



Mandated Reporting of Suspected Child Abuse

Michael Donner, Ph.D. and the 2004 Expertise Series Task Force

Reprinted with permission by CPA

California law and the American Psychological Association Ethical Principles Of Psychologists and Code of Conduct (2002) require psychologists to protect confidentiality. It is a violation of law, and unprofessional conduct, to disclose confidential information received in psychotherapy unless permitted to do so by law. The Child Abuse and Neglect Reporting Act (CANRA) is a law which mandates or permits certain disclosures in specific situations.

Psychologists must keep in mind that CANRA defines most, if not all, of the terms that apply to the mandate or permission to report. Some behaviors that psychologists may consider abusive will not be defined as such in CANRA. Psychologists must be aware of CANRA's definitions, and apply those definitions to reporting situations. (Penal Code Section 11164-11174.4)

CANRA makes an important distinction between mandated reporting and permissible reporting. Failure to make a mandated report is illegal, subject to discipline by the Board of Psychology, and may lead to civil suit. Permissible reports are left to the psychologist's discretion and psychologists are legally permitted to go against the wishes of the child or parent in making them.

Psychologists who make mandatory or permissible reports may be sued but are immune from civil liability if they follow the law. The immunity applies to the decision-making leading to a report as well as to the report itself. However, the immunity may not apply to post-reporting actions that are outside the scope of the mandated report, such as, taking on an investigative role.

Civil immunity does not prevent the Board of Psychology from taking disciplinary action where a psychologist has made a frivolous report or has made a report for an improper purpose. To impose discipline, the Board of Psychology would need to establish that the psychologist engaged in an extreme departure from the standard of care, not just a mistake or error of judgment.

MANDATED REPORTING

When psychologists acting in their professional capacity have knowledge or a reasonable suspicion that a child has

been the victim of abuse or neglect *as defined by CANRA*, an oral and a written report must be completed.

Reports should be made as soon as reasonably possible by telephone. A report may be directed to a Police Department, Sheriff's Department, or Children's Protective Services, which are typically a part of the County Welfare Offices. A written report (a form for which can be provided by any of the above) must be submitted within 36 hours (PC 11166 [a]). If the suspected abuse occurred outside of California, the psychologist still must report in California because psychologists may not have immunity for reports made to officials outside of California.

DEFINITIONS

Correction: The law says "could".

"Reasonable Suspicion"—This means that the education and training of psychologists in child abuse and neglect would lead a reasonable psychologist to suspect abuse. There must be some *objective* basis for suspecting abuse. A hunch, intuition or impression does not constitute an objective basis.

"A child has been the victim"—(1) The victim must still be a child, not an adult who was victimized as a child. (2) The abuse must have already occurred. A concern that abuse COULD occur is not reportable.

BEHAVIOR THAT MUST BE REPORTED

1. Sexual Abuse—Any form of non-consensual sexual activity between an adult and a child, i.e., someone 18 or over with someone under 18. Sexual activity includes any sexual or sexualized behavior that is intended to arouse the sexual desire of either the adult or the child, or sexually exploit the child. This includes intercourse, oral and anal sex, and a wide range of behaviors such as kissing, touching, fondling or groping (even through clothing), or showing of pornography (Penal Code Section 11165.1). A coerced agreement to perform sexual acts is not consent.

2. Reportable Consensual Sexual Activity - The rules involving CONSENSUAL activity are complicated and not necessarily intuitive. These should be read carefully and referred to as the situation requires. See table for further clarification.



a. Any consensual sexual activity between minors where one is 15 years old or over and the other is 13 or younger. This requirement includes the entire range of sexual activities, and probably includes behaviors that are normative and even age appropriate. However the CANRA mandates a report.

b. Any sexual activity between a child 14 or 15 years old and an adult at least 10 years older.

c. Sexual intercourse between a child 15 or younger and someone 21 or over. "Sexual intercourse" is genital intercourse between a male and a female.

d. Anal or oral sex when either partner is a minor 14 or older is a mandated report, even when the partner is also a minor, and even when intercourse would be permissible. For reasons not specified in CANRA, oral and anal sex are treated differently than intercourse.

e. SPECIAL NOTE - Voluntary sexual activity of any sort between children who are both under the age of 14 years and who are of similar age, maturity, and sophistication is not a mandated report.¹ This means that younger children can engage in voluntary sexual activity that would mandate a report if one of the minors were 14 or older.

