

Toronto District School Board

Operational Procedure PR608

Title: **Sexual Misconduct by Students**

Adopted: May 25, 2010 (formerly part of PR560)

Revised:

Authorization: Executive Council

1.0 OBJECTIVE

To provide guidelines for dealing with incidents of suspected sexual misconduct by students

2.0 DEFINITIONS

[See Chart 1, page 8 and Appendix C]

3.0 RESPONSIBILITY

Associate Director

4.0 PROCEDURES

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PART A: Sexual Misconduct by a Student 12 Years of Age and Over

A.1 Reporting Disclosures

(a) Inform the Principal

When any person (including a student) reports to an employee sexual assault or sexual abuse, allegedly perpetrated by a student, 12 years of age and over, the employee shall inform the principal or designate immediately.

REMEMBER: Do not investigate the disclosure. Once a disclosure has been made, a disclosing student will not be questioned by any other school staff, nor shall any other students or staff be spoken to until specific directions are received from the investigating police.

(b) **The principal shall report an allegation to the Chief of Social Work and Attendance** who will assist the principal to determine the appropriate response which may include:

- When and how to communicate with the appropriate police unit and determine if CAS should be contacted.
- The appropriate intervention strategy with the alleged perpetrator.
- Support to victims.
- Notification to Safe and Caring Schools Administrator.

(c) Notify Parent/Guardian

Notification of parents/guardians of victims is required in accordance with s. 300.3 of the Education Act where the principal believes a student has been physically or emotionally harmed by the sexual misconduct. Such notice **shall not be given** if, in the opinion of the principal, to do so would put the victim at risk of harm from the parent /guardian.

When notifying the parent/guardian the principal shall disclose the nature of the activity that resulted in harm, the nature of the harm and steps taken to protect the victim's safety, including the nature of any disciplinary action taken. (see Appendix B)

(d) Guidelines for Reporting to Police

- The principal or designate must call the police.

Appropriate support for the victim shall be provided during the reporting process including:

- Social worker
- Guidance teacher, or

- Staff member chosen by the victim
 - The manner and timing of contacting the parents of the victim and the alleged perpetrator will be done in consultation with the police.
 - The *Youth Criminal Justice Act* prohibits disclosure of the identity of the alleged perpetrator if under the age of 18.
- (e) Principal's Duties While Reporting
- (i) Ensure that the CAS and police are aware of the timelines (such as when a child victim or alleged perpetrator is expected at home) so its response can be prioritized accordingly. The police also require time to make arrangements for an investigation.
 - (ii) As the safety and protection of the student is the Board's paramount concern, the principal should inform the police regarding the child victim or her/his family, of circumstances which may help in the investigation. In addition, the principal should ask the following questions in respect to the victim and the alleged perpetrator:
 - Name and badge number of responding police officer(s).
 - How and when should the parents of the alleged perpetrator be contacted?
 - Will the victim/perpetrator be interviewed?
 - Do the investigators plan to come to the school or home? When?
 - May the victim/perpetrator go home at lunch or after school if the interview has not yet taken place? If the victim is a child that is scheduled for child care can the child be released to the child care centre? What information can be shared with the child care centre?
 - If no interview of the victim has taken place, and the victim is under 16, do the police have instruction for the supervision of the child?
 - What should the principal do if the parent of the victim/perpetrator arrives at the school?
 - What information can be shared with the victim/perpetrator and her/his parent(s) if the interview has not yet taken place?

A.2 Inform the Children's Aid Society

In the event that the alleged perpetrator is under 16 years of age, or is a sibling of the victim who is under 16 years of age, or has siblings under the age of 16 at

home, or is a babysitter, or is in any other way in a position of authority over the victim or other children, the CAS must be contacted.

<u>Children’s Aid Societies</u>	
Children’s Aid Society of Toronto	416-924-4646
Catholic Children’s Aid Society of Toronto	416-395-1500
Jewish Family and Child Services of Toronto	416-638-7800
Native Child and Family Services	416-969-8510

(a) Document the incident(s) in accordance with PR 560 (Dealing with Abuse and Neglect of Students)

Documentation of disclosed or suspected abuse cases of children under 16 years of age should be carefully prepared and maintained in accordance with the “Record of Report of Abuse or Neglect” (See PR 560). The report must:

- be factual (including dates and times);
- contain no opinions;
- be brief and to the point; and,
- include information seen or heard by the person making the report.

(b) Form 560A, Record of Report of Abuse/Neglect will be forwarded, in a sealed envelope marked “Private and Confidential,” to the appropriate Chief of Social Work and Attendance Services for secure storage.

(c) Form 560B, Notice of Report to a Children’s Aid Society indicating that a report has been made to the CAS is to be placed in the student’s OSR. This form **MUST** be signed by the Principal or Vice Principal.

