

V.T.C.A., Family Code § 261.101



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Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Family Code [\(Refs & Annos\)](#)

Title 5. The Parent-child Relationship and the Suit Affecting The Parent-child Relationship [\(Refs & Annos\)](#)

Subtitle E. Protection of the Child

[Chapter 261](#). Investigation of Report of Child Abuse or Neglect [\(Refs & Annos\)](#)

[Subchapter B](#). Report of Abuse or Neglect; Immunities

➔ § 261.101. Persons Required to Report; Time to Report

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

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

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

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

(1) as provided by [Section 261.201](#); or

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

CREDIT(S)

Added by [Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995](#). Amended by [Acts 1995, 74th Leg., ch. 751, § 87, eff. Sept. 1, 1995](#); [Acts 1997, 75th Leg., ch. 162, § 1, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 575, § 11, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 1022, § 65, eff. Sept. 1, 1997](#); [Acts 1999, 76th Leg., ch. 62, § 6.29, eff. Sept. 1, 1999](#); [Acts 1999, 76th Leg., ch. 1150, § 2, eff. Sept. 1, 1999](#); [Acts 1999, 76th Leg., ch. 1390, § 21, eff. Sept. 1, 1999](#); [Acts 2001, 77th Leg., ch. 1420, § 5.003, eff. Sept. 1, 2001](#).

HISTORICAL AND STATUTORY NOTES

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Acts 1995, 74th Leg., ch. 751, in subsec. (b), inserted the second sentence; and added subsecs. (c) and (d).

Acts 1997, 75th Leg., ch. 162, in subsec. (b), in the last sentence, deleted "and" following "doctors," and added ", juvenile probation officers, and juvenile detention or correctional officers".

Acts 1997, 75th Leg., ch. 575, in subsec. (d), inserted "rendered under Section 261.201.

Section 38 of Acts 1997, 75th Leg., ch. 575 provides:

"This Act takes effect September 1, 1997, and applies to a suit affecting the parent-child relationship filed on or after that date. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose."

Acts 1997, 75th Leg., ch. 1022, in subsec. (a), deleted "or may be" following "has been"; in subsec. (b), in the first sentence, deleted "or may be" following "has been", inserted "or that a child is a victim of an offense under [Section 21.11, Penal Code](#), and that the professional has cause to believe that the child has been abused as defined by Section 261.001" and "or is a victim of an offense under [Section 21.11, Penal Code](#)", and in the fourth sentence, added ", and employees of a clinic or health facility that provides reproductive services"; and in subsec. (c), added ", and an employee of a clinic or health care facility that provides reproductive services".

Section 109 of Acts 1997, 75th Leg., ch. 1022 provides:

"The change in law made by this Act to Section 261.101, Family Code, applies only to a report of child abuse or neglect made on or after the effective date [Sept. 1, 1997] of this Act. A report made before that date is governed by the law in effect on the date the report was made, and the former law is continued in effect for that purpose."

Acts 1999, 76th Leg., ch. 62, in subsec. (b), in the first sentence, preceding "the professional", deleted "and that the professional has cause to believe that the child has been abused as defined by Section 261.001,".

Acts 1999, 76th Leg., ch. 1150 and Acts 1999, 76th Leg., ch. 1390 rewrote subsec. (d), which previously read:

"The identity of an individual making a report under this chapter is confidential and may be disclosed only on the order of a court rendered under Section 261.201 or to a law enforcement officer for the purposes of conducting a criminal investigation of the report."

Section 32(b) of Acts 1999, 76th Leg., ch. 1150 and § 51(d) of Acts 1999, 76th Leg., ch. 1390 provide:

"The change in law made by this Act to Chapter 262, Family Code, applies only to a suit affecting the parent-child relationship filed requesting an order to take possession of a child or to a child taken into possession without a court order on or after that date. A suit filed before the effective date [Sept. 1, 1999] of this Act or a child taken into possession before the effective date of this Act is governed by the law in effect on the date the suit was filed or the child was taken into possession, as appropriate, and the former law is continued in effect for that purpose."

Acts 2001, 77th Leg., ch. 1420 reenacted subsec. (b).

