

**202.00**  
**CHILD ABUSE SCREENING, DOCUMENTING AND REPORTING POLICY**  
**1/14**

*APPROVED 02/2002*  
*REVISED 01/2006*  
*REVISED 08/2011*

**PURPOSE:**

- I. The purpose of this Policy and Procedure is to ensure that all Center staff members have written guidelines to follow in determining if child abuse has occurred, how to document said child abuse and how to report child abuse to the proper authorities.

**POLICY:**

- II. The Center adopts the DSHS Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers by reference in our internal policy and will comply with all provisions of the DSHS policy.
- III. All suspected or known sexual abuse of a child under the age of 17 shall be reported, regardless of any affirmative defense.

**PROCEDURE:**

**IV. Determination**

**A. Time to Report**

1. Staff members having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect shall immediately make a report. (See definitions for abuse and neglect following procedures)
  - a. Staff members typically have interaction with patients during eligibility, intake, case management, and examinations.
  - b. Regardless of where patient interaction occurs; staff members have a duty to report.
2. Staff members having 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 (See in appendices to follow procedures), and the professional has cause to believe that the child has been abused as defined by Section 261.001.
3. The staff member shall make a report not later than the 48th hour after the hour the staff member 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. Staff members may not delegate to or rely on another person to make the report. Staff member 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 probation officers, and juvenile detention or correctional officers.



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2. the actor did not use duress, force, or a threat against the victim at the time of the offense.
- C. An acceptable affirmative defense for abuse as defined in the Penal Code §22.011 may be:
  1. the actor was not more than three years older than the victim at the time of the offense.
  2. there is no acceptable affirmative defense applicable for abuse of children under the age of 14 because a child under 14 cannot consent to sexual activity under Texas law.
- III. Reporting - In the case a staff member believes abuse has occurred the following must occur.
  - A. In the case of emergency
    1. Call your local law enforcement agency or 911 if the situation is an emergency.
    2. Call the Texas Abuse Hotline at 1-800-252-5400 if:
      - a. the situation you are reporting is an emergency;
      - b. you prefer to remain anonymous;
      - c. you have insufficient data to complete the required information on the report;  
or
      - d. you do not want e-mail confirmation of your report.
  - B. Other methods of reporting
    1. If none of the above apply, report through the following link:  
<https://www.txabusehotline.org>  
This reporting link will be targeted in an icon format on all computers, laptops and tablets in the Center.
    2. Staff may also fax report to the Department of Family and Protective Services at 1-800-647-7410.
  - C. For teens under age 17 who have never been married, staff members must either
    1. report them if they are or have been sexually active or
    2. determine if an affirmative defense to prosecution exists as described in the Penal Code which, under DSHS policy, would allow the staff member not to report.
    3. If the client is not willing to provide the age of the partner, a report must be made because you do not have sufficient information to document an affirmative defense.
  - D. If it comes to your attention that a male or female client has a sexual partner under age 17 and more than three years younger than the client, a report must be filed concerning abuse of the

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partner by the client; the partner would be under age 14 in this case and no affirmative defense applies.

- E. You may report anonymously as stated in the DSHS policy. The Family Code at §261.104 does not require your name to be given. The contractor/provider might cite the law to the caseworker in explaining why he/she is not providing his/her name.
1. The DSHS requirement for a "good faith effort" would be satisfied if the reporter attempts to report to DFPS when appropriate, is asked for his/her identity (perhaps even before any other information can be offered), and then DFPS declines to accept or enter the report if the reporter declines to identify himself/herself.
  2. The reporter may then either attempt to report to law enforcement, or may document their unsuccessful attempt to report to DFPS and end the matter as far as compliance with DSHS policy. DSHS will call this a good faith effort. As to whether that will suffice to avoid prosecution for knowingly failing to report under Family Code §261.109, the contractor/provider should seek advice from their agency counsel.
- F. Information required by law, if known, is stated in the law as follows:
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 information concerning the alleged or suspected abuse or neglect.
  4. if the staff member knows or suspects that a crime has been committed, the previously mentioned information is all they have to report, if known.
  5. if the Center does not routinely collect the other kinds of information DFPS would like to have, the staff member is not required by law to ask the client for that information;
  6. however, if a contractor/provider wishes to ask for further information, the contractor/provider may do so, if the information is pertinent to investigation of the abuse.
  7. Section 261.103, Texas Family Code, requires a person to make a report of abuse to one of four agencies, depending on the circumstances in which the abuse occurred. Reports are to be made to:
    - a. any local or state law enforcement agency;
    - b. the Texas Department of Protective and Regulatory Services if the alleged or suspected abuse involves a person responsible for the care, custody or welfare of the child;
    - c. the state agency that operates, licenses, certifies or registers the facility in which the alleged abuse or neglect occurred;

