



Department of
**Intellectual &
Developmental Disabilities**



IDD and Community Policing

DIDD Services and Investigation Processes
Training for Tennessee Law Enforcement Officers

Tennessee Department of Intellectual and Developmental Disabilities | April 2015

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Introduction to Intellectual and Developmental Disabilities

What Is the Definition of Intellectual Disabilities?

Intellectual disability (ID) is a term used to describe significant limitations that a person may have in intellectual functioning (IQ < 70) and adaptive behavior before the age of 18.

Limitations in intellectual functioning involve the person's difficulty processing information and making decisions. Limitations in adaptive behavior include problems communicating effectively and carrying out practical everyday living skills. However, this definition should by no means be taken as a complete understanding of people with intellectual disabilities. A number of people with intellectual disability are mildly affected, making the disability difficult to recognize. People with intellectual disabilities have unique personalities and are just as alike and just as different as anyone else. In fact, many people may be surprised to know that adults with intellectual disabilities can live independent, productive lives in the community with support from family, friends or a service system.

What Is the Definition of Developmental Disabilities?

According to the federal Developmental Disabilities Act (Pub. L. 106-402), the term developmental disability (DD) is a severe, chronic disability that:

1. Is attributable to a mental or physical impairment or a combination of those impairments
2. Occurs before the age of 22
3. Is likely to continue indefinitely
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency
5. Reflects the individual's need for individualized supports, or other forms of assistance that are of lifelong or extended duration.

People with developmental disabilities include individuals with cerebral palsy, epilepsy, developmental delay, autism and autism spectrum disorders, fetal alcohol spectrum disorder (FASD) or any of hundreds of specific syndromes and neurological conditions that can result in

impairment of adaptive behavior similar to that of a person with intellectual disabilities. Intellectual disability is a subcategory of developmental disability, but because they have similar limitations in adaptive behavior, they are often referred to together as Intellectual and Developmental Disabilities (IDD).

How Many People Have Intellectual/Developmental Disabilities?

It is estimated that approximately 2.2% of the general population, or 132,000 Tennesseans, have an intellectual disability. Estimates of developmental disability vary, but as many as 1 family out of every 5 is has a family member with a developmental disability.

What causes Intellectual/Developmental Disabilities?

- Causes prior to birth such as genetic conditions (Down Syndrome, Fragile X and others) or maternal factors such as illness, infection or substance abuse during pregnancy
- Causes during birth such as oxygen deprivation, prematurity or birth injury
- Causes from birth to 18 such as brain injury, infection/disease, environmental toxins or abuse

Intellectual Disabilities and Mental Illness

Intellectual disabilities and mental illness are TWO VERY DIFFERENT CONDITIONS. People with intellectual disabilities may or may not have a mental illness. They experience the same emotional stressors as people without intellectual disabilities, but people with intellectual disabilities may need more help to cope with those stressors than people without an intellectual disability. Many professionals have adopted the estimate that 30-35% of all persons with intellectual or developmental disabilities also have a psychiatric disorder. Examples of psychiatric disorders that persons with ID may have are:

- Anxiety Disorders – extreme fear and nervousness or fidgetiness including Post-Traumatic Stress Disorder
- Depressive Disorders – feelings of worthlessness and possible suicidality
- Bipolar Disorder – cycling through periods of depressive and manic states

- Psychotic Disorders – seeing or hearing things that aren't there or paranoid or delusional thinking

Because persons with intellectual disabilities may have difficulty expressing themselves, it is often difficult to tell what they may be feeling. Sometimes the symptoms of psychiatric disorders are made worse because the person is unable to communicate, making it extremely important that they have access to appropriate mental health services.

How Does Having a Disability Affect Someone's Life?

The effects of intellectual disabilities vary considerably among people who have them, just as the range of abilities varies considerably among all people. As adults, some will be able to lead independent lives in the community without paid supports. Others will need significant support throughout their lives. However, with the appropriate supports, every person with an intellectual disability can lead a satisfying and meaningful life in the community.

How Can Supports Help?

Supports include the resources and individual strategies necessary to promote the development, education, interests and well-being of a person. Supports enhance individual functioning. Sources of support can include family, friends, community members or a service system. Job coaching is one example of a support often needed by a new employee with an intellectual disability. Supports can be provided in many settings, and a "setting" or location by itself is not a support.

Why Do Some People Still Use the Term "Mental Retardation"?

The term "mental retardation" is an outdated term to refer to intellectual disabilities. Following the lead of the federal government in the passage of [Rosa's Law in 2010](#), many states have changed all terminology referring to mental retardation to reflect intellectual disability. When speaking to or about a person with an intellectual disability, you should not use the terms "mental retardation" or "retarded."

Common Characteristics of Persons with IDD

People with intellectual or developmental disabilities are unique individuals, and it is very difficult to generalize any single characteristic to ALL people with IDD. However, there are some

common characteristics that may aid in identification and effective intervention. Some of these characteristics are listed below:

- Some people with disabilities have stronger skills for understanding others than expressing themselves to others. Conversely, a person's expressive speech may sometimes give an impression of greater comprehension than is actually the case. Some people may use a computer or other device to communicate.
- People with IDD who do not communicate well may use their behavior to communicate pain or frustration.
- People with severe IDD (particularly those with an autism spectrum disorder) may overreact to sensory stimuli like touch, loud noises or perceptions of threat. Reactions may vary from jumping, flapping of arms and hands, making loud noises or engaging in aggressive or self-injurious behavior.
- People with IDD are often victims of abuse and may feel more easily threatened and react to these threats in more dramatic ways than a typical person would.
- People with IDD may be more likely to admit to something they didn't do if they feel pressured to respond that way.
- 87% of people with IDD are only mildly affected making their disability more difficult to recognize.

