-patient privilege; Tenn. Code Ann. § 37-1-411).

As far as *when* reporting is required, officials must be notified immediately when a person has knowledge that a child “is suffering from or has sustained any wound, injury, disability, or physical or mental condition” if it is reasonably indicated or it “reasonably appears to have been caused by brutality, abuse or neglect” (Tenn. Code Ann. § 37-1-403(a1)). Abuse is defined as “when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or

mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker” (Tenn. Code Ann. § 37-1-102). The definition of “dependent and neglected child” is more extensive and may be found in Tenn. Code Ann. § 37-1-102.

Mandatory reporting of child sexual abuse is covered in Title 37, Chapter 1, Part 6. Any person “who knows or has reasonable cause to suspect that a child has been sexually abused” must report it (Tenn. Code Ann. § 37-1-605). Any sexual act, committed by any person, against a child under the age of 13 is defined as child sexual abuse and must be reported (Tenn. Code Ann. § 37-1-602). For children between the ages of 13-17, sexual acts are considered child sexual abuse “if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child” (Tenn. Code Ann. § 37-1-602(a3d)). So for children 13 and older, rape and statutory rape by someone *other than* the child’s caretaker or relative are not currently included in Tennessee’s definition of child sexual abuse, thus they are not required to be reported (Mitchell & Rogers, 2003). Sexual activity involving children ages 13 to 17 that *does not* qualify as child sexual abuse is a complicated issue, and counselors need to be aware of some other related categories of behaviors and crimes that may look similar to child sexual abuse.

One non-abuse category of sexual activity counselors may encounter with minors is “willing” sexual activity between minors. If two 16 year olds are having sex, it is not considered abuse or criminal activity, however, the legal age of consent to sexual penetration in Tennessee is 18 (D. Morriss, personal communication, April 3, 2007). Consent is a legal term and minors technically cannot give “consent” to sex in Tennessee. However, there is a loophole of sorts, because two teens with no more than 4 years between them can engage in willing sexual activity, and it is not considered a crime. If a parent wanted to pursue it in the courts, they might be able to get a ruling on one or both of the minors for unruly behavior, juvenile delinquent behavior, or disorderly conduct for having sex, but willing sexual activity between teens with no more than 4 years between them is not child abuse or a criminal act, and does not have to be reported (D. Morriss, personal communication, April 3, 2007). However, when working with children, it is always important to remember that their parents own the rights to their personal information, and it may be clinically indicated and ethically permissible to inform parents of behavior that could cause harm to the child.

A second category of other sexual acts to be aware of is statutory rape. Like the activity between minors mentioned above, it involves willing sexual behavior (not forced), but with 4 or more years between the parties involved. Statutory rape is defined as penetration of the victim by the defendant, (or visa versa), and there are 3 types. The first type is called mitigated statutory rape. This takes place when the victim is at least 15 but less than 18 years old, and the defendant is at least 4, but not more than 5 years older (Tenn. Code Ann. § 39-13-506). The second type of statutory rape is just called “statutory rape”– the victim is at least 13, but less than 15, and the defendant is at least 4 years older, OR when the victim is at least 15, but less than 18, and the defendant is more than 5 years older than the victim (Tenn. Code Ann. § 39-13-506). The third type of statutory rape is that with an even greater age difference between victim and perpetrator and it is called aggravated statutory rape. This is when the victim is at least 13, but less than 18, and the defendant is at least 10 years older than the victim (Tenn. Code Ann. § 39-13-506).

It may seem arbitrary that a 13 year-old can have sex with a 16 year old and it not be a crime, but a 13 year old and a 17 year old having sex is considered statutory rape. According to Mr. Dent Morriss, Robertson County, Tennessee, Assistant District Attorney, “the statute is an attempt to try and not criminalize behavior that is going to happen anyway. Human beings are going to be human beings sexually. A 17 year old and an 18 year old, or a 16 year old with a 19 year old – that is just going to happen. The legislature had to draw a line and the line they drew was the 4 year demarcation” (D. Morriss, personal communication, April 3, 2007). The “assumed developmental power differential” that exists between sexual partners with the 4 or more year age discrepancy, (where one partner is a minor), is the basis for the statutory rape legislation (Mitchell & Rogers, 2003). Statutory rape is not “child sexual abuse” and therefore does not require mandatory reporting, but counselors should once again be aware that parents own the rights to information pertaining to minors, and if the client’s safety is in question, it should be shared with parents.