Prior Laws:

- Acts 1965, 59th Leg., p. 277, ch. 117.
- Acts 1969, 61st Leg., p. 637, ch. 219, § 1.
- Acts 1971, 62nd Leg., p. 2790, ch. 902, § 1.
- [Vernon's Ann.Civ.St. art. 695c-2, § § 2, 3.](#)
- Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1.
- Acts 1985, 69th Leg., ch. 768, § 2.
- Acts 1987, 70th Leg., ch. 620, § 1.

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Acts 1987, 70th Leg., ch. 720, § 1.
Acts 1987, 70th Leg., ch. 744, § 4.
Acts 1987, 70th Leg., ch. 1052, § § 6.04, 6.06.
Acts 1989, 71st Leg., ch. 370, § 1.

Acts 1989, 71st Leg., ch. 1265, § 2.
Acts 1991, 72nd Leg., ch. 16, § 7.01.
Acts 1993, 73rd Leg., ch. 766, § 1.
[V.T.C.A., Family Code § § 14.01, 34.01, 34.02\(d\).](#)

LAW REVIEW COMMENTARIES

Parent and child. Eugene L. Smith, 8 Tex.Tech L.Rev. 113 (1976).

Patient's rights. Edward P. Richards and Katharine C. Rathbun, 44 Tex.B.J. 1059 (1981).

Recent amendments to Texas child abuse statutes: Analysis and recommendation. 11 St.Mary's L.J. 914 (1980).


[Speaking Out Against Passive Parent Child Abuse: The Time Has Come to Hold Parents Liable For Failing to Protect Their Children. Amy L. Nilsen, 37 Hous.L.Rev. 253 \(2000\).](#)

Texas' clergyman-penitent privilege and the duty to report suspected child abuse. 38 Baylor L.Rev. 230 (1986).

[Turning in the Client: Mandatory Child Abuse Reporting Requirements and the Criminal Defense of Battered Women. Brooke Albrandt, 81 Tex.L.Rev. 655 \(2002\)](#)

LIBRARY REFERENCES

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Infants  13.
Westlaw Topic No. 211.
[C.J.S. Infants § § 5, 92 to 93, 95 to 98.](#)

RESEARCH REFERENCES

2005 Electronic Update

ALR Library

[93 ALR 5th 327](#), Subject Matter And Waiver Of Privilege Covering Communications To Clergy Member Or Spiritual Adviser.

Treatises and Practice Aids

[Texas Family Law § 29:60](#), In general.

[Texas Family Law § 43:48](#), Child abuse.

[Texas Family Law § 47:6](#), **Child abuse reporting requirements.**

[Texas Family Law § 47:7](#), Confidentiality; immunity.

[73 ALR 4th 782](#), Validity, Construction, And Application Of State Statute Requiring Doctor Or Other Person To

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Report Child Abuse.

Encyclopedias

[6 Am. Jur. Proof of Facts 2d 345](#), Failure To Report Suspected Case Of Child Abuse.

[38 Am. Jur. Trials 1](#), Professional Liability For Failure To Report Child Abuse.

[TX Jur. 3d Criminal Law § 467](#), Acts And Omissions, In General; Who Is Protected; Definitions.

[TX Jur. 3d Criminal Law § 3763](#), Copy Of Conditions To Defendant.

[TX Jur. 3d Family Law § 1865](#), Duty To Report; Oral Report Of Abuse Or Neglect.

[TX Jur. 3d Family Law § 1870](#), Form And Content Of Report.

Treatises and Practice Aids

TX Practice Guide, Family Law CH. 11.I.F, 11.I.F. Cases Involving Allegations Of Child Abuse.

TX Practice Guide, Family Law CH. 14.VI.A, 14.VI.A. Report Of Child Abuse.

Texas Practice Guide Torts CH 9.B, 9.B. Immunities.

7A Tex. Prac. Series § 70.01, Commentary-Jury Trials.

[29A Tex. Prac. Series § 985](#), Duty To Report Child Abuse.

[29A Tex. Prac. Series § 1112](#), Who Must Report Abuse Or Neglect.

[29A Tex. Prac. Series App. 3](#), Appendix 3. Selected Rules And Regulations Of The Texas Department Of Protective And Regulatory Services.