Community Oriented Policing

There is no question that police have played and will continue to play a critical role in the lives of people with disabilities. Whether it is in a typical domestic situation or a residential treatment setting, police are often called upon to assist in a crisis. To fulfill this role, perhaps the best information about people with disabilities comes from learning more about people with disabilities and the communities that surround them. As officers become part of their communities and get to know their residents, they are better prepared to assist people with disabilities. The more you learn about the individuals that live in your community, the better you will be at intervening and collaborating with others to make things safer. People with disabilities and their families need you!

Cross-Systems Crisis Planning

When a person experiences a behavioral crisis, several community partners must work together to manage the situation. Community members who may become involved in a crisis may include agencies providing services to persons with IDD, law enforcement officers, mobile crisis workers, emergency room staff and psychiatric hospital staff. In cases where people are in frequent need of emergency services, it is a good idea for representatives of these various groups to come together and create a Cross-Systems Crisis Plan (CSCP) for the person. The CSCP contains important information regarding how best to communicate with the person and intervene in a crisis. It also includes information about pre-arranged back-up services that may be helpful in resolving the crisis. Persons supported through DIDD who are frequent users of crisis services are required to have a CSCP created by the agency that serves them. Whenever possible, police officers should be part of the team developing a CSCP. Participation in this process helps police officers become part of the community that supports people with IDD and increases the likelihood of timely and effective crisis responses.

The Police Officer's Dilemma

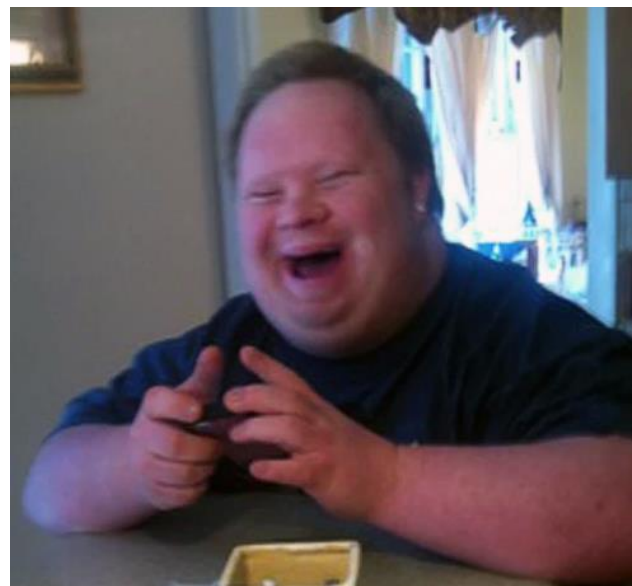
Every day, police officers are faced with balancing personal rights and public safety. This is difficult enough to do with plenty of time to consider options, but the difficulty is compounded when officers face threatening situations that require quick decisions. These decisions become even more complicated when they involve people with ID. It is important for law enforcement officers to know how to quickly determine if a person may have an intellectual disability and how best to intervene.

Meet Robert Saylor. His final hours were documented in a February 2013 story in *The Washington Post*. What follows is an excerpt, but you can [read more at this link](#).

Fascinated with law enforcement, Robert Ethan Saylor would sometimes call 911 just to ask the dispatchers a question. He loved talking to police officers and was a loyal follower of the TV show "NCIS."

Now, his death at age 26 is the subject of a criminal investigation that has left those who knew him in his Frederick County (Maryland) community and those who didn't around the country wondering: How did a young man with Down syndrome die in an encounter with the very people he idolized?

As officials tell it, Saylor had been watching "Zero Dark Thirty" at a Frederick movie theater last month and, as soon as it ended, wanted to watch it again. When he refused to leave, a theater employee called three off-duty Frederick County sheriff's deputies who were working a security job at the Westview Promenade shopping center and told them that Saylor either needed to buy another ticket or be removed.



What happened next is the subject of a probe by the Frederick County Bureau of Investigation. The findings are expected to go to the Frederick County State's Attorney's Office for review this week.

Cpl. Jennifer Bailey, a spokeswoman for the sheriff's office, said Saylor cursed at the deputies, who weren't wearing uniforms, and began hitting and kicking them. The deputies restrained him using three sets of handcuffs linked together and escorted him from the theater. At some point, Saylor ended up on the ground and began showing signs of medical distress. A short while later, he was pronounced dead at a local hospital.

It All Could Have Been Avoided

Without delving too deeply, it is easy to understand the dilemma faced by officers in this situation. They saw it as their responsibility to enforce the theater rules and remove Mr. Saylor from the theater. To make it worse, they felt time pressure because the next movie was about to start.

Would these officers have done things differently with the following information?

- People with Down syndrome often have difficulty processing information.
- People with disabilities often become more resistant under time pressure.
- The person present with the young man was a caregiver.
- People with disabilities are at greater risk for positional asphyxiation.

Positional and Aspirational Asphyxiation

Positional asphyxiation is death caused by restraining a person in a position where breathing is compromised. Persons with ID, breathing difficulties, or obesity are at greater risk for positional asphyxiation. There is also a great risk for aspirational asphyxiation (i.e., choking on vomit). For this reason, officers should avoid restraining or handcuffing people with intellectual disabilities unless it is absolutely necessary to prevent harm. When any form of restraint is used, the following guidelines should be considered:

- Avoid placing restrained persons in a prone or supine position. Breathing difficulties may be increased in a prone or supine position. Likewise, many persons with ID have problems with Gastro-esophageal Reflux Disease (GERD), placing them at greater risk for aspirational asphyxiation. If a person must be restrained in a horizontal position, it is best to place them on their side with their back supported.
- Avoid placing additional pressure on the person's neck, back or chest while being restrained. Further restriction of the airway in any manner may increase the likelihood of positional asphyxiation.
- Make sure that you can see the person's face while restrained. Be attentive to signs of difficulty breathing, change in color, or facial expressions that indicate distress. A person with difficulty breathing may have difficulty communicating. As stated earlier, people with disabilities often do not communicate well in general. For these reasons, it is important to have a non-vocal means of assessing physical distress while a person is restrained.
- Monitor the person's ability to breathe continuously while restrained. Develop the practice of verifying breathing at no longer than 1 minute intervals.
- Try to help the person remain calm while restrained. Additional stress may increase the likelihood of positional or aspirational asphyxiation.
- If the person has difficulty breathing, release the person from the restraint and raise him or her to an upright position.
- Minimize the duration of the restraint. Longer periods of restraint increase the risk of positional asphyxiation.