(d) The Ontario Student Record (OSR) of the student will contain Form 560B: Notice of Report to a Children’s Aid Society to indicate that a report was made to the CAS and that a copy of 560A is on file with the Chief of Social Work and Attendance Services.

(e) Written records may be subject to subpoena or disclosure in any subsequent court hearing.

A.3 Follow-up With Police/CAS

If it is not apparent that an investigation has commenced within 24 hours or no assistance has been provided for the victim/perpetrator, it is the responsibility of the principal or designate to contact the police to ascertain the status of the case.

A.4 Procedures for Dealing With Alleged Perpetrator

- (a) Investigation begun: Where the police or CAS have begun an investigation of a student, the alleged perpetrator may not attend the school during the course of the investigation. The alleged perpetrator shall be refused admittance to the school pursuant to s. 265 (1) (m) of the *Education Act*.
- (b) Student Charged: Where a student has been charged with a sexual offence involving another student, the charged student shall be placed in another school or program in order to prevent contact with the alleged victim. A Safe and Caring Schools Administrator shall, in conjunction with the Chief of Social Work and Attendance Services, assist the receiving school to develop a safety plan.
- (c) Student Not Charged: Where a student has been investigated by the police for a sexual offence involving another student, and the alleged perpetrator has not been charged with an offence, the Safe and Caring Schools Administrator will determine the appropriate placement for the (alleged) perpetrator, will determine a safety plan in consultation with appropriate Chief of Social Work and Attendance Services and the principal of the placement school and will if necessary, conduct an investigation into the circumstances.

A.5 Support for Students, Parents and Staff

In the case of criminal charges being laid, as outlined above, the Board may, under the co-ordination of the Chief of Social Work and Attendance provide appropriate support for the affected school community. A response team may meet with the staff of the school as soon as possible to advise of the charges and describe a plan of action for dealing with students and the school community.

PART B: Sexual Misconduct by a Student Under 12 Years of Age

Sexually acting-out behaviour by children under the age of 12 years is a serious problem for which there are limited outside resources and legal guidelines. However, the Toronto District School Board expects these behaviours to be addressed through school social work and parental support. **IT IS NOT NECESSARY TO CALL THE POLICE. The appropriate Chief of Social Work and Attendance is the first line of response** since a student perpetrator under the age of 12 is under the age of criminal responsibility. Describing the sexual misconduct or misbehaviour of a child under 12 as “sexual assault” is inaccurate. Police may be consulted but the police have no authority to lay criminal charges. Parents may elect to call police and if they do so the principal will cooperate fully with the investigating officers.

B.1 Reporting Disclosures

(a) Inform the Principal

- When a staff member witnesses, or receives a report of concern about sexual behaviours exhibited by a student under the age of 12 such as those listed in following chart, staff should inform the principal or designate immediately (see also Appendix B).
- The principal and staff member will determine whether the behaviour falls into the category of inappropriate, problematic or sexually intrusive (see Chart I on page 8) and will follow the procedures in Part B of this procedure based on that determination. If in doubt whether abuse has occurred, consult with the CAS.
- The Chief of Social Work and Attendance will notify the appropriate Safe and Caring Schools Administrator.
- Do not call the police or initiate a criminal investigation unless advised to do so by the Chief of Social Work and Attendance.

(b) Notify Parent of Victim

Notification of parents/guardians of victims is required in accordance with s. 300.3 of the Education Act where the principal believes a student has been physically or emotionally harmed by the sexual misconduct. Such notice shall not be given if in the opinion of the principal to do so would put the victim at risk of harm from the parent /guardian.

When notifying the parent/guardian the principal shall disclose the nature of the activity that resulted in harm, the nature of the harm and steps taken to protect the victim's safety including the nature of any disciplinary action taken. (see Appendix B)

(c) Intervene According to the Following Criteria

In order to assess the category of the behaviour, see Chart I (below).

- ***Inappropriate sexual behaviour*** does not require notification of any person or agency although resources may be used at the principal's discretion.
 - Interventions should be based on Chart II (see page 9).
- ***Problematic sexual behaviour*** requires consultation with a Chief of Social Work and Attendance Services to determine which agency, if any, will do further investigation.
 - The parents of any party should not be contacted until after consultation with a resource person.
 - Interventions should be based on Chart II (see page 9).

- ***Sexually intrusive behaviour*** requires consultation with a Chief of Social Work and Attendance Services (see list Appendix A). The acting-out student will be refused admittance to school while the investigation takes place. The superintendent will be informed as to which agency will do further investigation.
- Interventions should be based on Chart II (see page 9).