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- d. or the agency designated by the court to be responsible for the protection of children.
  - e. a report may be made to the Texas Youth Commission instead of the above-mentioned agencies 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.
- IV. Documentation – All child abuse reporting activities, including incidents with an affirmative defense, are documented and kept in a central location.
- V. Training
- A. Center employees and on-site contractors have the obligation to ensure a good faith effort to comply with Chapter 261, Family Code, regardless of professional or non-professional status.
  - B. The Center is responsible for ensuring a policy is in place, appropriate training of professional and non-professional staff is conducted, and the DSHS Checklist is used as required.
    - 1. training of Center staff members in regard to child abuse screening, documenting, and reporting shall occur no less than annually.
    - 2. the review of this policy and its associated procedures shall be reviewed by all new staff members during orientation.
- VI. Definitions
- A. "Abuse" includes the following acts or omissions by a person:
    - 1. mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
    - 2. 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;
    - 3. 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;
    - 4. 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;
    - 5. 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;

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6. failure to make a reasonable effort to prevent sexual conduct harmful to a child;
  7. compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;
  8. 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;
  9. 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;
  10. causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or
  11. causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.
- B. Acts of "Neglect" include:
1. 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;
  2. the following acts or omissions by a person:
    - a. 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;
    - b. 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;
    - c. 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
    - d. 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
  3. 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

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after the child has been absent from the home for any reason, including having been in residential placement or having run away.

4. "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:
  - a. a parent, guardian, managing or possessory conservator, or foster parent of the child;
  - b. a member of the child's family or household as defined by Chapter 71;
  - c. a person with whom the child's parent cohabits;
  - d. school personnel or a volunteer at the child's school; or
  - e. or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.
  
5. "Born addicted to alcohol or a controlled substance" means a child:
  - a. who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and
  - b. who, after birth as a result of the mother's use of the controlled substance or alcohol:
    - i. experiences observable withdrawal from the alcohol or controlled substance;
    - ii. exhibits observable or harmful effects in the child's physical appearance or functioning; or
    - iii. exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

VII. Penal Code – Chapter 21. Sexual Offenses § 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

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- 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.
- VII. Penal Code – Chapter 22. Assaultive Offenses § 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;



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- 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.

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- 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.
    - a. 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

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the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

- b. It is an affirmative defense to prosecution under Subsection (A)(2) that:
  - i. the actor was not more than three years older than the victim and at the time of the offense:
  - ii. was not required under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75<sup>th</sup> Legislature, Regular Session, 1997, to register for life as a sex offender; or
  - iii. was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section; and
  - iv. the victim was a child of 14 years of age or older.

D. An offense under this section is a felony of the second degree.

VII. Penal Code – Chapter 43. Public Indecency Subchapter A. Prostitution.

A. §43.01. Definitions. In this subchapter:

- 1. "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.
- 2. "Prostitution" means the offense defined in Section 43.02.
- 3. "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.
- 4. "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.
- 5. "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

VIII. § 261.201. Confidentiality and Disclosure of Information

- A. The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
  - 1. a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

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2. except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.
- B. A court may order the disclosure of information that is confidential under this section if:
1. a motion has been filed with the court requesting the release of the information;
  2. a notice of hearing has been served on the investigating agency and all other interested parties; and
  3. after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:
    - a. essential to the administration of justice; and
    - b. not likely to endanger the life or safety of:
      - i. a child who is the subject of the report of alleged or suspected abuse or neglect;
      - ii. a person who makes a report of alleged or suspected abuse or neglect; or
      - iii. any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.
- C. In addition to Subsection (B), a court, on its own motion, may order disclosure of information that is confidential under this section if:
1. the order is rendered at a hearing for which all parties have been given notice;
  2. the court finds that disclosure of the information is:
    - a. essential to the administration of justice; and
    - b. not likely to endanger the life or safety of:
      - i. child who is the subject of the report of alleged or suspected abuse or neglect;
      - ii. a person who makes a report of alleged or suspected abuse or neglect; or
      - iii. any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and
  3. the order is reduced to writing or made on the record in open court.