Recognizing the Presence of Disability

As seen in the example, having an intellectual or developmental disability can affect the way a person processes information and communicates with others. Not all people with intellectual disabilities are alike. A person with Down syndrome is easy to recognize by facial features, but other people with intellectual disabilities can only be recognized by their behavior or communication with others. Common difficulties of persons with intellectual disabilities include the following:

- Low intelligence
- Slow processing and response to requests
- Difficulty remembering things
- Difficulty understanding instructions or commands
- Difficulty expressing themselves clearly or complete lack of vocal communication
- Difficulty using context to understand a situation

People with developmental disabilities like autism spectrum disorder or cerebral palsy may not have low intelligence, but they still may have many of the other characteristics listed above.

As stated previously, many people with ID may also experience a co-occurring mental health disorder. As a result, their behavior may appear irrational. It is important for officers who encounter people with behavioral and mental health disorders have a solid plan of action.

So...What Does an Informed Officer Do?

First and foremost, the officer must assess the risk in a given situation. Obviously, if there is an immediate risk of serious harm, the officer should take a defensive action according to his or her training. Short of that, he or she should assess the situation and determine how best to intervene.

Since it is not always obvious to the officer if a person has ID, it is important for officers to use context clues to orient themselves to the situation they're facing. For instance, if the person has a caregiver, there is a high likelihood the person may have difficulty in social situations or responding to commands. If caregivers or family members mention the presence of a disability by using the terms "intellectual disability", "mentally retarded" or "touched", that may also be a clue on how to respond.

Once you've determined that the person may have a disability, begin asking questions to assess the person and the situation. Remain calm. Apply the maxim, "Seek first to understand, then to be understood." By approaching people in this manner, you preserve all options for resolving the situation. Listening and "seeking to understand" simply gives you more information for how the crisis might be resolved. Becoming authoritative and directive may be necessary in certain situations (it may even be helpful), but many officers may take it as a threat if the person doesn't immediately respond. For many people with ID, the expression of power may only serve to escalate the situation.

What specific obligations does an officer have when interacting with a person with a disability?

Title II of the ADA applies to all law enforcement activities, including arrests. Title II broadly covers all public entities and prohibits disability discrimination with respect to all of their services, programs and activities. 42 U.S.C. 12132; see *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998). By its plain terms, the provision therefore extends to arrests. The ADA's legislative history and the Justice Department's implementing regulations and interpretive guidance confirm this reading.

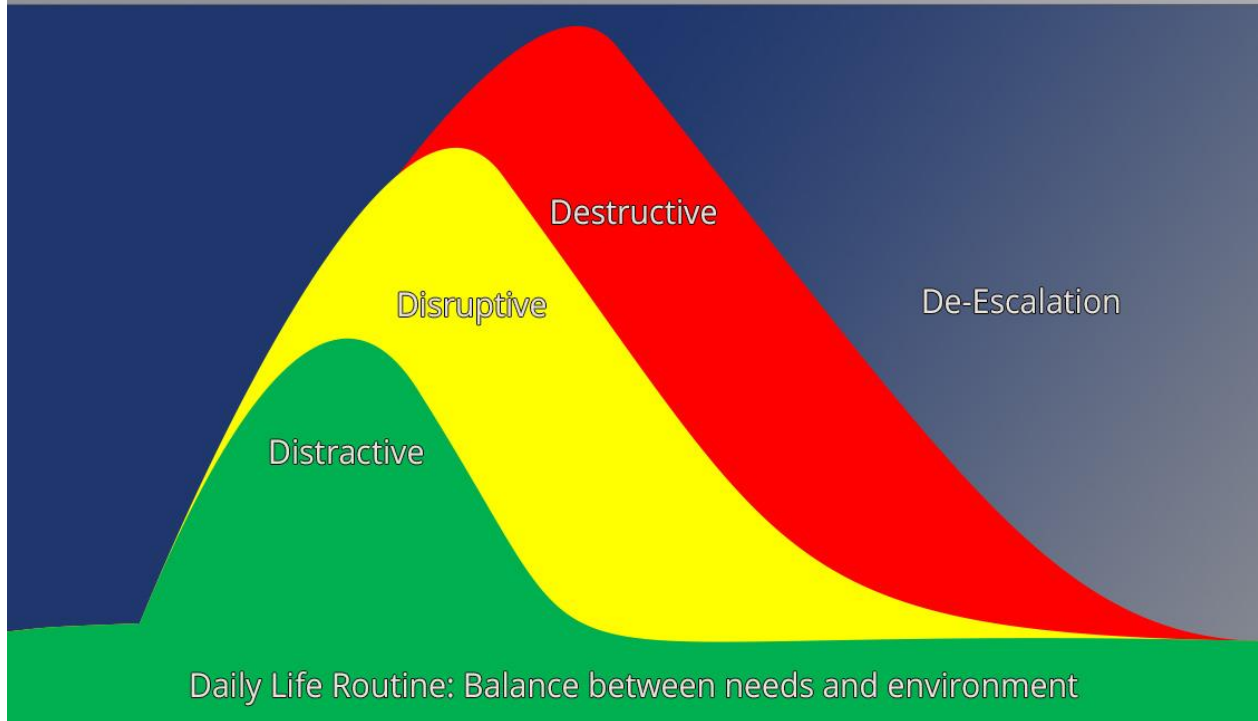
To comply with Title II during an arrest, public entities must make reasonable modifications to accommodate an individual's disability. However, the exigencies surrounding police activity can play a significant role in determining whether a modification is reasonable.