Chart I: Sexual Behaviour Problems of Students Under 12 Years

1. INAPPROPRIATE	2. PROBLEMATIC	3. INTRUSIVE
<ul style="list-style-type: none"> • no harm to self or others • self-focused or intrapersonal • sexual language or re-enactment may be included • spontaneous • consensual or tolerated by other children • may not include touching • light-hearted usually • involvement of same-age children • continues to tell sexual jokes after asked not to 	<ul style="list-style-type: none"> • harm may be caused to self or others • self-focused or intrapersonal • explicit sexual language or re-enactment may be included • spontaneous • one or more incidents (progressive) • consensual or coercion • touching usually included • light-hearted usually • involvement of younger or same age children in sex games or aggressive sexuality • compulsive talking about sex and sexual activity • drawing adult sexual activity or abuse 	<ul style="list-style-type: none"> • harm caused • interpersonal • explicit sexual language or re-enactment • spontaneous or planned • one or more incidents (progressive) • manipulation, coercion or force • touching behaviours • younger or same age children or adults may be involved • compulsive talking about sex and sexual acts after intervention

Chart II: School-based Intervention for Sexual Behaviour Problems of Children Under 12 Years of Age

1. INAPPROPRIATE	2. PROBLEMATIC	3. INTRUSIVE
<ul style="list-style-type: none"> staff shall advise principal 	<ul style="list-style-type: none"> staff shall advise principal 	<ul style="list-style-type: none"> staff shall advise principal
<ul style="list-style-type: none"> staff to correct behaviour and establish consequences staff to ensure comfort of victim 	<ul style="list-style-type: none"> principal to correct behaviour and establish consequences principal to ensure comfort of victim and family 	<ul style="list-style-type: none"> principal to correct behaviour and establish consequences principal to ensure comfort of victim and family
<ul style="list-style-type: none"> superintendent may be informed consultation with Chief of Social Work and Attendance may be required school investigation may be required parents of all parties may be informed 	<ul style="list-style-type: none"> superintendent may be informed consultation with Chief of Social Work and Attendance required school or CAS investigation may be required parents of all parties shall be informed after consultation with a Chief of Social Work and Attendance 	<ul style="list-style-type: none"> superintendent shall be informed consultation with Chief of Social Work and Attendance required school or CAS investigation required parents of all parties shall be informed after consultation with a Chief of Social Work and Attendance (see B-1 (b)) Chief of Social Work and Attendance will consult with Safe and Caring Schools Administrator for an appropriate response (such as whether to notify the police)
<ul style="list-style-type: none"> No withdrawal from class or refuse to admit to school 	<ul style="list-style-type: none"> Student with problematic behaviour may be temporarily withdrawn or excluded if they pose a risk to others 	<ul style="list-style-type: none"> Student with intrusive behaviour shall be temporarily excluded, until the investigation has been concluded
<ul style="list-style-type: none"> CAS not called 	<ul style="list-style-type: none"> CAS may be called 	<ul style="list-style-type: none"> CAS shall be called
	<ul style="list-style-type: none"> Safety plan to be established Child may be referred for assessment/treatment 	<ul style="list-style-type: none"> Safety plan shall to be established if child not excluded or expelled Shall be a recommendation for assessment/treatment
	<ul style="list-style-type: none"> Principal will convene meeting with parents of student with problematic behaviour 	<ul style="list-style-type: none"> Principal shall convene meeting with parents of student with intrusive behaviour

(d) Procedures if Police or Children’s Aid Society are Involved

NOTE: The Children’s Aid Society must always be called if there are reasonable grounds to suspect that any child has been abused or is in need of protection. (For example, student perpetrator may be an abuse victim or have siblings under the age of 16). If the CAS is to be called, do not contact parents of any of the parties until the CAS has approved.

<u>Children’s Aid Societies</u>	
Children’s Aid Society of Toronto	416-924-4646
Catholic Children’s Aid Society of Toronto	416-395-1500
Jewish Family and Child Services of Toronto	416-638-7800
Native Child and Family Services	416-969-8510

(e) Document the Incidents

- (i) Documentation of sexual behaviour problems with police or CAS involvement and the children are under the age of 12 should be carefully prepared and maintained in accordance with Form 560A: Record of Report of Abuse or Neglect. The report must:
 - be factual (including dates and times);
 - contain no opinions;
 - be brief and to the point; and,
 - contain questions asked of the student, information seen or heard by the teacher, principal or designate, and other observers.
- (ii) Form 560A, Record of Report of Abuse/Neglect will be forwarded, in a sealed envelope marked “Private and Confidential,” to the appropriate Chief of Social Work and Attendance Services for secure storage.
- (iii) Form 560B, Notice of Report to a Children’s Aid Society indicating that a report has been made to CAS is to be placed in the student’s OSR. This form **MUST** be signed by the Principal or Vice Principal.
- (iv) The Ontario Student Record (OSR) of the student will contain Form 560B: Notice of Report to a Children’s Aid Society to indicate that a report was made to the CAS and that a copy of 560A is on file with the Chief of Social Work and Attendance Services.
- (v) Written records may be subject to subpoena or disclosure in any subsequent court hearing.