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- D. The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential, unless this information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161.
- E. Before placing a child who was the subject of an investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child.
- F. The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.
- G. Notwithstanding Subsection (B), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.
- H. This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

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Department of State Health Services (DSHS)  
Child Abuse Reporting Form

DSHS monitors for reporting of abuse based on the factors described on this form and in the DSHS Screening, Documenting & Reporting Policy. You must use this form when:

- faxing reports of abuse to DFPS (800-647-7410) or law enforcement and documenting the report in the client record;
- documenting reports made by telephone to DFPS (800-252-5400, 24/7) or law enforcement; and
- documenting decisions not to report based on existence of an affirmative defense.

You may report abuse online at [www.txabusehotline.org/Default.aspx](http://www.txabusehotline.org/Default.aspx) and use a print-out of the report or a copy of the confirmation from DFPS with the client's name and date of birth written on it, instead of this form, as documentation in the client record.

**For DSHS monitoring purposes:** You must report all situations involving a minor under 14 years of age who is pregnant or has a confirmed diagnosis of a sexually transmitted disease acquired in a manner other than through perinatal transmission or transfusion. This form or the printed online report will be examined by DSHS monitoring staff and must be made available for review.

For minors under age 14: Confirmed HIV/STD via sexual contact or IV drug abuse      Yes \_\_\_ No \_\_\_  
Pregnant      Yes \_\_\_ No \_\_\_

Additionally, this form may be used as documentation of reporting other cases of potential child abuse and may be provided to the DSHS monitoring staff during a review to show evidence of reporting.

Date: \_\_\_\_\_

Child/Minor's name: \_\_\_\_\_ Child/Minor's Age: \_\_\_\_\_

In accordance with DSHS policy, an affirmative defense for sexual assault or indecency with a child may be established for clients ages 14, 15, and 16 years. All instances of sexual activity of clients under 14 years of age must be reported.

Check below if using the optional affirmative defense language for clients ages 14, 15, and 16 years of age:

- The actor was not more than three years older than the victim  
 And no duress or force was used  
 And partner is of the opposite sex

Using the criteria above or any other information provided by the client, did you determine that a report of child abuse is required? Yes \_\_\_ No \_\_\_

Reported to (if indicated):      DFPS            Case number: \_\_\_\_\_  
(Place a check in the appropriate box) Local Law enforcement            (optional)

The law requires you to report, if **known**, the name and address of the child, the name and address of the parent or caregiver, and any other pertinent information. You are not required to report information not routinely collected, but any known details can assist DFPS or law enforcement in investigating suspected abuse:

1. Client's address or some other way to locate (name of school or directions to home if rural or P.O. Box):  
\_\_\_\_\_

2. Name of parent or caregiver and address (or directions to home if rural or P.O. Box):  
\_\_\_\_\_

3. Name and age of alleged abuser:  
\_\_\_\_\_

4. Address or some other way to locate alleged abuser:  
\_\_\_\_\_

5. Explanation of why abuse is believed to have occurred (could include description of injury or condition, how the harm occurred or why the child appears to be at risk, explanation by child or parent, parents' involvement in the abuse/neglect situation, or when and where the incident occurred):  
\_\_\_\_\_  
\_\_\_\_\_

Contact information for staff person or agency submitting report (optional):  
\_\_\_\_\_

Effective January 1, 2009  
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THIS FORM IS AVAILABLE FROM THE QUALITY ASSURANCE COORDINATOR OR ONLINE AT  
[www.dshs.state.tx.us/childabusereporting/docs/DSHS\\_Child\\_Abuse\\_Reporting\\_Form.pdf](http://www.dshs.state.tx.us/childabusereporting/docs/DSHS_Child_Abuse_Reporting_Form.pdf)