3. Physical Abuse—Any *injury* caused *deliberately*. An accident is not abuse. An injury is defined in CANRA as a traumatic condition. This means serious harm, including cuts, burns, severe bruises, broken bones, welts or scars.²

a. Willful harming or injuring of a child or the endangering of the person or health of a child—This means behaviors in which the probability of serious flagrant disregard for the health and safety of children, or which result in significant psychological trauma. For example, a nine year old child was beaten with a wooden dowel so severely she was still bruised and swollen days later.³

b. Unlawful corporal punishment—Cruel or inhuman behavior that causes an injury. Beatings that left scars from belt buckles, black eyes, dragging a child by the hair, are all examples of unlawful corporal punishment. Physical discipline of a child, such as slapping, spanking

or grabbing to correct or punish breaches of rules, have been found to be acceptable as long as it is not excessive as described above. (In re Jose M.(1988), People v Checketts (1999) People v. Smith (2002) , Cal.App.4th)

4. Neglect—Neglect means risking, causing or permitting the health of a child to be seriously endangered by intentionally failing to provide adequate food, clothing, shelter or medical care. The emphasis in this section is on the severity of the neglect, behaviors that could cause great bodily harm. The courts have defined "intentionally" to mean "know or should know of the severity of the risk." (People v Sargent, 2002, Section 11165.2.[a], 11165.3)

WHAT IS NOT A MANDATED REPORT OF PHYSICAL ABUSE?

An accidental injury.

When an ADULT victim reports abuse that occurred to them when they were a child. Corporal punishment that did not cause a physically Traumatic condition and was not excessive. Parents may use "instruments." Thus, for example, leaving a red mark by hitting a child with a belt does not, in itself, constitute abuse, under a conservative interpretation of the law.

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. (11165.13 [a])

A child receiving treatment by spiritual means as long as the health of the child is not seriously endangered. (11165.2.[b])

A mutual fight between minors.

PERMISSIBLE REPORTING

A psychologist is PERMITTED but not mandated to make a report only if he or she suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage in the future (Penal Code Section 11166.05). Examples of evidence of serious emotional damage would include severe anxiety, depression, withdrawal, or aggressive behavior. Psychologists should note the use of the word SEVERE symptoms, even for PERMISSIBLE reporting. Psychologists who make PERMISSIBLE reports have the same protections as when making MANDATED reports, but those who decide to maintain patient confidentiality by not reporting are also fully in compliance with the law.

¹ Planned Parenthood v. Van de Kamp

² In re Edward C. 1981, In re Jose M, 1988, People v Whitehurst 1992.

³ People v. Jaramillo (1979), Cline v. Superior Court (1982), People v. Valdez (2002)



REPORTING IN AGENCY OR INSTITUTIONAL SETTINGS

A supervisor or employer may not prevent, or retaliate against, a subordinate from making a report. (PC Sec. 11166 [g]1)

A supervisor or employer may not require a subordinate to tell them if you made a report. (PC Sec. 11166 [g]2)

Only one member of a treatment team is required to make a report (PC Sec. 11166[f]), although all members may if they wish.

SPECIAL NOTE:

Psychologists must not provide the written child abuse reports to anyone other than the agencies previously described, even if the record has been subpoenaed. To do so is a misdemeanor. (PC 11167.5)

Disclaimers:

This document is educational in nature and is not intended to replace the advice of an attorney. In addition, although the information in this document was accurate at the time of publication, psychologists using this information should bear in mind that laws and regulations change over time and that the interpretation of laws and regulations by courts and the Board of Psychology may change from time to time.

The Board of Psychology (Board) is committed to including guest articles in the BOP Update. The Board of Psychology takes no responsibility for the accuracy or veracity of any comments or statements contained in a guest article, and the Board remains neutral on any position statements made in a guest article.

This table indicates specific acts that must be reported, even if the act is consensual. Identify the cell at the intersection of the ages of the parties involved. Forced or coerced behavior is not consensual. Any behavior deemed abusive by the therapist is a mandatory report.

Age	13	14	15	16	17
13	No mandated report for any consensual activity	Anal or Oral Sex Mandated*	Any Sexual Activity-Mandated Report	Any Sexual Activity-Mandated Report	Any Sexual Activity-Mandated Report
14	Anal or Oral Sex Mandated Report*	Anal or Oral Sex Mandated Report	Anal or Oral Sex Mandated Report	Anal or Oral Sex Mandated Report	Anal or Oral Sex Mandated Report
15	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
16	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
17	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
18	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
19	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
20	Any sexual behavior mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
21	Any sexual behavior mandated report	Anal, oral and intercourse-mandated report	Anal, oral and intercourse-mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
22	Any sexual behavior mandated report	Anal, oral and intercourse-mandated report	Anal, oral and intercourse-mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
23	Any sexual behavior mandated report	Anal, oral and intercourse-mandated report	Anal, oral and intercourse-mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
24	Any sexual behavior mandated report	Any sexual activity-mandated report	Anal, oral and intercourse-mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report
25	Any sexual behavior mandated report	Any sexual activity-mandated report	Any sexual activity-mandated report	Anal or oral sex mandated report	Anal or oral sex mandated report

* Although there is some disagreement, our interpretation is that some consensual sexual activity between a 14 year old child and a child under 14 does not mandate a report.

Sexual Activity: Sexual activity includes any behavior intended to arouse the adult or child or sexually exploit the child. This can include intercourse, oral and anal sex, and a wide range of behaviors such as kissing, touching, fondling, groping, or showing of pornography.

Sexual Intercourse: Genital intercourse between a male and a female.