

REPORTING ABUSE FOR MINORS

EQUIPPING AND REQUIREMENTS

Reporting Crimes Against Minors

We are legally required to report abuse when the individual is a minor, under the age of 18. Keep in mind, the same legalities apply for our friends with special needs and adults over the age of 65.

Minors are serving in ministry in most areas, so we want everyone to be equipped and understand the expectations we have in reporting the abuse of a minor.

As we minister to our church and community, we may have people who come to us for help who are letting us know they have been abused or are in an abusive situation. Churches are a lot like hospitals, where people go when they are hurt.

1 in 3 females, 1 in 5 males have had abuse in their past.

Caring For the Individual

Listen... don't interrupt.

Don't ask for more details. Listen, listen, listen.

"I'm so sorry that happened to you. Thank you for trusting me with that."

If appropriate, stop and pray with them.

For many young people, the term sexual assault is often used more broadly than how sexual assault is defined under the law. You do not need to get clarification on what they mean by sexual assault, just listen.

When the person reporting is the opposite gender from yourself, if possible, find another staff member or lay leader to join you- preferably of the same gender as the person you are ministering to.

Ask, are they safe?

- If not, do not let them leave your presence without attempting to get them help. Call someone on SLT to walk this with you. Notify the police if necessary.

Are they safe at home?

- If not, call someone on SLT to walk this with you. Notify the police.

If they are safe and safe in their home...

- Do they have a trusted adult they can tell? If yes, (but they may not want to) encourage them to do so.
- Let them know we will meet with them with their trusted adult to help them.
- Before you conclude your time together, please make sure you have their name and contact information so we can follow up with them.

Let them know that because a crime has been committed against them, you are required to report that crime to help them. This is very important to do in that first connection.

Everyone who resides in the state of Texas is required by law to report abuse to a minor even if that offense has been committed by another minor. Failure to report within 48 hours, depending on the offense alleged, carries a criminal penalty ranging from a Class A Misdemeanor up to a State Jail Felony.

Generally, hearsay is not admissible as evidence, but Texas law provides for the admissibility of statements given in the context we are working in, as they are considered outcry statements and are potentially admissible as evidence.

We do not investigate.

Let them own their story and keep their voice. You do not need to ask for more details for the report. You just need to report what they share.

We do need their contact info, name and telephone number, so we can follow up.

When you report, use the information you have, even if it is incomplete.

We can help sit with you while you file the report. You can do it from your phone. The link is also on the benttree.org/intranet site. If you are helping a lay leader, offer to sit with them while they fill out the report.

We will work with the appropriate pastor for a follow-up care plan.

Texas Law

There are two sources in Texas law that require persons to report crimes, and specifically to report crimes against children.

The Texas Family Code, Section 261.001, requires “persons,” which includes church staff and “professionals” which may include Bent Tree staff by virtue of operating a childcare facility on site, to file a timely report. (See Subchapter B below.)

There is no exclusion, no protection, no immunity in the law for members of the clergy, or any other person who may otherwise be considered to have “privileged” information. The duty applies regardless.

Failure to report within 48 hours, depending on the offense alleged, carries a criminal penalty ranging from a Class A Misdemeanor up to a State Jail Felony.

A broader requirement to report felonies can be found in the Penal Code, but it is generally less applicable than the Family Code requirements.

Refer to <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.261.htm> for a complete list of definitions of all terms and conduct that applies to this statute.

SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES

Sec. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT.

(a) **A person having reasonable 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 reasonable 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 reasonable 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 has reasonable cause to believe 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.

(b-1) In addition to the duty to make a report under Subsection (a) or (b), a person or professional shall make a report in the manner required by Subsection (a) or (b), as applicable, if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

- (1) another child; or
- (2) an elderly person or person with a disability as defined by Section [48.002](#), Human Resources Code.

(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, an employee or member of a board that licenses or certifies a 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.
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The second issue regarding statements from victims to church staff involves admissibility and evidence. Generally, hearsay is not admissible as evidence, but Texas law provides for the admissibility of res gestae (excited utterance) statements. These outcry statements to clergy are potentially admissible as evidence.

The potential problematic issue here is that the statements made to clergy by a victim of crime can be used as evidence. However if clergy fails in their duty to report, there is no potential for the victim's outcry statement to be known or heard.

The end result by omission is a miscarriage of justice. It's a double dip of failure... so the two important questions from the victim's perspective "Does anyone other than me know about the crime committed against me?" and "Could anyone testify on my behalf?" The answers to both questions can be "yes" but after failing to report according to the law, the result of both questions becomes "no."

These are found in the Texas Code of Criminal Procedure.

Art. 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE.

(a) A conviction under Chapter [21](#), Section [20A.02\(a\)\(3\)](#), (4), (7), or (8), Section [22.011](#), or Section [22.021](#), Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.

(b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:

- (1) 17 years of age or younger;
- (2) 65 years of age or older; or
- (3) 18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

Art. 38.072. HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 18 years of age or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section [25.02](#) (Prohibited Sexual Conduct);

- (3) Section [43.25](#) (Sexual Performance by a Child);
 - (4) Section [43.05](#)(a)(2) or (3) (Compelling Prostitution);
 - (5) Section 20A.02(a)(5), (6), (7), or (8) (Trafficking of Persons);
 - (6) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or
 - (7) Section [15.01](#) (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), (5), or (6) of this section.
- Sec. 2.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. [643](#)), Sec. 1

- (a) This article applies only to statements that describe the alleged offense that:
 - (1) were made by the child or person with a disability against whom the offense was allegedly committed; and
 - (2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 710 (H.B. [2846](#)), Sec. 2

- (a) This article applies only to statements that:
 - (1) describe:
 - (A) the alleged offense; or
 - (B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:
 - (i) described by Section 1;
 - (ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and
 - (iii) otherwise admissible as evidence under Article [38.37](#), Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;
 - (2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and
 - (3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.
- (b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:
 - (1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:
 - (A) notifies the adverse party of its intention to do so;
 - (B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and
 - (C) provides the adverse party with a written summary of the statement;
 - (2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and
 - (3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, "person with a disability" means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

Added by Acts 1985, 69th Leg., ch. 590, Sec. 1, eff. Sept. 1, 1985. Sec. 1 amended by Ac