A final broad category of sexual conduct counselors may become aware of during the counseling process includes rape, molestation, or other sexual crimes against a 13-17 year old by someone who is not a relative, caregiver, etc. Examples might be date rape or rape by a stranger. Even if the perpetrator is 4 or more years older than the client, if force or threat of injury is used, it will be tried as rape and not statutory rape. Here again, although the sexual incident reported is a crime, it is not covered by mandatory reporting statues and does not legally require counselors

to report. Although someone could be in a situation where they are being repeatedly raped, “rape is {most often} a past crime and the right to report is owned by the client or one’s parent or guardian, not the counselor” (Mitchell & Rogers, 2003).

It is wise to be aware, as much as possible, of these other types of sexual acts involving minors – willing activity between minors, statutory rape, and rape/other sex crimes. Even though they are not “child sexual abuse,” and none of them *legally require* counselors to report, counselors may need to report. According to the ACA code, as discussed later in this paper, counselors report based on ethical grounds when they feel their client is in “imminent danger.”

As mentioned earlier, state statutes vary in their definitions of abuse. Some states have specific statutes that define emotional abuse (Hamarman & Bernet, 2000), but Tennessee does not. One might say that the effects of emotional abuse, however, are included in the statute by the use of the term “mental condition,” from which a child might be suffering. “Mental injury” is defined as, “an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior, with due regard to the child’s culture” (Tenn. Code Ann. § 37-1-602(a7)). Some states include exposure to parental drug use in their definitions of child abuse and neglect. This issue is addressed in a Tennessee statute that includes “knowingly allowing a child to be present within a structure where the act of creating methamphetamine is occurring” in the definition of “severe child abuse” (Tenn. Code Ann. § 37-1-102(21)). Another situation that might be considered as child abuse/maltreatment is exposure to domestic violence. Although many states are now providing more protection for children in their domestic violence laws (NCCAN, 2004c), it is unclear how this affects mandatory reporting statutes. Alaska is the only state whose definition of child abuse specifically mentions domestic violence in the presence of a child, but some might interpret other state’s statutes to include this as well, through the use of language like “immediate danger” and “emotional harm” (Zink, Kamine, Musk, Sill, Field, & Putnam, 2004).

The Tennessee statute that grants to mandated reporters immunity from civil or criminal liability for reports made “in good faith” is § 37-1-410. This statute also gives reporters the right to receive compensatory and punitive damages if there is a change in their employment status due to the fact that they made a report (§ 37-1-410(b)). One purpose of the immunity statute seems to be to encourage all persons to report child maltreatment, so that the maximum number

of children at risk can be identified and protected. Another statute with a similar purpose is the one that addresses sanctions for those who violate the duty to report. This issue is addressed in Tenn. Code Ann. § 37-1-412, which states that a person commits a Class A misdemeanor if he/she knowingly fails to make a report as required by the mandatory reporting statute. If the person charged with failure to report pleads not guilty, he/she is handed over to a grand jury; if he/she pleads guilty, the sentence is limited to a fine of \$50.

Liability for civil damages is also possible in cases of failure to report. While only seven states have specific statutes that create civil liability for injuries proximately caused by failure to report, in any state, a reporter could be sued for failure to report and possibly could be found guilty of negligence *per se* or malpractice (Singley, 1998). As discussed by Singley (1988), rulings in court cases have gone both ways, with some holding mandated reporters liable for civil damages (i.e., *Williams v. Coleman*), and some determining that state mandatory reporting statutes do not provide a private, civil cause of action (i.e., *Borne v. Northwest Allen County School Corp*).

In addition to criminal and civil sanctions for violating a duty to report, there are professional sanctions for counselors. Professional counselors could have their state licenses suspended or permanently revoked for failing to report a suspected case of child abuse (which could be construed as professional misconduct or negligence; Tenn. Code Ann. § 63-22-110).

