

Court Reference Guide: Severe Child Abuse in Tennessee

A Court Reference Guide for Tennessee Child and Parent Attorneys and Multidisciplinary Professionals

A severe child abuse finding in Tennessee dependency and neglect proceedings can have profound consequences for children and families that may affect visitation, reunification, reasonable efforts obligations, permanency planning, and termination of parental rights (TPR).

Public Chapter 613 – Key Changes:

T.C.A. § 37-1-102

Severe Child Abuse Definition:

- Revised exposure prong of the severe child abuse definition.
- Removed requirement that exposure to serious bodily injury, death, or risk be “knowing.”
- Similar revisions made to several drug-related prongs.
- Focus is now more directly on exposure, accessibility, ingestion, and resulting risk or harm to the child.

T.C.A. § 37-1-129(b)(2) - Required D&N Adjudicatory Findings

The statute now separates the determination that a child is a victim of severe child abuse from caregiver-specific attribution findings.

For each relevant caregiver, courts must determine whether:

- 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.

T.C.A. § 37-1-130(c) - Return-Home Restrictions under Public Chapter 613

The statute applies heightened return-home requirements not only to identified perpetrators, but also to caregivers who “cannot be excluded.”

- Before return, the court must find by clear and convincing evidence that the child can be safely returned to the home.

T.C.A. § 36-1-113(g)(4)

TPR severe child abuse ground two prong analysis:

1. a child is found to be the victim of severe child abuse AND
2. the parent or guardian has been found to have knowingly or with gross negligence committed severe child abuse or failed to protect the child from severe abuse.

“Cannot be excluded” does not appear in § 36-1-113(g)(4).

Considerations at Adjudication

- ☐ Has severe child abuse been alleged under T.C.A. § 37-1-102?
- ☐ Which version of the statute applies?
 - Petitions filed before July 1, 2024, apply prior statutory language.
 - Petitions filed on or after July 1, 2024, apply P.C. 613.
- ☐ Has the court made separate findings regarding:
 - whether the child is a victim of severe child abuse?
 - whether each caregiver:
 - knowingly or with gross negligence committed severe abuse?
 - knowingly or with gross negligence failed to protect?
 - cannot be excluded as a perpetrator?
- ☐ Does the order contain sufficiently specific written findings?

Drug Exposure and Controlled Substance Cases

Tennessee appellate courts have held prenatal conduct may support severe child abuse findings where a child is born injured or exposed to serious risk.

- ☐ Was the child:
 - born drug exposed?
 - positive for controlled substances?
 - exposed to drugs or drug activity in the residence?
 - living where controlled substances were present & accessible?
- ☐ What evidence supports the allegation?
 - Toxicology screens, medical records, law enforcement testimony, parent admissions, drug paraphernalia or accessibility evidence are relevant.
- ☐ Is there evidence of:
 - withdrawal symptoms?
 - developmental concerns?
 - serious bodily injury or risk?
- ☐ Was the substance legally prescribed to the child?

Failure to Protect / Attribution Issues

- ☐ Is the alleged perpetrator known? If not, is the court considering a “cannot be excluded” finding?
- ☐ Is there evidence the caregiver had actual knowledge of abuse? Deliberately ignored warning signs? Or recklessly disregarded risk?
- ☐ Has counsel distinguished child victim finding and parent culpability finding?
- ☐ Does the evidence support knowing conduct, gross negligence or failure to protect?

Reasonable Efforts Considerations

- ☐ Is DCS arguing that a severe abuse adjudication relieves reasonable efforts obligations under T.C.A. § 37-1-166(g)(4)?
- ☐ Appellate courts have not yet clarified whether a “cannot be excluded” finding alone is sufficient to relieve DCS of reasonable efforts obligations.

PRACTICE TIPS

- Always determine the petition filing date before arguing statutory standards.
- Seek detailed written findings. Understand the child-victim finding and parent-specific culpability.
- In prenatal drug exposure cases, courts frequently focus on exposure / risk rather than injury.
- Positive toxicology screens, admissions, medical records are often foundation of severe abuse findings.
- Criminal acquittals or dismissed charges do not necessarily defeat civil severe abuse findings.
- Appeal severe abuse findings promptly when appropriate.