B.2 Safety Plan and Assessment/Treatment Agreement

- In the case of either sexually problematic or sexual intrusive behaviour, the principal will meet with the parents of the acting-out student.
- Where the behaviour is sexually intrusive the principal shall, with the assistance of the school social worker, or the Chief of Social Work and Attendance Services, establish a school safety plan with the parents of all parties, and will provide information regarding assessment and treatment for both the victim and perpetrator.
- If it is determined that the student's continued presence in the school would be detrimental to other students, the student will be refused admittance to the school (see Section B.3 below) and a suitable alternate program may be established.

B.3 Acting-Out Student - Refusal to Admit, - Discipline

- (i) If a student is to be removed from a school under this procedure, the principal should consult with the Safe and Caring Schools Administrator and exclude pursuant to section 265(m) of the *Education Act* which states:

“It is the duty of the principal of a school, subject to an appeal to the Board to refuse to admit to the school or classroom a person whose presence in the classroom would, in the principal's judgment, be detrimental to the physical or mental well-being of the pupils.”

Every effort must be made to continue the academic program of an excluded student.

- (ii) If following a principal's inquiry, a student is found to have engaged in sexually intrusive behaviour, the student may be subject to disciplinary sanctions such as suspension or expulsion consistent with Part XIII of the Education Act.
- (iii) Appropriate assessment will be required for re-entry into regular program.
- (iv) In the event a student who has been refused admittance under this procedure is registered at another school or program, such student shall not be admitted to the new school or program until the new school or program receives the Ontario Student Record and any documents generated pursuant to this procedure.
- (v) A student returning from a refusal to admit under this procedure shall have a transition plan prepared by the principal in consultation with the sending school (if any), Social Work and Attendance Services, Psychological Services, the family and Treatment Agency (if any).

5.0 REFERENCE DOCUMENTS

Board Policy: P071, Gender-Based Violence

Forms: 560A: Record of Report of Abuse or Neglect
 560B: Notice of Report to a Children's Aid Society

Checklist: 560C : Checklist for Formal Reports of Child Abuse/Neglect

Child and Family Services Act

Criminal Code of Canada

Youth Criminal Justice Act

Education Act, ss. 300.1, 300.2, 300.3, 300.4, 301, 302.

Professional Support Services

David Johnston
Senior Manager

Phone : 416-396-9171
Fax : 416-396-9165
Cell : 416-807-0031

NORTH/EAST QUADRANT	SOUTH/EAST QUADRANT
Frank Orlando Chief of Social Work and Attendance Services Phone : 416-396-3400 Fax : 416-396-5444 Cell : 416-459-1846	Mark Dooner Chief of Social Work and Attendance Services Phone : 416-396-7935 Fax : 416-396-5444 Cell : 416-459-1843

NORTH/WEST QUADRANT	SOUTH/WEST QUADRANT
Marcia Powers-Dunlop Chief of Social Work and Attendance Services Phone : 416-394-3388 Fax : 416-394-3978 Cell : 416-459-1844	Harvey Nagelberg Chief of Social Work and Attendance Services Phone : 416-394-3767 Fax : 416-394-3978 Cell : 416-459-1845

For situations involving TDSB staff or volunteers contact:

Investigation Advisors:

Brian Wilson 416-397-3234
Kathy Small 416-397-3571

Duty to Report Harm (Education Act - Bill 157)

Delegation by principals

300.1 (1) A principal of a school may delegate in writing any of his or her powers, duties or functions under this Part to,

- (a) a vice-principal of the school; and
- (b) a teacher employed in the school. 2009, c. 17, s. 1.

Same

(2) A teacher who is not a vice-principal may only act under a delegation under this section if the principal and vice-principal of the school are absent from the school. 2009, c. 17, s. 1.

Same

(3) A delegation under this section is subject to any restrictions, limitations and conditions set out in the delegation. 2009, c. 17, s. 1.

Same

(4) A delegation under this section shall be in accordance with any policies and guidelines established by the Minister under subsection 301 (5.1) or by the board under subsection 302 (0.1). 2009, c. 17, s. 1.

Reporting to the principal

300.2 An employee of a board who becomes aware that a pupil of a school of the board may have engaged in an activity described in subsection 306 (1) or 310 (1) shall, as soon as reasonably possible, report to the principal of the school about the matter. 2009, c. 17, s. 1.

Notice to parent or guardian

300.3 (1) Subject to subsections (2) and (3), if the principal of a school believes that a pupil of the school has been harmed as a result of an activity described in subsection 306 (1) or 310 (1), the principal shall, as soon as reasonably possible, notify the parent or guardian of the pupil. 2009, c. 17, s. 1.

Same

(2) A principal shall not, without the pupil's consent, notify a parent or guardian of a pupil who is,

- (a) 18 years or older; or
- (b) 16 or 17 years old and has withdrawn from parental control. 2009, c. 17, s. 1.

