



**Severe Child Abuse in
Tennessee Courts:
Advocacy, Evidence, and the Law**

Objectives

- Define severe child abuse under Tennessee law
- Understand required findings after 2024
- Apply those findings in D&N and TPR strategy

POLL:

Who's joining us today?

*Severe Child Abuse under
Tennessee Law*

Severe Child Abuse

Defined:

- (A) Exposure to serious bodily injury/death or risk
- (B) Severe psychological harm (expert required)
- (C) Enumerated criminal acts
- (D) - (F) Drug-related prongs

Most litigation happens under prong (A) and prongs (D)-(F).



Serious Bodily Injury

Prong (A) of § 37-1-102(b)(28) uses the criminal definition of serious bodily injury to the child.

- Second- or third-degree burns
- Bone fractures
- Intracranial bleeding or cerebral edema
- Severe bruising injuries (including whipping injuries)
- And others

This is a high threshold, not ordinary neglect.

Criminal evidence may strongly support severe abuse findings, but a criminal conviction is not required.



Severe Child Abuse

Drug exposure (more common)

Child's exposure to illegal drug activity, ingestion of unprescribed (to child) controlled substances, or access to highly dangerous drugs.

Psychological harm (expert-driven)

Specific brutality, abuse, or neglect that, in the opinion of a qualified expert, has caused or is reasonably expected to cause severe psychosis, severe neurotic disorder, severe impairment.



What Changed in 2024?
Public Chapter 613

Post–Public Chapter 613 Structure

Statute	Function
§ 37-1-102	Defines severe child abuse
§ 37-1-129	Required D&N adjudication findings
§ 37-1-130	Governs return-home restrictions
§ 36-1-113(g)(4)	Governs TPR severe-abuse grounds



Key Change — Removal of the “Knowing” Requirement

Public Chapter 613 changed:

- The severe abuse definition in T.C.A. § 37-1-102(b)(28):
 - Revised the exposure prong of the severe child abuse definition.
 - **Statute no longer requires proof that the exposure was knowing.**
 - Similar revisions were made to drug-related prongs.



Drug Exposed Child

- Key Changes: Removed “knowing” and “gross negligence” language from several drug-related prongs.
- Focus is now more directly on exposure, ingestion, accessibility of controlled substances, and resulting risk to the child.
- Current Severe Abuse Drug-Related Categories Include:
 - Child under eight ingesting a controlled substance not prescribed to the child
 - Controlled substances present and accessible to the child
 - Exposure to methamphetamine manufacture or drug activity



Key Case: In re Markus E. (Tenn. 2023)

In re Markus E., 671 S.W.3d 437 (Tenn. 2023) is the leading Tennessee Supreme Court case interpreting the “knowing” element in the pre-2024 severe child abuse definition.

- Defines “knowing” (actual knowledge + reckless disregard)
- Still relevant for cases arising from petitions dated before July 1, 2024



Why Does This Matter?

The statute now separates the definition of severe abuse from caregiver attribution findings.



Required Findings in D&N Adjudications

Child-Level Finding:

- Is the child a victim of severe child abuse under § 37-1-102?

Caregiver-Specific Findings:

For each caregiver, determine whether the caregiver:

- knowingly committed severe abuse,
- committed severe abuse with gross negligence,
- knowingly failed to protect,
- failed to protect with gross negligence, OR
- cannot be excluded as a perpetrator.



Severe Abuse: Required Findings

Question	Source
Is child victim of severe abuse?	§ 37-1-102
Did caregiver knowingly commit or fail to protect?	§ 37-1-129
Did caregiver act with gross negligence?	§ 37-1-129
Can caregiver be excluded?	§ 37-1-129

“Cannot be excluded” is an adjudicatory finding and not part of the severe-abuse definition itself.



Cannot Be Excluded

Used in cases where:

- Severe abuse clearly occurred, but the perpetrator cannot be specifically identified.
- Expressly contemplated for D&N adjudications and return-home restrictions.