Delay in Reporting

In *Morgan v. State*, 847 S.W.2d 538 (Tenn. Crim. App. 1992), the defendant's 1988 indictments on three counts of aggravated rape, aggravated sexual battery, and the use of a minor for obscene purposes, all occurred more than four years after the offenses; as there was no evidence of concealment, including threats to the victims on the part of the defendant, the proof was inadequate to support a tolling of the statutes of limitation, depriving the trial court of subject-matter jurisdiction. A conviction for a time-barred crime clearly violates the constitutional rights of an accused. Prosecution should commence within four years of commission of the offenses or when the victim reaches the age of majority, whichever is later; thus, when another defendant was prosecuted after the four year period and after the victim was over the age of majority when the indictment was returned, and the state failed to allege any facts to toll the statute of limitations, the indictment must be dismissed (TCA § 40-2-101). All

prosecutions for misdemeanors, on the other hand, shall be commenced within the following twelve (12) months after the offense has been committed (TCA § 40-2-102).

What the Code Says

The American Counseling Association Code of Ethics and Standards of Practice establishes principles to guide counselors in ethical practice (American Counseling Association, 1995). A few standards are particularly applicable to the issue of mandatory reporting of child abuse. One of the most critical principles in the counseling profession is confidentiality—“the obligation of professionals to respect the privacy of clients and the information they provide” (Handelsman, 1987, p.33). Section B of the ACA code addresses confidentiality, requiring counselors to “avoid illegal and unwarranted disclosures of confidential information” (B.1.a.). However, the code also delineates specific exceptions to the general principle of confidentiality: “when disclosure is required to prevent clear and imminent danger to the client or others or when legal requirements demand that confidential information be revealed” (B.1.c.). Therefore, with relation to confidentiality, child abuse, and state’s mandatory reporting statutes, legal and ethical requirements are not at odds—both require a counselor to report knowledge or suspicions of child maltreatment to authorities.

Since there are legal and ethical limitations to confidentiality, the principle of informed consent is of utmost importance. This is addressed in Section A.3.a. of the ACA code, which requires counselors to inform clients of several aspects of the counseling relationship at the initiation of the relationship. With regard to confidentiality, clients have the right “to be provided with an explanation of its limitations” (A.3.a., see also B.1.g.). Thus, as part of standard informed consent procedures, counselors must explain to clients that reports of child abuse and neglect, and/or information that leads the counselor to suspect child abuse and neglect, is information that will not be kept confidential.

“Minimal disclosure” is another issue addressed in the ACA code that is relevant to mandatory reporting requirements (B.1.f.). This section states that counselors must reveal only the essential information when they are legally or ethically required to disclose confidential information. Also, counselors must make efforts to inform clients before information is disclosed.

Although the ACA code outlines specific ethical behaviors as described above, it also states “the primary responsibility of counselors is to respect the dignity and to promote the

welfare of clients” (A.1.a.). Thus, situations may present where a counselor feels that a conflict exists between acting in the client’s best interest and acting as required by specific standards in the ACA code. Examples of such conflicts that might occur in situations of suspected child abuse will be discussed in the following section of this paper. The section of the ACA code applicable to the issue of ethical dilemmas is C.2.e., “Ethical Issues Consultation.” As with all situations that involve ethical dilemmas, counselors should consult with colleagues when a suspicion of child maltreatment presents them with questions regarding the most ethical solution.

Ethical Issues Related to the Mandatory Reporting of Child Abuse

In situations regarding suspicions of child maltreatment, ethical concerns primarily arise from issues related to (1) confidentiality, and (2) perceived negative outcomes of reporting.

Confidentiality

Confidentiality is an ethical standard of primary importance in counseling relationships, and it is a major factor that influences professionals’ decisions in cases of suspected child abuse (MacNair, 1992). Counselors may fear that breaking confidentiality could lead to a client feeling betrayed, or it could interfere with a client’s sense of autonomy. Since ethical codes and legal statutes limit confidentiality, a counselor can try to prevent the potential adverse consequences of breaching confidentiality with an upfront and clear discussion of the mandatory reporting requirement, as required by the ACA code standard of informed consent. Once exceptions to confidentiality have been explained, the mere act of breaching confidentiality to report child abuse should not be considered an ethical violation.