Same

(3) A principal shall not notify a parent or guardian of a pupil if in the opinion of the principal doing so would put the pupil at risk of harm from a parent or guardian of the pupil, such that the notification is not in the pupil's best interests. 2009, c. 17, s. 1.

Same

(4) When notifying a parent or guardian of a pupil under this section, the principal shall disclose,

- (a) the nature of the activity that resulted in harm to the pupil;
- (b) the nature of the harm to the pupil; and
- (c) the steps taken to protect the pupil's safety, including the nature of any disciplinary measures taken in response to the activity. 2009, c. 17, s. 1.

Same

(5) When notifying a parent or guardian under this section, the principal shall not disclose the name of or any other identifying or personal information about a pupil who engaged in the activity that resulted in the harm, except in so far as is necessary to comply with subsection (4). 2009, c. 17, s. 1.

Response by board employees

300.4 (1) If the Minister has established policies or guidelines under subsection 301 (5.6), an employee of a board who observes a pupil of a school of the board behaving in a way that is likely to have a negative impact on the school climate shall respond in accordance with those policies and guidelines and in accordance with any policies and guidelines established by the board under subsection 302 (3.3). 2009, c. 17, s. 1.

Exception

(2) Subsection (1) does not apply in circumstances set out in a regulation made under clause 316 (1) (d). 2009, c. 17, s. 1.

2. Section 301 of the Act is amended by adding the following subsections:

Same, governing delegation by principals

(5.1) The Minister may establish policies and guidelines with respect to delegation by principals, under section 300.1, of their powers, duties or functions under this Part.

Same, reporting to principals

(5.2) The Minister may establish policies and guidelines requiring individuals described in subsection (5.3) who become aware that a pupil of a school of a board may have engaged in an activity described in subsection 306 (1) or 310 (1) to report to the principal of the school about the matter, as soon as reasonably possible.

Same

(5.3) The individuals referred to in subsection (5.2) are individuals who are not board employees who come into direct contact with pupils of a board on a regular basis in the normal course of,

- (a) providing goods or services to the board;
- (b) carrying out their employment functions as an employee of a person who provides goods or services to the board; or
- (c) providing services to a person who provides goods or services to the board.

Same

(5.4) The Minister may establish policies and guidelines with respect to reporting to principals under section 300.2 or under a policy or guideline established under subsection (5.2).

Same, support to certain pupils

(5.5) The Minister may establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3 (3).

Same, governing responses by board employees

(5.6) The Minister may establish policies and guidelines with respect to responses under section 300.4 by employees of a board, including, but not limited to, policies and guidelines with respect to the kinds of responses that are appropriate.

3. (1) Section 302 of the Act is amended by adding the following subsection:

Board policies and guidelines

Delegation by principals

(0.1) Every board shall establish policies and guidelines with respect to delegation by principals, under section 300.1, of their powers, duties or functions under this Part and the policies and guidelines must be consistent with the policies and guidelines established by the Minister under section 301, and must address such matters and include such requirements as the Minister may specify.

(2) Section 302 of the Act is amended by adding the following subsections:

Same, reporting to principals

(3.1) If required to do so by the Minister, a board shall establish policies and guidelines with respect to reporting to principals under section 300.2 or under a policy or guideline established under subsection 301 (5.2), and the policies and guidelines must be consistent with those established by the Minister under section 301 and must address such matters and include such requirements as the Minister may specify.

Same, support to certain pupils

(3.2) If required to do so by the Minister, a board shall establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3 (3), and the policies and guidelines must be consistent with those established by the Minister under section 301 and must address such matters and include such requirements as the Minister may specify.

Same, governing responses by board employees

(3.3) If required to do so by the Minister, a board shall establish policies and guidelines with respect to responses under section 300.4 by employees of a board, including but not limited to policies and guidelines with respect to the kinds of responses that are appropriate, and the policies and guidelines must be consistent with those established by the Minister under section 301, and must address such matters and include such requirements as the Minister may specify.

4. Subsection 316 (1) of the Act is amended by adding the following clauses:

- (c) governing actions to be taken by a principal who does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3 (3);
- (d) setting out circumstances in which employees are not required to respond under section 300.4.

Sexual Offences as Defined by the Criminal Code

1. Age of Consent

Consent no defence

150.1 (1) Subject to subsections (2) to (2.2), when an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of 16 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

Exception - complainant aged 12 or 13

- (2) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 12 years of age or more but under the age of 14 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused:
- (a) is less than two years older than the complainant; and
 - (b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Exception - complainant aged 14 or 15

- (2.1) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if
- (a) the accused:
 - (i) is less than five years older than the complainant; and
 - (ii) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant; or
 - (b) the accused is married to the complainant.