Open question:

- Whether a prior “cannot be excluded” finding alone is sufficient to support the severe-abuse TPR ground under T.C.A. § 36-1-113(g)(4).



Severe Abuse Adjudication

A finding of severe child abuse in a dependency and neglect (D&N) case has major legal consequences.

Such findings can:

- Affect visitation
- Significantly affect reunification and return-home decisions
- Affect DCS's reasonable efforts to reunify
- Serve as a ground for termination of parental rights (TPR)



Return-Home Restrictions after Severe Abuse Findings

Public Chapter 613 also revised T.C.A. § 37-1-130(c).

- Key concepts:
 - § 37-1-130(c) operationalizes “cannot be excluded” findings made under § 37-1-129(b)(2).
 - Before returning a child to such a caregiver, the court must find by clear and convincing evidence that:
 - Safe home proven by clear and convincing evidence
 - Applies to caregivers who were found to be responsible AND those who could not be excluded under § 37-1-129



Effect on Reasonable Efforts to Reunify

T.C.A. § 37-1-166(g)(4): “Reasonable efforts to reunify the child with the family shall not be required if a court of competent jurisdiction has determined that... the parent has subjected the child or a sibling to aggravated circumstances as defined in T.C.A. § 36-1-102.”

Language unchanged by PC 613, but T.C.A. § 37-1-166(g)(4) now operates alongside the revised language in § 37-1-129 and § 37-1-130.



Procedural Note – Finality of Findings

- Once a severe-abuse adjudication becomes final, later TPR courts often treat those findings as binding.
- BUT: The scope of preclusion depends on the original order.
- Example:
 - *In re Kaitlyn D.*, No. M2023-00658-COA-R3-PT (Tenn. Ct. App., Mar. 11, 2024): prior proceedings included parent-specific culpability findings and criminal convictions.
 - *In re Avery H.*, No. W2024-01763-COA-R3-PT (Tenn. Ct. App., Jan. 20, 2026): the earlier order found severe abuse occurred but stated the perpetrator could not be identified and therefore could not stand as grounds.
- Practice implication:
 - Always analyze whether the prior order includes:
 - child-victim findings, parent findings.



Termination of Parental Rights (TPR) – Basic Standard

Termination cases are governed by T.C.A. § 36-1-113.

- To terminate parental rights, the court must find by clear and convincing evidence:
 - at least one statutory ground for termination, and
 - that termination is in the child's best interest.



Termination of Parental Rights (TPR) – Basic Standard

Before Public Chapter 613, severe abuse adjudications included:

- Child victim status, AND
- Parent culpability (by incorporation of T.C.A. §37-1-102 knowing abuse or failure to protect)

After Public Chapter 613, TPR now requires TWO separate findings:

- Child is a victim of severe child abuse, AND
- Parent knowingly *or with gross negligence*:
 - committed severe abuse, OR
 - failed to protect

“Cannot be excluded as a perpetrator” appears in D&N statutes; does NOT appear in T.C.A. § 36-1-113(g)(4).



Practical Impact in Termination Litigation

- In practice, appellate courts frequently note that a severe child abuse finding can be outcome-determinative in TPR cases.
- Once established:
 - It provides a direct statutory ground for termination, and
 - It strongly influences the best-interest analysis.
 - For this reason, courts scrutinize severe abuse findings carefully and require clear and convincing proof.
 - Check that the adjudication is sufficient for grounds in severe abuse adjudications on petitions filed after July 1, 2024.



*Severe Child Abuse **Litigation** Strategy*

Avery H. demonstrates limits of child-only findings without parent-specific attribution.