Dilemmas may arise, however, by the requirement that confidential information is only to be disclosed when legal requirements demand it or when it is required to prevent clear and imminent danger (ACA Code of Ethics, B.1.c.). In situations that involve possible child abuse, it is sometimes tricky to determine when a suspicion of abuse is strong enough to *require* making a report and breaking confidentiality. According to Johns (2004), “the aspect of state mandatory reporting statutes that has brought the most controversy and litigation relates to the circumstances under which professionals are required to report.” Many mandatory reporting statutes contain a phrase similar to “reasonable cause to suspect” (as in Tennessee’s sexual abuse reporting statute, Tenn. Code Ann. § 37-1-605), a vague threshold that often leaves mental health counselors to define their own professional standards (Kalichman, 1999).

One important aspect of the “reasonable cause to suspect” standard is that professionals are *not* required to have evidence or firm knowledge of abuse in order to report. Many professionals, however, say they feel ethically responsible to seek evidence of abuse prior to reporting it (Kalichman, 1999). Mental health practitioners whose normal duties do not include investigative roles risk diluting their professional role and functioning outside of their competence if they decide to seek additional evidence of abuse outside of treatment (Kalichman, 1999). It is for this reason that the law requires reports to be made when child abuse is suspected, not known.

The “reasonable cause to suspect” reporting threshold appears to play a major role in criminal “failure to report” trials. One option for the defense has been to show that other mental health professionals agree that the displayed symptoms did not constitute reasonable cause to suspect abuse (as in the case of *People v. Hedberg* (Ebert, 1992), in which the psychologist was acquitted). Some mental health professionals who have been charged with failure to report have challenged the constitutionality of mandatory reporting statutes, due to excessively vague language. One of the most widely discussed cases is *People v. Cavaiani* (1988, 1989). In this case, a family counselor was working with a couple and their 15-year-old daughter, and he decided not to report statements the daughter had made about her stepfather sexually molesting her (as cited in Kalichman, 1999). Doubting the girl’s statements, Cavaiani considered the situation carefully and decided not to report but to address the alleged abuse in family therapy. Later the girl reported the accusations to her schoolteacher and counselor, who reported the situation, and Cavaiani was arrested for failure to report. Cavaiani’s attorney challenged the constitutionality of the mandatory reporting statute, and the Oakland Circuit Court deemed it unconstitutional (as cited in Johns, 2004). The case was taken to the Michigan Court of Appeals, who stated that the statute was *not* vague and that the phrase “reasonable cause to suspect” spoke for itself. The Michigan State Supreme Court would not hear the case, however, because there was a jury trial, in which Cavaiani was acquitted of failure to report charges (Kalichman, 1999).

Another highly publicized “failure to report case” that went to the Missouri Supreme Court is *State v. Brown* (2003, 2004). In this case, an emergency room nurse failed to report fingertip shaped bruises on the back of a 2-year old who later died of “shaken baby syndrome.” The nurse was charged with failure to report, but Judge Holden of Missouri’s Circuit Court of Greene County dismissed misdemeanor charges against the nurse (as cited in Johns, 2004).

Judge Holden ruled that the state's mandatory reporting statute was void for vagueness and therefore unconstitutional (Johns, 2004). The Missouri Supreme Court reversed the above decision on August 3, 2004 and said the law was not unconstitutionally vague. The ruling said the language "reasonable cause to suspect" is "readily understandable by ordinary persons and is used in several other Missouri laws" (*State v. Brown*, 2004).