Exception for transitional purposes

- (2.2) When the accused referred to in subsection (2.1) is five or more years older than the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if, on the day on which this subsection comes into force,
- (a) the accused is the common-law partner of the complainant, or has been cohabiting with the complainant in a conjugal relationship for a period of less than one year and they have had or are expecting to have a child as a result of the relationship; and
 - (b) the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Exemption for accused aged twelve or thirteen

- (3) No person aged twelve or thirteen years shall be tried for an offence under section 151 or 152 or subsection 173(2) unless the person is in a position of trust or authority towards the complainant, is a person with whom the complainant is in a relationship of dependency or is in a relationship with the complainant that is exploitative of the complainant.

Mistake of age

- (4) It is not a defence to a charge under section 151 or 152, subsection 160(3) or 173(2), or section 271, 272 or 273 that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

Idem

- (5) It is not a defence to a charge under section 153, 159, 170, 171 or 172 or subsection 212(2) or (4) that the accused believed that the complainant was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

Mistake of age

- (6) An accused cannot raise a mistaken belief in the age of the complainant in order to invoke a defence under subsection (2) or (2.1) unless the accused took all reasonable steps to ascertain the age of the complainant.

R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 2; 2008, c. 6, ss. 13, 54.

NOTE: A child must be 16 years of age to consent to sexual activity with an adult over the age of 21.

A child between the ages of 14 and 16 cannot consent to sexual activity with a person that is more than 5 years older.

A child between the ages of 12 and 14 cannot consent to sexual activity with a person more than 2 years older.

A child under 12 cannot consent to sex.

2. Sexual assault

- 271.** (1) Every one who commits a sexual assault is guilty of
- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 271; R.S., 1985, c. 19 (3rd Supp.), s. 10; 1994, c. 44, s. 19.

NOTE: Sexual assault is an assault which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated. The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one: whether viewed in the light of all the circumstances the sexual or carnal context of the assault is visible to a reasonable observer. The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats, which may or may not be accompanied by force, will be relevant. The intent or purpose of that person committing the act, to the extent that this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence, it may be a factor in determining whether the conduct is sexual. The existence of such a motive is, however, merely one of many factors to be considered.

3. Sexual Interference

151. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 3; 2008, c. 6, s. 54.

4. Invitation to Sexual Touching

152. Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

R.S., 1985, c. C-46, s. 152; R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 3; 2008, c. 6, s. 54.

5. Sexual Exploitation

153. (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

- (b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.
- (1.1) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or
 - (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.
- (1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including
- (a) the age of the young person;
 - (b) the age difference between the person and the young person;
 - (c) the evolution of the relationship; and
 - (d) the degree of control or influence by the person over the young person.
- (2) In this section, “young person” means a person 16 years of age or more but under the age of eighteen years.

R.S., 1985, c. C-46, s. 153; R.S., 1985, c. 19 (3rd Supp.), s. 1; 2005, c. 32, s. 4; 2008, c. 6, s. 54.

6. Child Pornography

Definition of “child pornography”

163.1 (1) In this section, “child pornography” means

- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

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- (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or
- (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;
- (b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;
- (c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or
- (d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.

Making child pornography

- (2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of
 - (a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of ninety days.

Distribution, etc. of child pornography

- (3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of
 - (a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months

and to a minimum punishment of imprisonment for a term of ninety days.

Possession of child pornography

- (4) Every person who possesses any child pornography is guilty of
- (a) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

Accessing child pornography

- (4.1) Every person who accesses any child pornography is guilty of
- (a) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or
 - (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

Interpretation

- (4.2) For the purposes of subsection (4.1), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself.

Aggravating factor

- (4.3) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that the person committed the offence with intent to make a profit.

Defence

- (5) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being eighteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was eighteen years of age or more, the representation did not depict that person as being under the age of eighteen years.

Defence

- (6) No person shall be convicted of an offence under this section if the act that is alleged to constitute the offence
- (a) has a legitimate purpose related to the administration of justice or to science, medicine, education or art; and
 - (b) does not pose an undue risk of harm to persons under the age of eighteen years.

Question of law

- (7) For greater certainty, for the purposes of this section, it is a question of law whether any written material, visual representation or audio recording advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.

1993, c. 46, s. 2; 2002, c. 13, s. 5; 2005, c. 32, s. 7.

7. Luring A Child

- 172.1** (1) Every person commits an offence who, by means of a computer system within the meaning of subsection 342.1(2), communicates with
- (a) a person who is, or who the accused believes is, under the age of eighteen years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155 or 163.1, subsection 212(1) or (4) or section 271, 272 or 273 with respect to that person;
 - (b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 280 with respect to that person; or
 - (c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.
- (2) Every person who commits an offence under subsection (1) is guilty of
- (a) an indictable offence and liable to imprisonment for a term of not more than ten years; or

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- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

- (3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of eighteen years, sixteen years or fourteen years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

- (4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least eighteen years of age, sixteen years or fourteen years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

2002, c. 13, s. 8; 2007, c. 20, s. 1; 2008, c. 6, s. 14.