[1 Tex. Prac. Series § 502.1](#), Rule 502: Required Reports Privileged By Statute.

[1 Tex. Prac. Series § 503.3](#), Rule 503(A)(1) And (A)(2): Client And Client's Representative Defined.

[1 Tex. Prac. Series § 505.3](#), Exceptions To The Privilege.

[1 Tex. Prac. Series § 510.4.4](#), Rule 510(D)(4): Exceptions To Privilege: Court-Ordered Examinations.

NOTES OF DECISIONS

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[1](#). Validity



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Defendants clearly failed to report child abuse as required by statute mandating persons to "immediately" report such abuse, and thus the statute was not unconstitutionally vague as applied to them, where defendants witnessed child abuse for approximately two months but never reported it to the police. [Rodriguez v. State \(App. 14 Dist. 2001\) 47 S.W.3d 86](#), petition for discretionary review refused. Constitutional Law  258(3.1); Infants  13


2. In general


Texas law requiring educators to report abuse of students does not create private cause of action against educators who fail to report abuse. [Doe v. S & S Consol. I.S.D., E.D.Tex.2001, 149 F.Supp.2d 274](#), affirmed [309 F.3d 307](#). Action  3

In instances of suspected child abuse, protection of child is paramount. [Albright v. Texas Dept. of Human Services \(App. 1 Dist. 1993\) 859 S.W.2d 575](#). Infants  156

At common law nonfamily member had no duty to prevent or report suspected abuse. [Scott for J.L.R. v. Butcher \(App. 12 Dist. 1994\) 906 S.W.2d 16](#), rehearing overruled, writ granted, reversed [906 S.W.2d 14](#). Infants  13; Negligence  220


If statutory provisions requiring the reporting of suspected child abuse are to be adopted as creating a duty, the failure of which would be negligence per se, it should be done by the Supreme Court, and the Court of Appeals declines to do so. [Scott for J.L.R. v. Butcher \(App. 12 Dist. 1994\) 906 S.W.2d 16](#), rehearing overruled, writ granted, reversed [906 S.W.2d 14](#). Courts  247(1); Infants  13


Provisions of Family Code requiring person to report suspected child abuse, immunizing such person from civil or criminal liability for good faith in doing so, but making it misdemeanor to knowingly fail to make report define conduct of reasonable person, and negligence action may be founded upon violation of statutory duty. [Nash v. Perry \(App. 3 Dist. 1997\) 944 S.W.2d 728](#), rehearing overruled, writ granted, reversed in part 1998 WL 226906, withdrawn and superseded on overruling of rehearing [973 S.W.2d 301](#). Infants  13

Court of Appeals would presume that legislature intended statutory section requiring immediate reporting of child abuse and statutory section granting immunity regarding such reports to be effective, because both sections were found in same subchapter of family code, and both sections were passed by legislature in same statute. [State v. Harrod \(App. 5 Dist. 2002\) 81 S.W.3d 904](#), rehearing overruled, petition stricken, petition for discretionary review refused. Infants  13.5(2)

A physician is not required to report a pregnant patient's illegal drug use under statute. The definition of the term "individual" in the Penal Code, recently revised to include "an unborn child," does not affect the definition of the term "child" in this section. Op.Atty.Gen.2005, No. GA-0291.

3. Clergy

Defendant was not entitled to rely on the clergy-communication privilege to exclude his confession that he sexually assaulted his three children; child abuse statute provided an exception to the clergy-communication privilege in child abuse cases. [Bordman v. State \(App. 14 Dist. 2001\) 56 S.W.3d 63](#), rehearing overruled, petition for discretionary review refused. Witnesses  215

Defendant's incriminating statement to clergyman was not a privileged communication in prosecution for aggravated sexual assault of a child and indecency with a child. [Martinez v. State \(App. 13 Dist. 2002\) 2002 WL 1860301](#). Unreported. Witnesses  215

Statute requires a minister of an established church to report evidence of child abuse when confidentially disclosed to him by a parishioner. Op.Atty.Gen.1985, No. JM-342.


