

What a church should know about reporting suspected child abuse

Georgia's mandatory reporting statute

This article provides a brief synopsis of how Georgia's child abuse reporting law impacts churches, church schools, and church ministries.

It is important for churches in Georgia to understand and comply with Georgia's child abuse reporting statute (OCGA § 19-7-5). With amendments to the statute in 2012, the list of persons who are "mandated reporters" was greatly expanded. Now, based on definitions in the amendment, church employees and volunteers are mandated reporters.

It is interesting to note that the first section of the statute states, "this code section should be liberally construed." This statement of intent leaves little doubt that the Georgia General Assembly intends that reports of suspected child abuse will be made in all circumstances where warranted. When evaluating a situation to determine if a report should be made, it is important to remember that the stat-

ute should be "liberally construed" in order to protect children.

The statute identifies the categories of persons who are "mandated reporters." A mandated reporter is one who is required by law to "report or cause reports ... to be made" of suspected child abuse. Should a mandated reporter knowingly and wilfully fail to report suspected child abuse, such person can be charged with a misdemeanor crime.

➤ Church employees, workers, and volunteers are mandated reporters.

The word church is not used in the statute. However, the term that is used, "child service organization personnel," is broadly defined to mean "persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit ... that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children."

This definition of "child service organiza-

tion personnel" is sufficiently broad to include employees, workers, and volunteers in a church, a church school, or a church program or ministry, which provides "care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter" for children. That means that church employees and volunteers come within the definition of "child service organization personnel" and are "mandated reporters."

In a church setting a program or ministry covered by the statute would include, but is not limited to, programs and ministries such as Sunday school, children's choir, Vacation Bible School, mother's day out, nursery, day care, children's camps and retreats, Awana/Acteens/GAs/RAs, sports and recreation, field trips, etc. This means that a church employee, worker, or volunteer in a church which provides these types of church pro-

grams or ministries is a mandated reporter under the law.

➤ The reporting statute defines a child as a person under 18 years of age and the statute applies even where an older child is participating in a youth or adult program or ministry.

Churches should not be confused into thinking that the reporting statute only applies to children's programs and ministries. The reporting statute defines a

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child as a person under 18 years of age. Where a church has youth or adult programs or ministries and any participants are under 18, the statute applies and church employees, workers, and volunteers are mandated reporters for those under 18 years of age.

➤ What is considered child abuse under the reporting statute?

To determine if a report of suspected child

abuse should be made, it is important to have a general understanding of what the term “*child abuse*” means. The reporting statute goes into detail defining the term.

The definition of child abuse in the statute means: (i) physical injury or death inflicted upon a child; (ii) neglect or exploitation of a child; (iii) sexual abuse of a child; or (iv) sexual exploitation of a child. However, sexual abuse of a child in (iii) above does not include consensual sex acts involving persons of the opposite sex when it is between minors (under the age of 18) or between a minor and an adult who is not more than five years older than the minor. This provision does not make such acts legal,

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but means that such acts are not considered as “*sexual abuse*” for reporting purposes. This exception, sometimes

referred to as a “Romeo and Juliet” exception, only applies to item (iii) sexual abuse, and does not apply to other parts of child abuse defined in (i), (ii), and (iv) above. Sexual exploitation includes sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct. To be more specific about what constitutes child abuse, Georgia Code § 19-7-5(b) and § 16-12-100 should be reviewed as they explain in more detail what the terms mean.

➤ **The definition of “school” in the statute includes a church school.**

The statute defines “*school*” to include “*any public or private pre-kindergarten, elementary school, [or] secondary school*” Church schools are private schools and are covered by this definition. Therefore, an employee, worker, or volunteer in a church pre-kindergarten, elementary, or secondary school is a mandated reporter.

However, in a school, a person is only required to report suspected child abuse “*up the ladder*”

to the appropriate person at the school. This occurs when a person is required to report because that person “*attends to a child pursuant to such person’s duties as an employee of or volunteer at a ... school*” In this situation such person shall notify “*the person in charge of the facility [school], or the delegated delegate thereof.*”

If a mandated reporter reports suspected child abuse to the designated person at the school, then the person receiving the report is required to make the official report in accordance with the statute. The mandated reporter making the report to the designated person is then considered to have fully complied with the statute.

Because of this provision allowing a mandated reporter in a school to report to the “*person in charge of the facility*” or the “*delegated delegate*” of the school, a church school must have a written policy setting out the reporting procedure and clearly identifying the person or persons at the school to whom the report should be made.

➤ **A member of the clergy is a mandated reporter.**

Clergy is defined in the statute as “*ministers, priests, rabbis, imams, or similar functionaries, by whatever name called*” A member of the clergy, subject to the limited exception explained below, is a mandated reporter of suspected child abuse.