Legal Responsibilities Under the Child and Family Services Act

1. Duty to Report (C.F.S.A. Section 72(1))

The *Child and Family Services Act* states that “if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

- 1.1. The child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person’s
 - (a) failure to adequately care for, provide for, supervise or protect the child, or
 - (b) pattern of neglect in caring for, providing for, supervising or protecting the child.
- 1.2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s
 - (a) failure to adequately care for, provide for, supervise or protect the child, or
 - (b) pattern of neglect in caring for, providing for, supervising or protecting the child.
- 1.3. The child has been sexually molested or sexually exploited, by the person having charge of the child or another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.
- 1.4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 1.3.
- 1.5. The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to the treatment.
- 1.6. The child has suffered emotional harm, demonstrated by serious
 - (a) anxiety
 - (b) depression
 - (c) withdrawal
 - (d) self-destructive or aggressive behaviour, or
 - (e) delayed development.

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- 1.7. The child has suffered emotional harm of the kind described in the subparagraphs of 1.6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.
 - 1.8. There is a risk that the child is likely to suffer emotional harm of the kind described in the subparagraphs of 1.6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
 - 1.9. There is a risk that the child is likely to suffer emotional harm of the kind described in the subparagraphs of 1.6 and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.
 - 1.10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
 - 1.11. The child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
 - 1.12. The child is less than 12 years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to those services or treatment.
 - 1.13. The child is less than 12 years old and has on more than one occasion injured another person or caused damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.
2. Ongoing Duty to Report (C.F.S.A. Section 72(2))

A person who has additional reasonable grounds to suspect one of the matters set out in subsection 72 (1) above shall make a further report under subsection (1) even if he or she has made previous reports with respect to the same child.

3. Person Must Report Directly (C.F.S.A. Section 72(3))

A person who has a duty to report a matter under subsection (1) or (2) above shall make the report directly to the society and shall not rely on any other person to report on his or her behalf.

The professional duty to report overrides the provisions of any other provincial or federal statute, e.g. Education Act, Young Offenders Act, Mental Health Act, Criminal Code of Canada, s. 18(1)(b) of the Regulation under the Teaching Professions Act.

4. Penalty for Failure to Report (C.F.S.A. Sections 72(4) and 72(5)) (Applicable to “professional” only, see bold below)

Section 72(4)

A person referred to in subsection (5) below is guilty of an offence if,

- (a) he or she contravenes subsection (1) or (2) by not reporting a suspicion; and
- (b) the information on which it was based was obtained in the course of his or her professional or official duties.

Section 72(5)

Subsection (4) applies to every person who performs professional or official duties with respect to children including,

- (a) A health care professional, including a physician, **nurse**, dentist, pharmacist and **psychologist**;
- (b) a **teacher, school principal, social worker**, family counsellor, priest, rabbi, member of the clergy, operator or **employee of a day nursery and youth and recreation worker**;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

A professional who does not report suspected child abuse as required by Sections 72(1) and 72(2) of the Child and Family Services Act is guilty of an offence, and upon conviction, is liable to a fine of not more than \$1,000 (C.F.S.A. s.85(1)) or, except in the case of contravention of subsection 72(3) to imprisonment for a term of not more than one year, or to both.

5. Protection for Persons Reporting

Board employees or volunteers who report suspicions of child abuse are afforded protection from the consequences of any legal proceedings which may be brought by the parents or on behalf of the child, provided the reporting is not done maliciously or without reasonable grounds (Section 72(7) of the C.F.S.A.)

Children’s Sexual Behaviour

Children’s sexual behaviour develops over time, like other areas of growth. Many behaviours are healthy and are normal for children at certain ages. On the other hand, there are some behaviours which we should be concerned about. These behaviours are “worrisome” and should not be ignored or seen as child’s play. The parent/caregiver may need to redirect the child, or consider asking for advice on what to do. Other behaviours are more serious and may even be dangerous to the child and others. These children may need professional help, and the parent/caregiver should talk with someone who understands the sexual development of children (for example, a doctor, a public health nurse, or a child protection worker).

The behaviours in the first chart are mostly seen in toddlers and preschoolers, but may also be seen in older children. The second chart looks at behaviours common in older children (adapted from Johnson, *Updated Understanding Children’s Behaviors, What’s Natural and Healthy*, 2004).

