

# MANDATED REPORTER ONLINE TRAINING

## Sexual Abuse Definition FAQs

### **What is “sexual contact”?**

Sexual contact primarily is intentional touching, either directly or over the clothing, of a child’s intimate body parts, for the purpose of sexually gratifying or arousing oneself or sexually degrading or humiliating the child.

### **What about that phrase “for the purpose of sexually gratifying oneself or sexually humiliating the child”? Why is it included in the definition?**

The act of touching a child’s genital area is not, by itself, sexual abuse. Consider wiping a toddler’s bottom during a diaper change. Or providing care for the child’s genital or anal area for any number of medical problems. These are normal, even necessary, care activities and should not be confused with sexual abuse.

### **What is “child sex trafficking”?**

Child sex trafficking is defined as a crime committed by anyone (i.e., the person does not have to be the child’s parent or caregiver) who knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts.

### **What is the definition of a “commercial sex act”?**

According to the statutes, a commercial sex act means any of the following for which anything of value is given, promised, or received, directly or indirectly, by any person:

- Sexual contact
- Sexual intercourse
- Sexually explicit performance
- Any other conduct done for the purpose of sexual humiliation, degradation, arousal or gratification

### **What if the child “consented” to the commercial sex act without any force, fraud or coercion?**

Legally, consent is not a consideration for child sex trafficking and a child is unable to give consent to any commercial sex act. While the definition of sex trafficking for adults includes the existence of force, fraud, or coercion, the definition of child sex trafficking does not. The definition of child sex trafficking implicitly recognizes that children and youth are more vulnerable to manipulation than adults. Consequently, even if a homeless youth runaway would say that he “consented” to having sex with the man who gave him food and shelter, and there is no evidence of force, fraud, or coercion, this may still be an instance of child sex trafficking because the child or youth is a minor.

## **What is “sexual exploitation”?**

Sexual exploitation of a child includes:

- employing, using, persuading or coercing a child to engage in sexually explicit behavior for the purpose of photographing, filming or recording in any way that behavior; or
- profiting, importing into Wisconsin, reproducing, advertising, selling, distributing or possessing with an intent to sell or distribute such photographs, films, or recordings of that behavior; or
- a person responsible for the child’s welfare knowingly permitting or encouraging the child to engage in sexually explicit conduct for the above purposes

## **What is “sexually explicit conduct”?**

The statutes define this as actual or simulated intercourse, bestiality, masturbation, sexual sadism or masochism, or lewd exhibition of intimate body parts.

## **Who can sexually abuse a child?**

As in physical abuse, sexual abuse can be committed by any other person – a parent, a relative, a caregiver, a teacher, a family friend, or a neighbor.

In some cases, sexual abuse may be committed by another child. However, not all sexual contact or sexual intercourse between children is considered sexual abuse. For example, sexual contact or sexual intercourse between a 16- or 17-year-old and another 16- or 17-year-old that is completely voluntary – and where both children have the capacity to consent – is not considered sexual abuse under Wisconsin law.

For children who are under the age of 16, however, the statute does not account for consent and any sexual contact or sexual intercourse with a child who is under the age of 16 is considered sexual abuse. This is because, for children aged 15 or younger, the idea is that they have not developed enough cognitively, emotionally or socially to understand what they are consenting to, and are easily exploited and manipulated by older persons. Stipulating that they cannot legally consent means that the maltreater cannot use consent as a defense in court.

But there is an exception to the reporting law for a subset of these children (the Health Care Services Exception) which you will learn about later.

In addition, even if sexual contact or sexual intercourse between two children must be reported, the agency that receives the report may decide that investigation of the incident is not needed.

**Why is there a specific rule for sexual contact or intercourse between a child and staff at a facility where they are placed?**

Children placed in foster homes, group homes and treatment facilities are also especially vulnerable to the adults who care for, oversee or provide services to them, Stipulating that they cannot legally consent offers them the same protection as children 15 years old or younger.

**What is considered consent?**

Consent must be freely and knowingly given. The law does not recognize a person's consent to sexual activity if that person is unable to judge the implications or ramifications because of mental illness, mental deficiency, unconsciousness or intoxication or if a person is physically unable to communicate an unwillingness to act.

**What are some situations that you may come across that are not sexual abuse?**

Here are two examples.

- Sexual contact with a 16- or 17-year-old that is completely voluntary on the part of the child.
- Sexual intercourse with a 16- or 17-year-old that is completely voluntary on the part of the child. This is a misdemeanor in the criminal code, but is not one of the specified types of sexual abuse in the reporting law.