Perceived negative outcomes of reporting

Despite the requirements of the law, the perceived consequences of reporting are major factors that influence counselors' decisions about whether or not to report. As mentioned earlier, counselors' primary ethical responsibility is to promote the welfare of their clients (while preventing imminent danger to others). One major concern for some professionals is that reporting will be disruptive to therapy, particularly in those relationships where the client is a perpetrator (Kalichman, 1999). For example, a counselor might feel that therapeutic progress is being made toward ending potential risks of abuse and that reporting would inhibit the perpetrator from continuing to seek assistance, thereby increasing the risk to future victims. Other counselors working with victims of abuse may similarly worry that a client (or a client's parents) will terminate treatment if a report is made; however, research studies summarized by Kalichman (1999) have shown that mandated reporting does not usually have a negative effect on the therapeutic alliance, and even that positive changes in the relationship can result from reporting (Watson and Levine, 1989).

Personal beliefs regarding the ability of Child Protective Services to protect children also influence professionals' decisions about the most ethical action in a case of suspected abuse (Alvarez, Kenny, Donohue, & Carpin, 2004). Counselors may feel that CPS resources are too limited to provide the services children need, and that delays in investigations put children at risk for further harm. CPS investigations have the potential to be aversive to families, so counselors may choose to report abuse only when there is ample evidence (rather than a suspicion) in order to protect families from intrusive and unnecessary investigations (Kalichman, 1999). Alvarez et al. (2004) summarize research showing that professionals also fear that reporting will lead to further harm to the family—disrupting the family structure, ruining family relationships, removing family resources through prosecution of the offending parent, or placing the child in a worse living environment.

Guidelines for Determining and Reporting Suspected Abuse

Determining “reasonable cause to suspect”

Due to the “reasonable cause to suspect” threshold in mandatory child abuse reporting statutes, there is a degree of professional discretion involved in determining when a report is required by law. Since obeying legal and ethical code requirements will be the most ethical action in the majority of cases, professionals need to know how to determine which symptoms and indications of abuse lead reasonable professionals to suspect the occurrence of child maltreatment. Consultation with professional colleagues is highly recommended in ambiguous cases.

Reporting suspected abuse

Once a professional has determined the need to report a suspicion of child abuse, there are several steps one can take to help the necessary sequence of events go smoothly. A summary of the steps proposed by Kalichman (1999) are as follows: Professionals should inform parents, guardians, and children of the need to make a report, as long as doing so does not increase a child’s risk for further abuse. Professionals can emphasize their ethical requirement to report based on their clinical assessment, and they can encourage families to openly discuss their feelings about the report. Weinstein, Levine, Kogan, Harvaky-Friedman, & Miller (2001) found a statistical relation with improved therapeutic relationships when reports were effectively handled—specifically, when clients were informed by the therapist himself (not a supervisor) before reports were made, and when the therapist took professional ownership of her decision to report.

Mandated reporters should appropriately prepare for making a report by organizing the information an intake worker will ask them to provide. When making the report, counselors should only disclose confidential information that is specifically related to the abuse (as required by the ACA code’s “Minimal Disclosure” standard), and reporters should keep detailed records of how the report was made and what was said. Once CPS has begun an investigation, they may ask the reporter for more details to supplement information in the report. Counselors should remember to discuss only information related to the abuse in the report, in order to protect the client’s confidentiality. Kalichman (1999) also recommends following up reports with child protection workers.

Conclusion

Mandatory child abuse reporting statutes are designed to protect children who are in danger of harm. Counselors are ethically bound to report suspicions of child maltreatment, as required by law. Since the legal and ethical requirements are seemingly in agreement, it seems that reporting decisions should not be experienced as ethical dilemmas; however, this is often not the case. In practice, counselors weigh many factors when deciding whether or not to report a suspicion of child abuse. The two main factors in these decisions are one's interpretation of the language of the law, and one's perceived negative consequences of reporting. With proper training on recognizing signs and symptoms of abuse, and diligent consultation with professional colleagues in ambiguous situations, counselors are best able to protect themselves from the legal consequences of failure to report, and they are best able to promote the welfare of their clients.

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Relevant Tennessee Statutes

37-1-410. Immunity from civil or criminal liability for reporting abuse - Damages for employment change because of making report.

(a) (1) IF a health care provider makes a report of harm, as required by the provisions of § 37-1-403; AND

IF the report arises from an examination of the child performed by the health care provider in the course of rendering professional care or treatment of the child; THEN

The health care provider shall not be liable in any civil or criminal action that is based solely upon:

- (A) The health care provider's decision to report what such provider believed to be harm;
- (B) The health care provider's belief that reporting such harm was required by law; or
- (C) The fact that a report of harm was made.