SEXUAL BEHAVIOUR IN TODDLERS & PRESCHOOLERS

TYPE OF BEHAVIOUR	OKAY	WORRISOME	GET HELP
CURIOSITY BEHAVIOURS	<ul style="list-style-type: none"> • asks appropriate questions about sex, for example “where do babies come from?” • children learn to name parts of the body 	<ul style="list-style-type: none"> • shows fear when talking about anything to do with sex 	<ul style="list-style-type: none"> • does not stop asking questions about sex • knows too much about sexuality for age and stage of development
SELF-EXPLORATION	<ul style="list-style-type: none"> • likes to be naked • has erections • is curious and enjoys exploring own body • touches own genitals as a self-soothing behaviour (for example, when going to sleep, when feeling sick, tense or afraid) • very aware of genital area during toilet training • puts objects in own genitals or buttocks without it feeling uncomfortable 	<ul style="list-style-type: none"> • self-stimulates on furniture, toys and uses objects to self-stimulate • imitates sexual behaviour with dolls or toys • continues to self-stimulate in public after being told that this behaviour should take place in private • puts something in genitals, buttocks even when it feels uncomfortable 	<ul style="list-style-type: none"> • self-stimulates in public or in private instead of playing in other activities • self-stimulates on other people • harms own genitals, buttocks

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(Sexual Behaviour in Toddlers & Preschoolers, continued)

TYPE OF BEHAVIOUR	OKAY	WORRISOME	GET HELP
BEHAVIOUR WITH OTHERS	<ul style="list-style-type: none"> • explores the bodies of other children when playing • if people are naked, the child likes to look • wants to touch genitals, to see what they feel like • may show his/her genitals or buttocks to others • may take off clothes in front of others • sees these behaviours as fun and silly 	<ul style="list-style-type: none"> • continues to play games like “doctor” after asked not to • always wants to touch other people • tries to do adult sexual behaviours • copies adult sexual activity with clothes on 	<ul style="list-style-type: none"> • forces, bullies other children to take their clothes off or do sexual things • sad, angry or aggressive scenes between people is shown in dramatic play • demands to see the genitals of other children or adults • tricks or forces other children into touching genitals, adult sexual behaviours, copying sexual acts with clothes off, oral sex
BATHROOM, TOILETING AND SEXUAL FUNCTIONS	<ul style="list-style-type: none"> • interested in peeing and pooing • is curious about and tries to see what people are doing in the bathroom • some preschoolers want privacy in the bathroom and when changing • uses unacceptable words for toileting and sexual functions 	<ul style="list-style-type: none"> • spreads poo • purposefully pees in places they shouldn't • often caught watching others who want privacy in the bathroom • continues to use unacceptable words after asked not to 	<ul style="list-style-type: none"> • keeps on spreading poo • continues to pee in places they shouldn't • does not allow others privacy in the bathroom or bedroom • does not care about the rules set for unacceptable language and continues to use it
RELATIONSHIPS	<ul style="list-style-type: none"> • plays house with other children • kisses and hugs people who are important to him/her • may share what they have found out about sex 	<ul style="list-style-type: none"> • when talks about adult relationships, refers to sex a lot • afraid of being kissed or hugged • talks or acts in a sexual way with others • uses sexual language even after asked not to • talks about sex or includes sex in play instead of doing other things 	<ul style="list-style-type: none"> • imitates adult sexual behaviour in detail • being touched causes fear • talks in a sexual way even with people s/he does not know

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TYPE OF BEHAVIOUR	OKAY	WORRISOME	GET HELP
BEHAVIOUR WITH ANIMALS	<ul style="list-style-type: none"> • curious about how animals have babies 	<ul style="list-style-type: none"> • touches genitals of animals 	<ul style="list-style-type: none"> • sexual behaviour with animals
RELATIONSHIP	<ul style="list-style-type: none"> • thinks children of the opposite sex are "gross" • chases children of the opposite sex • talks about sex with friends, talks about having a boyfriend/girlfriend • older children play games with peers about sex • likes telling and listening to dirty jokes 	<ul style="list-style-type: none"> • refuses contact with specific individual(s) • uses sexual language to insult or scare others • wants to play games related to sex with younger or older children • continues to tell dirty jokes after asked not to • makes sexual sounds 	<ul style="list-style-type: none"> • hurts and/or avoids certain types of people (e.g., the opposite sex, people with certain features such as facial hair) • cannot seem to stop talking about sex and sexual acts • sees all relationships in a sexual way • forces others to play sexual games • continues to tell dirty jokes even after being disciplined
NATURE OF SEXUAL AWARENESS	<ul style="list-style-type: none"> • includes genitals on drawings of people • looks at pictures of naked people • makes fun of the opposite sex • shows that s/he wants privacy respected 	<ul style="list-style-type: none"> • includes genitals in drawings of one sex and not the other • genitals are a main feature in pictures, or are larger than the rest of the body parts • overly-curious with pictures of naked people • wants to be the opposite sex • becomes very upset when privacy is not respected 	<ul style="list-style-type: none"> • drawings may include adult sexual activity, sexual abuse of a child • hates being a boy or girl • hates own genitals • demands privacy in an aggressive or overly upset way

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