Parent Attorneys:

- Challenge attribution
- Separate child harm from parent culpability
- Use ambiguity strategically

GALs:

- Push for clear findings
- Avoid “cannot be excluded” as endpoint
- Ensure order supports permanency path



Drug Exposure

Drug Screening for Individuals Receiving DCS Services

Purpose of the Policy:

- Establishes statewide rules for how Tennessee Department of Children's Services conducts drug screening in child welfare cases.
- Focuses on safety, documentation, reliability, and procedural consistency.

Reasonable Suspicion:

- DCS may request a drug screen when there are "specific, objective, articulable facts" suggesting substance use or abuse.

Practice Point:

- Drug testing should be tied to safety concerns and evidence, not routine practice.



Drug Screening for Individuals Receiving DCS Services

Before testing, DCS employees must:

- Obtain consent
- Verify identity when necessary
- Ask about prescriptions, medical conditions, and substance use history
- Follow manufacturer instructions and universal precautions
- Trauma/Child-Centered Provision: DCS should avoid administering drug tests in front of children whenever possible

The policy outlines tampering protections and provides that confirmatory testing is not automatically required for every screen.



Drug Screen vs. Substance Use Assessment

Drug Screen: Detects presence of substances/metabolites. A positive drug screen does not establish addiction, impairment, or parenting incapacity.

Substance Use Assessment:

- Evaluates likelihood of substance use disorder
- Determines need for behavioral health evaluation/services

Confirmatory testing required when:

- likely court action
- written dispute of results
- court order
- suspected tampering/inaccuracy



Drug Screening Is One Tool — Not the Entire Safety Analysis

- DCS policy states drug screening is “one tool, among many” used in assessing child safety and family needs.
- Screening should occur as part of a “comprehensive family assessment.”
- Purpose is risk reduction and service planning, not punishment alone.
- **A positive screen ≠ automatic severe abuse.**



Case Law: Drug Exposure

Tennessee Case Law

Two pathways to severe child abuse in drug cases

Pathway	Typical Evidence
Prenatal exposure (likely to cause serious bodily injury)	toxicology at birth, NAS symptoms, admissions
Environmental exposure	drugs accessible in home, child positive test, law enforcement testimony

See also: *In re Cora W.*, No. M2021-00804-COA-R3-PT, (Tenn. Ct. App. Feb. 2, 2022), *In re A.L.H.*, No. M2016-01574-COA-R3-JV, (Tenn. Ct. App. Aug. 31, 2017), *In re Mason E.*, No. E2015-01256-COA-R3-JV, (Tenn. Ct. App. May 16, 2016)



*Case Law: Prenatal Drug
Exposure*

Prenatal Drug Exposure and Severe Child Abuse

- Tennessee appellate courts have repeatedly held that prenatal drug exposure can support a severe child abuse finding in civil child welfare proceedings.
- A key doctrinal statement appears in *In re Colton B.*, No. M2018-01053-COA-R3-PT, (Tenn. Ct. App. 2018), relying on *In re Benjamin M.*, 310 S.W.3d 844 (Tenn. Ct. App. 2009):
 - **Holding:** Conduct occurring before birth can constitute severe child abuse if:
 - the child is born alive, and
 - the child is injured or exposed to risk of serious bodily injury due to that conduct.
 - **Key Principle:** Timing of conduct (prenatal vs postnatal) does not control. Focus is on harm or risk at birth



In re Lucas L. (Tenn. Ct. App. 2022): Proof without Experts

Facts: Parents admitted using marijuana during pregnancy. The child tested positive for THC at birth. Medical records documented symptoms.

Holding:

- Expert proof is not always required; the focus is exposure and risk, not permanent injury. The court rejected the argument that THC exposure is categorically too minor to support a severe child abuse finding.