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The limited exception for clergy reporting states “*a member of the clergy shall not be required to report child abuse reported [to the clergy] solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice.*” This exception, however, is further limited when the law states, “*when a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements ... even though the clergy member may have also received a report*

of child abuse from the confession of the perpetrator.”

In the interest of protecting children and preventing child abuse, members of the clergy should not avoid reporting suspected child abuse based on this “confessional” exception. Even where the exception might apply, the statute does not prohibit a member of the clergy from reporting suspected child abuse, but only states a clergy member “shall not be required to report” The primary concern must always be the safety and well-being of the children and it is better to report than not report when a child may be at risk.

➤ **When is a mandated reporter required to report suspected child abuse?**

It is very important to know when a mandated reporter is required to make a report of suspected child abuse. The law simply states that suspected child abuse must be reported when a person has “reasonable

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cause to believe that a child has been abused.” This is the standard that must be applied to the facts and circumstances of any particular situation involving suspected child abuse.

A determination that reasonable cause exists should be based on all available information. “Reasonable cause” can be said to mean a suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that something is true.

A person reporting suspected child abuse does not have to be certain or positive that child abuse has occurred but only needs to have “reasonable cause” to believe that it has occurred. On the other hand, when a person does not have “reasonable cause” to believe that a child has been abused; a report is not required by law.

It should be remembered that a report of suspected child abuse is not an accusation but is simply a notice to the authorities and the authorities are then responsible for following up on or investigating the report.

➤ **How does a person make a report of suspected child abuse?**

When a report is required, a mandated reporter “shall report or cause reports of that abuse to be made.”

An oral report must be made immediately by telephone or otherwise, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused. If requested by the authorities, this report must be followed by a written report.

A report of suspected child abuse should be made to the child welfare agency providing protective services, as designated by the Georgia Department of Human Services, Division of Family and Children Services (DFCS). That is generally the local DFCS office.

Reports can also be made by calling the DFCS Child Protective Center hotline at 1-855-GACHILD (1-855-422-4453), where reports are taken 24 hours a day, 7 days a week. In the event a person is unable to contact the local DFCS office or the DFCS hotline, the report can be made to the appropriate police authority or district attorney.

➤ **What information should be in a report of suspected child abuse?**

The report should contain the name and address of the child and the child’s parents or caretakers, if known,

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along with the child’s age and the nature and extent of the child’s injuries. The report should also include any evidence of previous injuries and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries.

Photographs of a child’s injuries which document or support allegations of child abuse may be taken without the permission of the child’s parents or guardian. The photographs must be made available to the authorities to whom the report is made.

➤ **It can be a crime if a mandated reporter does not report suspected child abuse.**

The statute provides a penalty for not reporting suspected child abuse for those who are required to report. Any person or official who is required to report a suspected case of child abuse and who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

➤ **Anyone may report suspected child abuse.**

In addition to those required by law to report suspected child abuse the statute states that any other person who has reasonable cause to believe that a child has been abused may report or cause a report to be made as provided in the statute.

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➤ **The law protects those who report suspected child abuse.**

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law provides that any person acting in good faith that makes or participates in the making of a report of suspected child abuse in accordance with the statute is immune from any civil or criminal liability that might otherwise be incurred or imposed. This immunity protects those required by law to report and those who are not required to report, but who do make a report.

➤ **Churches must have written child protection policies, procedures for reporting suspected child abuse, and training programs for mandated reporters.**

Recognizing and dealing with child abuse is a major concern for churches. The church has a duty to protect its children and the church must have a written child protection policy and a procedure for reporting suspected child abuse. All church employees, workers, and volunteers who are mandated reporters must be trained and educated in protecting children and reporting suspected child abuse.

If a church does not have a child protection policy or a procedure for reporting child abuse and

does not provide training programs, a good place to start is to contact the church's insurance company. Many church insurers have forms that can be helpful and provide assistance in developing policies and training programs.

There is information on the subject on the internet and a thoughtful search will turn up documents and information that should be helpful to a church in developing its policy and training programs.

There are also companies such as *MinistrySafe* which are dedicated to sexual abuse awareness and prevention and to assisting organizations in the design and implementation of safety systems. *MinistrySafe* has worked with the Georgia Baptist Convention to provide educational seminars throughout the state to help churches reduce the risk of child abuse. An internet search will provide contact information for *MinistrySafe*.

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This article was prepared by Thomas O. Duvall, attorney for the Georgia Baptist Convention. The article is only for general information purposes and is not intended to be, and

should not be taken as, legal advice. It is suggested that you contact a local attorney should you have specific questions or need legal advice relating to the reporting of child abuse or preparing policies and procedures.