- If questioning a person with ID, he/she may not be aware whether questioning is voluntary or if he/she is not free to leave, i.e., a Terry Stop, depending on that person's disability.
- Advise your dispatcher/supervisor as soon as your situation permits. If a physical interaction appears likely, request EMS response to the scene.
- Consider using alternatives such as a specialized unit, e.g., Crisis Intervention Team, or asking for the assistance of caregivers or family members to communicate with the individual.

Escalation and Response

There are some basic things to keep in mind when dealing with harmful behavior. The following illustration shows the different stages of a behavioral crisis. If you can identify the early signs of a developing crisis, you can intervene before it escalates. Unfortunately, police officers are often not in a position to intervene early, so they are most likely to encounter a person when they've reached the disruptive or destructive stage. Nonetheless, it should be the police officer's goal to de-escalate the situation and restore order as soon as possible.

Crisis Classification by Topography/Intensity of Behavior



Daily Life Routine: This is the baseline. Everyone has problems in life, but at this stage the problems are minimal, and the person stays engaged in an active and positive daily life routine.

Distractive behaviors are low intensity signs of a developing crisis. Examples include fidgetiness, being distracted, excessive talkativeness, flushing, tearfulness, etc. Police officers aren't usually called at this stage of a crisis, but they may observe it when the person is de-escalating. At this stage, it may be appropriate to begin some problem solving that can restore order and get the person back to his/her daily life routine.

Disruptive behaviors are higher intensity signs of an emerging behavior problem. These signs are not easily ignored. Yelling, cursing, threatening and aggressive gestures are examples. The first thing to do is to relax YOURSELF. Maintain a position of minimal risk. It's usually best to let the person "get it out" and wait to intervene until the situation de-escalates.

Destructive behaviors are behaviors that harm the person or others. These include aggression and self-injurious behaviors. Your options are more limited here because physical safety is the

primary concern. Generally, these destructive behaviors are NOT DEADLY, and intervention can be limited to minimal physical safety techniques. Restraint of any kind should only be used when it is the only way to deal with the risk. Even then, it should only be used for the minimum time necessary to resolve the crisis and under strict guidelines (see section above labeled Positional and Aspirational Asphyxiation). There are risks associated with restraint including suffocation, falls and severe injuries to all people involved. Always use the least intrusive intervention necessary to keep the person and others safe.

De-Escalation Strategies

De-escalation means taking action to calm things down (i.e., restore order). To do this, you will need to seize the moment when a person is starting to escalate and find the best way you can to change the direction. There are different de-escalation techniques that may be effective in different situations.

- **Distraction:** Get the person to think about something else. Use humor or an interesting story to lighten things up. It may also be a way to develop rapport with the person.
- **Questioning:** If the person can communicate with words, ask them what happened, how they feel and what they need. Talking can help a person calm down and then they can work on solving their problem.
- **Minimize your own words** when the tension is high. The best time to talk is at a low-intensity phase of a crisis.
- **Include a “Do” with a “Don’t.”** Think of positive alternatives. For example, actions that involve the use of hands (simple manual tasks) or feet (walking) can help the person expend energy and get re-engaged in problem solving.
- **Enlist the person as a “Helper.”** If the positive alternative is phrased as a request for help, it often has better results. People with disabilities may be highly motivated by opportunities to help a law enforcement officer.

- **Establish clear and appropriate boundaries.** Police officers often find themselves in a position where it is important to inform others of limits for their behavior. Boundaries should be stated clearly (e.g., “I will have to stop you if you try to attack your mother.”). Avoid making threats that may increase the person’s anxiety and escalate behavior.
- **Be prepared to make objectively reasonable modifications** to your standard procedures to accommodate the individual’s disability and mitigate risk of unintended consequences. If a custodial stop or arrest becomes necessary, cuffing, restraint and transportation may vary from your usual policies. If executing an arrest of a person with a disability, he/she may not make a knowing waiver of *Miranda* rights, depending on that person’s disability.

A Few More Tips

- Don’t be shocked when behavior escalates. Have a plan of action for de-escalation.
- Slow the situation down. Speak slowly and calmly to model what you need from the person.
- Rely on people who know the person for guidance on how they will respond. Ask questions regarding what approaches might work best.
- Set appropriate limits, but don’t OVERLOAD yourself and make threats you can’t (or don’t want to) carry out.
- Be a great listener and KEEP the person communicating! When he is communicating effectively, he is not being aggressive.
- Regulate your own fear, anxiety or anger.
- Avoid taking actions that INCREASE the person’s fear. If he/she becomes more fearful or threatened, his/her motivation to fight or flee increases.
- Stay in a position of least risk. Think about this at all times. How can I best position myself to avoid being injured?

A Handy Checklist

Things to Do	✓
Determine if a person may have a disability. Does the person:	
Have an appearance that signals a disability (e.g., Down Syndrome, Fragile X, etc.)?	
Have a caregiver?	
Display age-inappropriate behavior?	
Live with parents or relatives?	
Fail to respond requests or commands?	
Respond slowly to requests or commands?	
Have difficulty coming up with solutions to his/her problem?	
Have difficulty repeating back to you what you've requested?	
Have difficulty or no ability to communicate?	
If the person encountered is suspected of having a disability, did I:	
Advise the dispatcher as soon as the situation permits?	
Require him/her to obtain legal counsel before questioning him/her?	
Take extra precautions in making a <i>Terry Stop</i> to ensure that the person understands his/her right to leave?	
If a physical altercation appears possible, did I:	
Request Emergency Medical Service or Crisis Intervention Team support?	
Use appropriate judgment in determining the level of risk involved?	
Try verbal redirection techniques designed to de-escalate the crisis?	
In making a decision to restrain a person, did I consider:	
The risk that the restraint might cause an escalation in behavior?	
The risks of positional or aspirational asphyxiation?	
Weight	

Communication problems	
Ability to observe the person's face	
Increased risk of Gastro-Esophageal Reflux	
Increased risk of placing the person in a prone or supine position	
Increased risk of placing pressure on the neck, back, or chest.	
Ways to reduce risk, such as:	
Using alternatives to prone or supine restraint (standing, seated, or side immobilization)?	
Ensuring I have the ability to see signs of distress on the person's face?	
Monitoring breathing and color no less frequently than every 60 seconds?	
Taking actions to help the person calm down while in restraint?	
Releasing the person from restraint if signs of difficulty breathing or discoloration are noted?	
Minimizing the duration of the restraint?	