ADVOCACY CONSIDERATIONS

Parent Attorneys

- Challenge parental attribution in child injury.
- Distinguish exposure from parent culpability.
- Scrutinize evidentiary foundation for toxicology and medical conclusions.
- Preserve objections and appellate issues.
- Consider Fifth Amendment implications where criminal exposure exists.

Guardian ad Litem / Child Attorneys

- Consider permanency implications early.
- Ensure the record addresses safety, visitation, and return-home concerns when relevant.

CASE LAW QUICK REFERENCE

Full case text available at <https://www.tncourts.gov/courts/court-appeals/opinions>

Topic	Case	Key Holdings
Knowing conduct / failure to protect	<i>In re Markus E.</i> , 671 S.W.3d 437 (Tenn. 2023)	“Knowing” includes actual knowledge, deliberate ignorance, or reckless disregard. In 2024, the legislature removed “knowing” and “gross negligence” language from some provisions of T.C.A. § 37-1-102. Courts determine whether caregiver can be excluded as a perpetrator.
Prenatal drug exposure	<i>In re Colton B.</i> , No. M2018-01053-COA-R3-PT, 2018 WL 5415921 (Tenn. Ct. App. Oct. 29, 2018)	Prenatal conduct may constitute severe child abuse where child is born alive but injured or exposed to serious risk.
Prenatal THC exposure	<i>In re Lucas L.</i> , No. M2020-01614-COA-R3-JV, 2022 WL 2181784 (Tenn. Ct. App. July 5, 2022)	Expert proof is not required under T.C.A. § 37-1-102(28)(A); focus is exposure and risk, not permanent injury. THC exposure is sufficient to support severe abuse findings.
Prenatal drug exposure	<i>In re Cayla C.</i> , No. M2024-01648-COA-R3-PT (Tenn. Ct. App. Aug. 28, 2025)	Toxicology evidence and admissions supported severe abuse and TPR.
Accessible drugs in home	<i>In re Alexander P.</i> , No. E2024-01714-COA-R3-PT (Tenn. Ct. App. Sept. 10, 2025)	Accessible drugs and child positive test supported severe abuse despite failed criminal prosecution. Trial court can draw negative inference from parent refusal to testify.
Drug exposure in residence	<i>In re A.L.H.</i> , No. M2016-01574-COA-R3-JV, 2017 WL 3822901 (Tenn. Ct. App. Aug. 31, 2017)	Child tests positive and methamphetamine exposure supported severe abuse finding. Parent who does not intervene when child is exposed by other parent is responsible for severe child abuse due to a failure to protect.
Methamphetamine exposure	<i>In re Mason E.</i> , No. E2015-01256-COA-R3-JV, 2016 WL 2894331 (Tenn. Ct. App. May 16, 2016)	Exposure to methamphetamine environment supported severe abuse adjudication.
Failure to protect	<i>In re H.L.F.</i> , 297 S.W.3d 223 (Tenn. Ct. App. 2009)	Deliberate disregard of known sexual abuse risk constituted severe child abuse.
Gross negligence	<i>In re Azay C.</i> , No. W2023-01261-COA-R3-JV, 2024 WL 2191117 (Tenn. Ct. App. May 15, 2024)	Grossly negligent conduct causing catastrophic injury may constitute severe abuse.
Finality of findings	<i>In re Kaithlyn D.</i> , No. M2023-00658-COA-R3-PT, 2024 WL 1098470 (Tenn. Ct. App. Mar. 11, 2024)	Final, unappealed severe abuse findings may later support TPR grounds.
Sufficiency of findings	<i>In re Avery H.</i> , No. W2024-01763-COA-R3-PT (Tenn. Ct. App. Jan. 20, 2026)	The unappealed findings in earlier order found severe abuse occurred but stated the perpetrator could not be identified. Insufficient to uphold those grounds at TPR.