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[Vernon's Ann.Civ.St. art. 3715a](#) (repealed; see, now, Rules Crim. Evidence, rule 505 and Vernon's Ann. Rules of Evidence, rule 505), which provided for clergyman-penitent privilege in judicial proceedings, did not conflict with statute. Op.Atty.Gen.1985, No. JM-342.

4. Sex offender treatment provider

Council on Sex Offender Treatment may not interpret statute which requires person who suspects that child has been abused or neglected to report suspicion immediately to appropriate authorities to permit a registered or affiliated sex-offender-treatment provider to decide whether or not to report a suspicion based on dated or incomplete information. Op.Atty.Gen. 1997, No. DM-458.

5. Negligence

Child abuse reporting statute, which imposed reporting requirement on any person having "cause to believe" child was being abused, was not appropriate standard for negligence per se liability, though statute criminalized only knowing failure to report abuse, considering that there was no relevant common law duty, statutory standard was not clearly defined, liability could be significantly disproportionate to underlying conduct, statute applied to broad class of people, and connection between statutory violation and relevant injury was attenuated. [Perry v. S.N. \(Sup. 1998\) 973 S.W.2d 301](#). Infants  13


6. Polygraph examinations

Section 261.101 of the Family Code prevails over a conflicting statute, such as section 19A of the Polygraph Examiners Act, [article 4413\(29cc\) of the Revised Civil Statutes](#), unless the legislature has explicitly indicated to the contrary. Because the legislature has not expressly excepted the information a polygraph examiner acquires during the course of a polygraph examination from the scope of section 261.101 of the Family Code, a polygraph examiner must report information indicating that a child has been or may have been abused or neglected in accordance with [section 261.103 of the Family Code](#). Op.Atty.Gen.1999, No. JC-0070.

A court probably would find that a polygraph examinee is not entitled to counsel during the course of a polygraph examination under section 261.101 of the Family Code and, consequently, that conducting the examination without counsel does not violate the examinee's due-process right. The attorney-client privilege applies to the testimony of a polygraph examiner hired by an attorney in certain circumstances. Op.Atty.Gen.1999, No. JC-0070.

An polygraph examinee may have a right to claim the privilege against self-incrimination during the course of a polygraph examination. If the state wishes to compel an examinee who has legitimately invoked the privilege to respond to the question, the state must determine whether to provide immunity for the confession. Op.Atty.Gen.1999, No. JC-0070.

7. Immunity from prosecution

Mother who told officers during investigation of abuser regarding unrelated abuse claim of alleged child abuse of her daughters by abuser several months before was not immune from criminal prosecution for failure to immediately report the alleged abuse, since prosecution of mother arose neither from mother's participation in investigation of abuser regarding unrelated claim nor from mother's report of abuse of daughters. [State v. Harrod \(App. 5 Dist. 2002\) 81 S.W.3d 904](#), rehearing overruled, petition stricken, petition for discretionary review refused. Infants  13.5(2)

8. Law enforcement officers


Law enforcement officers, whether on or off duty, are required to report suspected child sexual abuse when they have cause to believe that such sexual abuse has occurred or is occurring. Op.Atty.Gen.2003, No. GA-0106.

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9. Investigation

The appropriate state or local law enforcement agency shall investigate a report of child sexual abuse if the agency determines an investigation should be conducted, and whether a specific person has cause to believe that a child has been a victim of sexual abuse depends upon the facts within that person's knowledge. Op.Atty.Gen.2003, No. GA-0106.

10. Instructions

Trial court was not required to give defendant's requested instructions regarding statutory duty to report suspected child abuse or neglect and confidentiality of information obtained in an investigation of suspected abuse or neglect, in prosecution for retaliation against a public servant arising from defendant's altercation with school superintendent over the withholding of last paycheck of defendant's wife who resigned from school district over policy dispute involving reporting of suspected child abuse; instructions did not implicate statutory defenses or affirmative defenses, but served only to negate the public servant element of the retaliation charge. [Moore v. State \(App. 10 Dist. 2004\) 143 S.W.3d 305](#), petition for discretionary review refused. Criminal Law  772(6)

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Current through Chapters effective immediately through Ch. 290 of the 2005 Regular Session of the 79th Legislature

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