Description of DIDD Services

People with IDD live in your community. Your awareness of the state's service delivery model will help you better recognize settings in which people live and work, and to provide community policing to people with IDD and their families.

Home and Community-Based Services (HCBS) Medicaid Waivers

HCBS Medicaid Waiver programs were developed as an alternative to services provided in an institutional setting. The HCBS Waiver is the primary source of supports and services for people with intellectual disabilities who live in a supported setting in Tennessee.

The Department of Intellectual and Developmental Disabilities (DIDD) offers a variety of services to meet the needs of people in the HCBS Medicaid Waiver programs. These are the basic types of services and supports available:

Residential Services: A variety of residential options are available to people who receive services through DIDD. Services depend on the individual's needs and desires. Some types of residential services provide staff support 24/7 while others provide only intermittent supports with access to emergency help if needed.

Respite Services: Respite services are available to people who live independently or in their family home and do not receive a residential service. Respite is intended to offer relief from care-giving activities for family member(s) who provide day to day supports to the person with an intellectual disability.

Behavior Respite and Behavioral Residential Services: There are several options available for people who are at-risk due to behavioral issues. Behavior Respite offers a short term, intensive program designed to remediate behavior crisis situations. The Intensive Behavior Residential Support program is a new clinical treatment model designed to meet the specific needs of people who have exhibited high-risk behavior which places themselves and/or others in danger. A person with high-risk behavior who is involved in this program will have opportunities to develop the skills to be able to return to a less-restrictive residential setting.

Employment Services: DIDD offers a variety of supports to help people engage in work activities at a personal level. Some people are able to work a full schedule with only the supports of a co-worker. Others may need 1:1 staff supports for all work hours.

Day Services: These are services provided during typical work hours for people who are retired, who do not choose to work or those who are still seeking employment. Support is offered for the person to access his/her community for recreational or leisure activities in much the same way as anyone else.

Accessibility/Environmental Modifications: Some people with intellectual and developmental disabilities have accessibility issues with their environment. People who use a wheelchair for mobility may need the use of a ramp or a specially modified means of transportation. Other modifications might include an elevated toilet seat or grab bars in the bathroom, customized work space, and assistance or special equipment for eating.

The Role of DIDD Investigators in Allegations of Abuse, Neglect and Exploitation

Organizational Structure

The Department of Intellectual and Developmental Disabilities (DIDD) has a statewide network of investigators. There are approximately 15 investigators who are departmental employees located in each of the three regions of the state. Offices are located in Greeneville, Knoxville and Chattanooga in the East Region, Nashville in the Middle Region and Jackson and Arlington in the West Region. The investigators report to an investigations coordinator in their region. The three investigations coordinators report to the director of investigations in DIDD's Central Office in Nashville.

DIDD Investigators

Most DIDD investigators have many years of experience with the department. A number of them have prior experience with law enforcement agencies or prior investigative experience with other state departments or agencies. They are trained and certified by an outside entity under contract with the department and receive ongoing training on a monthly and quarterly basis.

Reporting of Incidents

Statewide, there are approximately 440 privately owned and operated service providers who work with people with intellectual disabilities under the jurisdiction of DIDD. These providers are under contract with DIDD. Their provider agreements require them to report to DIDD a variety of incident types and to cooperate with DIDD investigators if an investigation is opened regarding a particular incident. Most DIDD investigations are opened as a result of phone calls to the investigations hotline in the region. The hotline is manned 24 hours a day by an on-call investigator. Calls to the hotline are not limited to provider personnel. Parents or relatives of the person with disabilities, private citizens, anonymous callers and anyone else may report an incident. Incidents involving persons supported at the three remaining developmental centers operated by DIDD (Clover Bottom, Greene Valley and Harold Jordan Center) must also be reported, as well as those occurring at private intermediate care facilities (ICF) contracted with TennCare. If you become aware of an incident that causes you concern, even though it may not rise to the level of law enforcement action, you should call the hotline. Those numbers are:

- East Tennessee (800) 579-0023
- Middle Tennessee (888) 633-1313
- West Tennessee (888) 632-4490

The on-call investigator may respond to the scene of the incident (or the hospital, if appropriate) in cases of abuse, serious injury or death, to take necessary steps to safeguard the person supported and/or interview witnesses and collect or preserve evidence.

What Types of Incidents Are Investigated?

DIDD opens investigations of all reported allegations of abuse, neglect, exploitation, serious injury of unknown cause, suspicious injury and unexpected or unexplained deaths of people supported by DIDD. The following are the definitions of those terms, with citations to Tennessee statutes:

Abuse: [defined in T.C.A. § 33-2-402 (1)] the knowing infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. DIDD recognizes three subcategories of abuse:

- i. *Physical Abuse:*** actions including, but not limited to, any physical motion or action by which physical harm, pain or mental anguish is inflicted or caused. The use of any unauthorized restrictive or intrusive procedure to control behavior or punish. Corporal punishment, takedowns, prone and supine restraints are prohibited and considered abuse.
- ii. *Sexual Abuse:*** any type of sexual activity or contact with sexual intent or motivation between a person supported and anyone affiliated with DIDD as a staff person, employee or a contracted provider or volunteer. This includes but is not limited to actions by which a person is coerced into sexual activity (forced, tricked, induced or threatened) or exposed to sexually explicit material or language. Sexual battery by an authority figure as defined in T.C.A. § 39-13-527 is also considered sexual abuse. Sexual abuse occurs whether or not a person is able to give consent to such activities.
- iii. *Emotional/Psychological Abuse:*** actions including but not limited to humiliation, harassment, threats of punishment or deprivation, intimidation or demeaning or derogatory communication (vocal, written, gestures) directed to or within eyesight or audible range of the person supported.