(2) As used in this subsection, "health care provider" means any physician, osteopathic physician, medical examiner, chiropractor, nurse, hospital personnel, mental health professional or other health care professional.

(3) Nothing in this subsection shall be construed to confer any immunity upon a health care provider for a criminal or civil action arising out of the treatment of the child about whom the report of harm was made.

(4) (A) IF absolute immunity is not conferred upon a person pursuant to subdivision (a)(1); AND
IF, acting in good faith, the person makes a report of harm, as required by the provisions of § 37-1-403; THEN

The person shall not be liable in any civil or criminal action that is based solely upon:

(i) The person's decision to report what the person believed to be harm;

(ii) The person's belief that reporting such harm was required by law; or

(iii) The fact that a report of harm was made.

(B) Because of the overriding public policy to encourage all persons to report the neglect of or harm or abuse to children, any person upon whom good faith immunity is conferred pursuant to this subdivision shall be presumed to have acted in good faith in making a report of harm.

(5) No immunity conferred pursuant to this subsection shall attach if the person reporting the harm perpetrated or inflicted the abuse or caused the neglect.

(6) A person furnishing a report, information or records as required or authorized under the provisions of this part shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by the provisions of this subsection upon such person for making the report of harm.

(7) If the person furnishing a report, information or records during the normal course of such person's duties as required or authorized under the provisions of this part is different than the person originally reporting the harm, then the person furnishing such report, information or records shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by the provisions of this subsection upon the person who made the original report of harm.

(b) Any person reporting under the provisions of this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse.

(a) (1) Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect.

(2) Any such person with knowledge of the type of harm described in this subsection shall report it, by telephone or otherwise, to the:

(A) Judge having juvenile jurisdiction over the child;

(B) County office of the department;

(C) Sheriff of the county where the child resides; or

(D) Chief law enforcement official of the municipality where the child resides.

(3) If any such person knows or has reasonable cause to suspect that a child has been sexually abused, the person shall report such information in accordance with § 37-1-605, relative to the sexual abuse of children, regardless of whether such person knows or believes that the child has sustained any apparent injury as a result of such abuse.

(b) If a hospital, clinic, school, or any other organization responsible for the care of children has a specific procedure, approved by the director of the county office of the department, for the protection of children who are victims of brutality, abuse or neglect, any member of its staff whose duty to report under the preceding sentence arises from the performance of services as a member of the staff of the organization may, at the staff member's option, fulfill that duty by reporting instead to the person in charge of the organization or such person's designee who shall make the report in accordance with the preceding sentence.

(c) The report shall include, to the extent known by the reporter, the name, address, and age of the child, the name and address of the person responsible for the care of the child, and the facts requiring the report. The report may include any other pertinent information.

(d) If a law enforcement official or judge becomes aware of known or suspected child abuse, through personal knowledge, receipt of a report, or otherwise, such information shall be reported to the department immediately and, where appropriate, the child protective team shall be notified to investigate the report for the protection of the child in accordance with the provisions of this part. Further criminal investigation by such official shall be appropriately conducted in coordination with the team or department to the maximum extent possible.

(e) Any person required to report or investigate cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-409.

(f) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to Acts 1985, ch. 478, relative to the sexual abuse of children. Investigations of institutional child sexual abuse shall be conducted in accordance with the provisions of § 37-1-606.

(g) Every physician or other person who makes a diagnosis of, or treats, or prescribes for any venereal disease set out in § 68-10-101, or venereal herpes and chlamydia, in children thirteen (13) years of age or younger, and every superintendent or manager of a clinic, dispensary or charitable or penal institution, in which there is a case of any of the diseases, as set out in this subsection, in children thirteen (13) years of age or younger shall report the case immediately, in writing on a form supplied by the department of health to that department. If the reported cases are confirmed and if sexual abuse is suspected, the department of health will report the case to

the department of children's services. The department of children's services will be responsible for any necessary follow-up.