Key Principle:

- Expert testimony not required for adjudication. Courts can rely on:
 - Toxicology
 - Medical records
 - Observable symptoms

In re Lucas L. M2020-01614-COA-R3-JV (Tenn. Ct. App. July 5, 2022)

Tennessee courts treat drug exposure as severe child abuse. Focus is exposure and risk, not whether permanent injury occurs. See also *In re Cayla C.*, No. M2024-01648-COA-R3-PT (Tenn. Ct. App., Aug. 28, 2025)



Practical Takeaways from the Case Law

Across Tennessee decisions involving prenatal drug exposure:

- Courts commonly rely on:
 - Positive toxicology screens
 - Medical documentation of withdrawal or symptoms
 - Hospital or NICU records
 - Admissions by parents

The central issue is exposure and risk of serious harm, rather than proof of permanent injury.



*Case Law: Accessible Drug
Exposure*

Drug Presence in the Home as Severe Child Abuse

Tennessee courts treat environmental drug exposure as severe child abuse.

This often involves situations where:

- Controlled substances are present and accessible in a residence, and
- The child is exposed to drugs or tests positive for a substance.

These cases frequently rely on the statutory provision covering controlled substances present and accessible to a child.



In re Alexander P., (Tenn. Ct. App. 2025)

Facts:

- Methamphetamine, scales, firearms in home
- Child tested positive
- Criminal charges dismissed (search issue)

Holding:

- Severe abuse and TPR affirmed

Key Principle:

- Accessibility of drugs, risk to child and positive test strengthens case significantly

Also of note: Tennessee courts may draw negative inferences from a parent's refusal to testify in termination proceedings, if facts corroborate. Also note that criminal case outcome does not control

In re Alexander P., No. E2024-01714-COA-R3-PT, (Tenn. Ct. App. Sep. 10, 2025)



Case Law: Serious Bodily Injury

In re Noah D. (Tenn. Ct. App. 2012)

Facts: Infant presented with severe malnutrition and medical diagnosis of “failure to thrive.” Mother failed to provide adequate nutrition or seek medical help over an extended period. Child required emergency intervention and hospitalization.

Holding: Court found clear and convincing evidence of severe child abuse. The mother’s knowing failure to provide basic care led to life-threatening harm.

Key Principle: Severe neglect can constitute severe child abuse when the parent’s omission causes or risks serious bodily injury. “Knowing” conduct includes conscious disregard of basic parental duties essential to survival.

In re Noah D., No. M2011-01087-COA-R3PT, (Tenn. Ct. App., Jan. 20, 2012).



In re Avery H. (Tenn Ct. App. 2026)

Facts: Infant sustained a femur fracture; injury deemed likely inflicted. Both parents gave vague explanations and delayed care. Trial court found severe child abuse and terminated parental rights.

Holding: The court agreed with the trial court that the nature of the injury met the statutory definition of serious bodily injury under Tennessee law but reversed the severe abuse ground for both parents. No clear proof either parent caused or knowingly failed to prevent the injury.

Key Principle: Severe abuse before PC 613 required parental knowing action or omission. Suspicion and injury are not enough without knowledge or failure to protect.

In re Avery H., No. W2024-01763-COA-R3-PT (Tenn. Ct. App., Jan. 20, 2026).



Case Law: Failure to Protect

In re H.L.F. (Tenn Ct. App. 2009)

Facts: Father sexually abusing daughter, mother failed to protect.

Holding: A parent's deliberate failure to protect a child from known sexual abuse may constitute severe child abuse.

Key Principle: Ignoring obvious abuse risks can support knowing failure to protect findings, severe abuse adjudications, and dependency findings.

In re H.L.F., 297 S.W.3d 223 (Tenn. Ct. App. 2009).



Case Law: Gross Negligence

In re Azay C. (Tenn. Ct. App. 2024)

Facts: Children not restrained in car seats were in a fatal crash.

Holding: Severe abuse affirmed.

Key Points: Grossly negligent conduct resulting in serious injury or death may support severe abuse findings. No specific intent required under the exposure-based prongs.

In re Azay C., No. W2022-01156-COA-R3-JV (Tenn. Ct. App. May 31, 2024)



So What?

Now What?

*A Practice Panel
Conversation*