Neglect: [T.C.A. § 33-2-402 (9)] failure to provide goods or services necessary to avoid physical harm, mental anguish or mental illness, which results in injury or probable risk of serious harm.

Exploitation: [T.C.A. § 33-2-402 (8)] actions including but not limited to the deliberate misplacement, misappropriation or wrongful temporary or permanent use of belongings or money with or without the consent of a person using services. The illegal or improper use of a person's resources or status for another's benefit or advantage is considered exploitation.

Serious Injury of Unknown Cause: an injury that requires assessment and treatment beyond basic first aid that can be administered by a lay person, the cause of which is unknown.

Suspicious Injury: an injury that may have been the result of abuse or neglect or is not consistent with the explanation provided. There must be a reason to suspect the injury was the result of abuse or neglect.

Death: a fatality occurring under circumstances that are unexpected or unexplained.

If an incident falling into one of these categories is reported and the alleged perpetrator is an employee of DIDD, an employee of a DIDD-contracted provider or private ICF or a volunteer working under the auspices of DIDD or a provider, an investigation will be opened. Some people supported by DIDD live with their families, and many visit their families. If a family member who is not receiving payment from DIDD for services rendered is the alleged perpetrator, an investigation will not be opened, unless there was neglect on the part of a paid caregiver in allowing the person supported to be placed at risk.

Involvement of Law Enforcement

In many cases, the DIDD on-call investigator will instruct the caller to contact Adult Protective Services and, if criminal activity is alleged or suspected, local law enforcement. The provider's incident management coordinator will also be instructed to secure the scene, keep all material witnesses at the scene, request medical assistance for the victim, if necessary, and call law enforcement authorities.

Interaction Between the DIDD Investigator and Law Enforcement

When a DIDD investigation is opened in a matter in which there is also activity by local law enforcement or the TBI, it is the policy of the department for its investigators to make contact

with the other investigator(s), make efforts to collaborate in the investigative process and when instructed by law enforcement, defer to the criminal investigators.

If the DIDD investigator becomes aware that another investigation of the same or related incident is being conducted by local law enforcement, TBI, Adult Protective Services or Child Protective Services, the investigator will:

1. Make contact with the outside entity and explain the role of the DIDD investigator and the investigative process.
2. Attempt to establish an arrangement with the other investigator for mutual assistance and for the sharing of facts and information relevant to the investigations.

A collaborative investigation may be appropriate in some cases so that some investigative activities may be conducted simultaneously by both investigators and/or the results of activities conducted separately may be shared. If collaboration is not feasible, the DIDD investigator will conduct his or her investigation independently unless the DIDD investigation is delayed at the request of a law enforcement agency.

When a law enforcement agency requests that the DIDD investigator delay his or her investigation because of an ongoing criminal investigation, this request will be honored. The DIDD investigator will request an extension(s) of time to complete the DIDD investigation. The investigator will also contact the law enforcement agency in writing and request that the investigator be notified when the criminal investigation is completed along with the outcome. The investigator will contact the officer(s) monthly to inquire about the current status of the criminal investigation. Since the DIDD investigator is "on hold" and is also required to document these contacts, updated information provided by the officer will always be appreciated. When the DIDD investigator receives notification that the criminal investigation has concluded, the DIDD investigation will resume and be completed.

When the criminal and DIDD investigations proceed simultaneously, the DIDD investigator will cooperate with the law enforcement officers, sharing information and documents collected, including witness statement, photos and other items. Since the DIDD investigator also has a job to do, any reciprocal assistance that the officer(s) can provide will be welcomed. Sometimes DIDD investigators attend police questioning of witnesses and take notes or use the interview as an opportunity to obtain a written statement from the witness. It is not uncommon for a DIDD investigator to be asked to testify at a criminal hearing. DIDD values its relationships with local law enforcement organizations and believes that working with law enforcement to hold perpetrators of abuse, neglect and exploitation of vulnerable persons accountable is in everyone's best interest.

Administrative Leave for Alleged Perpetrator

If DIDD opens an investigation of allegations of physical or sexual abuse, the provider must place the alleged perpetrator on administrative leave or in another position in which he or she does not have direct contact with, or supervisory responsibility for, a person(s) supported. This is done for the safety of the victim and other persons supported. Providers may request an exception to this requirement if they furnish evidence that the legal representative of any person supported who will come into contact with the employee consents and if other conditions, such as increased supervision and unannounced visits to the home by provider management, are undertaken. After some information about the case is gathered by the investigator, such requests are approved or denied by the director of investigations.

Conduct of a DIDD Investigation

When an investigation is assigned, the DIDD investigator first contacts the provider to notify management that an investigation is now in progress. A request is made for specific documents that may be relevant to the incident and the person supported, including incident reports, staffing plan, Individual Support Plan or other care plans, daily notes, medical, EMS or hospital records or training records. The investigator will schedule interviews of the person supported and other witnesses who may have been present at the time of the incident. When the investigator visits the person supported, he or she will inspect the scene and may take photographs or draw diagrams. During interviews with witnesses, written and signed statements are obtained whenever possible. Follow-up interviews may be necessary, as well as interviews of supervisors or management, doctors, nurses, EMS technicians, private citizens and conservators or family members of the person supported.

When the witness interviews have been completed and other evidence has been collected and reviewed, the investigator prepares a written report describing and summarizing the evidence collected. The report also contains conclusions based on the preponderance of the evidence standard to answer the investigative question(s) as to whether the alleged perpetrator committed abuse, neglect or exploitation of a person supported.