37-1-605. Reports of known or suspected child sexual abuse - Investigations.

(a) Any person, including, but not limited to, any:

(1) Physician, osteopathic physician, medical examiner, chiropractor, nurse or hospital personnel engaged in the admission, examination, care or treatment of persons;

(2) Health or mental health professional other than one listed in subdivision (1);

(3) Practitioner who relies solely on spiritual means for healing;

(4) School teacher or other school official or personnel;

(5) Judge of any court of the state;

(6) Social worker, day care center worker, or other professional child care, foster care, residential or institutional worker;

(7) Law enforcement officer; or

(8) Neighbor, relative, friend or any other person who knows or has reasonable cause to suspect that a child has been sexually abused;

shall report such knowledge or suspicion to the department in the manner prescribed in subsection (b).

(b) (1) Each report of known or suspected child sexual abuse pursuant to this section shall be made immediately to the local office of the department responsible for the investigation of reports made pursuant to this section or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides. Each report of known or suspected child sexual abuse occurring in a facility licensed by the department of mental health and developmental disabilities, as defined in § 33-5-402, or any

hospital, shall also be made to the local law enforcement agency in the jurisdiction where such offense occurred. In addition to those procedures provided by this part, the provisions of § 37-1-405 shall also apply to all cases reported hereunder.

(2) If a law enforcement official or judge becomes aware of known or suspected child sexual abuse, through personal knowledge, receipt of a report or otherwise, such information shall be reported to the department immediately and the child protective team shall be notified to investigate the report for the protection of the child in accordance with the provisions of this part. Further criminal investigation by such official shall be appropriately conducted.

(3) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to this section.

(c) Any person required to report or investigate cases of suspected child sexual abuse who has reasonable cause to suspect that a child died as a result of child sexual abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-612.

[Acts 1985, ch. 478, § 6; 1987, ch. 145, §§ 2, 11; 1988, ch. 953, § 14; 1993, ch. 439, § 2; 1994, ch. 901, § 2; 2000, ch. 947, §§ 6, 8M.]

Other Relevant Tennessee Statutes:

37-1-102, Chapter Definitions.

Title 37 – Juveniles, Chapter 1 – Juvenile Courts and Proceedings, Part 4 – Mandatory Child Abuse Reports

37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse.

37-1-413. False reporting of child sexual abuse - Penalty.

Title 37 - Juveniles, Chapter 1 – Juvenile Courts and Proceedings, Part 6 – Child Sexual Abuse

37-1-602, Prevention of child sexual abuse deemed priority of state - Comprehensive approach - Purpose and construction of part.

37-1-615. Child Sexual Abuse. Violations –Penalties.

Title 37 – Juveniles, Chapter 5 –Department of Children’s’ Services, Part 1 – General Provisions

37-5-103, Chapter definitions.

37-5-106, Powers of the Department

Title 39 – Criminal Offenses, Chapter 15 – Children, Part 4 - Children

39-15-401, Child Abuse or Child Neglect and Endangerment

Title 39 – Criminal Offenses, Chapter 13 – Offenses Against Persons, Part 5- Sexual Offenses

39-13-501, Definitions

39-13-506, Statutory Rape

Title 71 – Welfare, Chapter 6 – Programs and Services for Abused Persons, Part 3 – Sexual Assault Programs and Services

71-6-304, Prerequisites to Receiving Funds

Rule Reference. This section is referred to in the Advisory Commission Comments under Rule 501 of the Tennessee Rules of Evidence.

Textbooks. Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), Rule 501.

Law Reviews. Tennessee's Adoption of the Planning-Operational Test for Determining Discretionary Function Immunity Under the Governmental Tort Liability Act, 60 Tenn. L. Rev. 633 (1993).

Cited: State v. Mounger, 7 S.W.3d 70 (Tenn. Crim. App. 1999).

NOTES TO DECISIONS

1. Civil Damage Liability.

Civil damage liability for failing to report complaints of child sexual abuse will only arise when it proximately causes injury to another. Doe v. Coffee County Bd. of Educ., 852 S.W.2d 899 (Tenn. Ct. App. 1992).