Investigators are under strict time deadlines to complete an investigation. If the facility providing care to the victim is one of DIDD's contracted community providers, unless there are significant complications, the report must be completed within 30 calendar days from the day the incident was first reported to DIDD. If the facility is a public intermediate care facility operated by DIDD, the report must be completed within 5 business days.

The Abuse Registry

The Department of Health maintains a statewide, public registry of persons who have been determined to have abused, neglected, misappropriated or exploited the property of vulnerable individuals. The registry is governed by statute, T.C.A. § 68-11-1001, *et seq.*

Referrals to the registry may be made by departments and agencies of state government, including the TBI and other law enforcement agencies. Offenses justifying placement do not have to be criminal in nature. However, if a criminal act constitutes an “offense against a vulnerable person”, when the Department of Health receives notice of a criminal conviction, the offender’s name will be placed on the registry.

DIDD has a committee comprised of state employees, advocates, stakeholders and provider representatives that determine whether persons substantiated in a DIDD investigation should be referred to the Department of Health for placement on the Abuse Registry. If an offender is referred for placement, he or she has the right to be informed of the proposed placement and a due process hearing. DIDD’s procedure is to send notice to the offender by certified and regular mail of the intended placement and allow 30 days to request a hearing. If the person does not respond, his/her information is sent to the Department of Health for placement on the registry. If a hearing is requested in time, the matter is turned over to the DIDD Office of General Counsel.

Once a person’s name is placed on the registry, it is not removed except under very limited circumstances. The person may not be employed by DIDD, DCS, DHS, the Department of Health, or other state departments and agencies that elect to utilize the registry in hiring decisions. The person may not be employed by a company or entity licensed by, or which has a contract for provision of care with these named state departments.

A person may have his or her name removed from the registry if there has been a mistake in the report of a criminal disposition, reversal of a criminal conviction or if the department that made the referral determines that it was an error. A person may request that the department which made the referral remove his/her name from the registry. The department will then convene an “advisory group” of qualified individuals to make a recommendation. This group may determine that the person is unlikely to offend again and that removal is “clearly warranted”. This recommendation may or may not be accepted by the department. If not accepted, the person may request an administrative hearing.

Sometimes criminal cases are resolved by orders of conviction resulting from plea bargains in which the prosecutor has included, as a term of agreeing to the defendant’s plea, that the defendant consent that his or her name be placed on the Abuse Registry. If you are involved in a criminal case of abuse, neglect or exploitation of a vulnerable person, it would be helpful to remind the prosecutor you are working with of the availability of the Abuse Registry and make the suggestion that placement on the registry be included as one of the terms of any plea arrangement with the defendant.

APPENDIX

TENNESSEE CRIMINAL STATUTES THAT MAY BE APPLICABLE TO CASES IN WHICH INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES ARE VICTIMS

T.C.A. § 39-13-101. Assault

(a) A person commits assault who:

- (1) Intentionally, knowingly or recklessly causes bodily injury to another;
- (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or
- (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative

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T.C.A. § 39-13-102. Aggravated assault

(a)(1) A person commits aggravated assault who:

(A) Intentionally or knowingly commits an assault as defined in § 39-13-101, and the assault:

- (i) Results in serious bodily injury to another;
- (ii) Results in the death of another;
- (iii) Involved the use or display of a deadly weapon; or
- (iv) Was intended to cause bodily injury to another by strangulation or bodily injury by strangulation was attempted; or

(B) Recklessly commits an assault as defined in § 39-13-101(a)(1), and the assault:

- (i) Results in serious bodily injury to another;
- (ii) Results in the death of another; or
- (iii) Involved the use or display of a deadly weapon.

(2) For purposes of subdivision (a)(1)(A)(iv) "strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

(c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals

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T.C.A. § 39-13-103. Reckless endangerment

(a) A person commits an offense who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.

(b)(1) Reckless endangerment is a Class A misdemeanor;

(2) Reckless endangerment committed with a deadly weapon is a Class E felony;

(3) Reckless endangerment by discharging a firearm into a habitation, as defined under § 39-14-401, is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony;

(4) In addition to the penalty authorized by this subsection (b), the court shall assess a fine of fifty dollars (\$50.00) to be collected as provided in § 55-10-412(b) and distributed as provided in § 55-10-412(c).

T.C.A. § 39-13-502. Aggravated rape

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Aggravated rape is a Class A felony.

T.C.A. § 39-13-503. Rape

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual penetration is accomplished by fraud.

(b) Rape is a Class B felony.

T.C.A. § 39-13-504. Aggravated sexual battery

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

- (A) Force or coercion is used to accomplish the act; or
 - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The victim is less than thirteen (13) years of age.
- (b) Aggravated sexual battery is a Class B felony.

T.C.A. § 39-13-505. Sexual battery

(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act;
- (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
- (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
- (4) The sexual contact is accomplished by fraud.

(b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

(c) Sexual battery is a Class E felony.

T.C.A. § 39-14-103. Theft of property

(a) A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent.

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T.C.A. § 39-14-104. Theft of services

(a) A person commits theft of services who:

- (1) Intentionally obtains services by deception, fraud, coercion, forgery, false statement, false pretense or any other means to avoid payment for the services;

(2) Having control over the disposition of services to others, knowingly diverts those services to the person's own benefit or to the benefit of another not entitled thereto; or

(3) Knowingly absconds from establishments where compensation for services is ordinarily paid immediately upon the rendering of them, including, but not limited to, hotels, motels and restaurants, without payment or a bona fide offer to pay.

(b) Any individual directly or indirectly harmed by a violation of subsection (a) shall have legal standing to report such violations to law enforcement and testify in support of corresponding criminal charges.

T.C.A. § 39-14-114. Forgery

(a) A person commits an offense who forges a writing with intent to defraud or harm another.

(b) As used in this part, unless the context otherwise requires:

(1) "Forge" means to:

(A) Alter, make, complete, execute or authenticate any writing so that it purports to:

(i) Be the act of another who did not authorize that act;

(ii) Have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) Be a copy of an original when no such original existed;

(B) Make false entries in books or records;

(C) Issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of subdivision (b)(1)(A); or

(D) Possess a writing that is forged within the meaning of subdivision (b)(1)(A) with intent to utter it in a manner specified in subdivision (b)(1)(C); and

(2) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and symbols of value, right, privilege or identification.

(c) An offense under this section is punishable as theft pursuant to § 39-14-105, but in no event shall forgery be less than a Class E felony.

T.C.A. § 39-14-118. Credit or debit cards; unauthorized use or possession

(a) A person commits the crime of illegal possession of a credit or debit card who, knowing the person does not have the consent of the owner or issuer, takes, exercises control over or otherwise uses that card or information from that card.

(b) A person commits the crime of fraudulent use of a credit or debit card who uses, or allows to be used, a credit or debit card or information from that card, for the purpose of obtaining property, credit, services or anything else of value with knowledge that:

(1) The card is forged or stolen;

(2) The card has been revoked or cancelled;

(3) The card has expired and the person uses the card with fraudulent intent; or

(4) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit or debit card is issued.

(c)(1) Fraudulent use of a credit or debit card is punishable as theft pursuant to § 39-14-105, depending on the amount of property, credit, goods or services obtained.

(2) If no property, credit, goods, or services are actually received or obtained, illegal possession or fraudulent use of a credit card is a Class A misdemeanor.

T.C.A. § 39-14-146. Shoplifting

(a) For purposes of § 39-14-103, a person commits theft of property if the person, with the intent to deprive a merchant of the stated price of merchandise, knowingly commits any of the following acts:

(1) Conceals the merchandise;

(2) Removes, takes possession of, or causes the removal of merchandise;

(3) Alters, transfers or removes any price marking, or any other marking which aids in determining value affixed to the merchandise;

(4) Transfers the merchandise from one (1) container to another; or

(5) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise.

(b) In a theft prosecution under this section, unless applicable, the state is not required to prove that the defendant obtained or exercised control over the merchandise as required in a prosecution under § 39-14-103.

T.C.A. § 39-16-503. Evidence; destruction, tampering or fabrication

(a) It is unlawful for any person, knowing that an investigation or official proceeding is pending or in progress, to:

(1) Alter, destroy, or conceal any record, document or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) Make, present, or use any record, document or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) A violation of this section is a Class C felony.

T.C.A. § 71-6-102. Definitions

As used in this part, unless the context otherwise requires:

(1)(A) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the Tennessee Right to Natural Death Act, compiled in title 32, chapter 11, and if the provision of such medical care would conflict with the terms of such living will;

(B) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:

(i) The adult is unable to protect or care for himself or herself without assistance or supervision; and

(ii) The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;

(2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter;

(3) "Advanced age" means sixty (60) years of age or older;

(4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

(5) "Caretaker":

(A) Means an individual or institution who has assumed the duty to provide for the care of the adult by contract or agreement;

(B) Includes a parent, spouse, adult child or other relative, both biological or by marriage, who:

(i) Resides with or in the same building with or regularly visits the adult;

(ii) Knows or reasonably should know of the adult's mental or physical dysfunction or advanced age; and

(iii) Knows or reasonably should know that the adult is unable to adequately provide for the adult's own care; and

(C) Does not mean a financial institution as a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

(6) "Commissioner" means the commissioner of human services;

(7) "Department" means the department of human services;

(8) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated. However, the department is not required to assume responsibility for a person in imminent danger pursuant to this chapter except when, in the department's determination, sufficient resources exist for the implementation of this part;

(10) "Investigation" includes, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(11) "Protective services" means services undertaken by the department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home;

(12) "Relative" means spouse; child, including stepchild, adopted child or foster child; parents, including stepparents, adoptive parents or foster parents; siblings of the whole or half-blood; step-siblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces and nephews; and

(13) "Sexual abuse" occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an adult, as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.

T.C.A. § 71-6-117. Knowing abuse, neglect, or exploitation; crimes and penalties; registry

(a) It is an offense for any person to knowingly, other than by accidental means, abuse, neglect or exploit any adult within the meaning of this part.

(b) A violation of this section is a Class D felony.

(c)(1) Following a conviction for a violation of this section or § 71-6-119, the clerk of the court shall notify the department of health of the conviction by sending a copy of the judgment in the manner set forth in § 68-11-1003 for inclusion pursuant to title 68, chapter 11, part 10.

(2) Upon receipt of a judgment of conviction for a violation of an offense set out in subdivision (c)(1), the department shall place the person or persons convicted on the registry of persons who have abused, neglected, or misappropriated the property of a vulnerable individual as provided in § 68-11-1003(c).

(3) Upon entry of the information in the registry, the department shall notify the person convicted, at the person's last known mailing address, of the person's inclusion on the registry. The person convicted shall not be entitled or given the opportunity to contest or dispute either the prior hearing conclusions or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which the conclusions and determinations are based. The person convicted may challenge the accuracy of the report that the criminal disposition has occurred, such hearing conclusions were made or any factual issue related to the correct identity of the person. If the person convicted makes such a challenge within sixty (60) days of notification of inclusion on the registry, the commissioner, or the commissioner's designee, shall afford the person an opportunity for a hearing on the matter that complies with the requirements of due process and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

T.C.A. § 71-6-119. Knowing physical abuse or gross neglect of an impaired adult

(a) It is an offense to knowingly, other than by accidental means, physically abuse or grossly neglect an impaired adult if the abuse or neglect results in serious mental or physical harm.

(b) In order to prosecute and convict a person for a violation of this section, it is not necessary for the state to prove the adult sustained serious bodily injury as required by § 39-13-102, but only that the elements set out in subsection (a) occurred.

(c) A violation of this section is a Class C felony.