

QUESTIONS AND ANSWERS REGARDING CHILD ABUSE REPORTING REQUIREMENTS

1. What is the purpose of the Child Abuse and Neglect Reporting Act?

The Legislature passed the Child Abuse and Neglect Reporting Act, Penal Code section 11164 et seq., to protect children from abuse and neglect. The act requires that all persons participating in the investigation of the case consider the needs of the child victim and do whatever is necessary to prevent psychological harm to the child victim.

2. How is a child defined in the Child Abuse and Neglect Reporting Act?

Section 11165 defines a child as a person under the age of eighteen years.

3. What is child abuse?

Section 11165.6 defines child abuse as a physical injury that is inflicted by other than accidental means on a child by another person. The term "child abuse or neglect" includes sexual abuse, neglect, willful cruelty, or unjustifiable punishment, unlawful corporal punishment or injury, and abuse or neglect in out of home care. Child abuse or neglect does not include a mutual affray between minors. Child abuse or neglect does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

4. What is sexual abuse?

Section 11165.1 defines sexual abuse as sexual assault or sexual exploitation. Sexual assault means conduct in violation of one or more of the following penal code sections:

Section 261 (rape), subdivision (d) of 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), and sections relating to lewd or lascivious acts upon a child, oral copulation, sexual penetration, and child molestation.

Sexual exploitation refers to conduct involving matter depicting a minor in obscene acts or using a child in child pornography.

5. What is neglect?

Section 11165.2 defines neglect as the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare, under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

6. What is severe neglect?

Section 11165.2(a) defines severe neglect as negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. Severe neglect also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

7. What is general neglect?

Section 11165.2(b) defines general neglect as the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

8. What is willful harming or injuring of a child or the endangering of a person or health of a child?

Section 11165.3 defines willful harming or injuring of a child or the endangering of a person or health of a child as a situation where any person willfully causes or permits any child to suffer or inflicts thereon unjustifiable physical pain or mental suffering or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

9. What is unlawful corporal punishment or injury?

Section 11165.4 defines unlawful corporal punishment or injury as a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in the public school to quell a disturbance threatening physical injury to person or damage to property for purposes of self defense or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Education Code section 49001. It does not include the exercise of the degree of physical control authorized by Education Code section 44807. Section 44807 authorizes certificated employees to use the same degree of physical control as a parent to maintain order, to protect property, to protect the health and safety of others students, or to maintain conditions conducive to learning. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

10. What is abuse or neglect in out of home care?

Section 11165.5 defines abuse or neglect in out of home care as including sexual abuse, neglect, unlawful corporal punishment or injury, or willful harming or injuring of a child or the endangering of a person or health of a child, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children or an administrator

or employee of a public or private school or other institution or agency. Abuse or neglect in out of home care does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

11. What is a mandated reporter (formerly referred to as a child care custodian)?

Section 11165.7 defines a mandated reporter as any of the following:

1. A teacher.
2. An instructional aide.
3. A teacher's aide or teacher's assistant employed by any public or private school.
4. A classified employee of any school (previously, classified employees as a general group were not included).
5. An administrative officer or supervisor of Child Welfare and Attendance, or a certificated pupil personnel employee of any public or private school.
6. An administrator of a public or private day camp.
7. An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
8. An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
9. Any employee of a county office of education of the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
10. A licensee, an administrator, or an employee of a licensed community care or child day care facility.
11. A Head Start program teacher.
12. A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
13. A public assistance worker.
14. An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
15. A social worker, probation officer, or parole officer.
16. An employee of a school district police or security department.
17. Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
18. A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
19. A peace officer.
20. A firefighter, except for voluntary firefighters.
21. A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
22. Any emergency medical technician I or II, paramedic, or other person certified

- pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
23. A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
 24. A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
 25. An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.
 26. A state or county public health employee who treats a minor for venereal disease or any other condition.
 27. A coroner.
 28. A medical examiner, or any other person who performs autopsies.
 29. A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.
 30. A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.
 31. An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
 - (A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.
 - (B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.
 32. A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.
 33. Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

A mandated reporter also includes volunteers of public or private organizations whose duties require direct contact and supervision of children who are encouraged to obtain training in the identification and reporting of child abuse. School districts are strongly encouraged to provide their employees who are mandated reporters with training. As part of that training, school districts are required to provide all employees being trained a written copy of the reporting requirements and a written disclosure of the employee's confidentiality rights. School districts that do not train their employees that are specified in Section 11165.7 in the child abuse reporting laws are required to report to the State Department of Education the reasons why this training is not provided. However, the absence of training does not excuse a mandated reporter from the duties imposed by the child abuse reporting law.

12. To which agency are mandated reporters required to report child abuse?

Section 11165.9 requires mandated reporters to report suspected child abuse or neglect to any police department, sheriff's department, county probation department, if designated by the county to receive mandated reports or the County Welfare Department. It does not include a school district police or security department. Any of the appropriate agencies shall accept a report of suspected child abuse or neglect, whether offered by a mandated reporter or another person or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with the proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

13. What is an unfounded report?

Section 11165.12(a) defines an unfounded report as a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect.

14. What is a substantiated report?

Section 11165.12(b) defines a substantiated report as a report which is determined by the investigator who conducted the investigation based upon some credible evidence, to constitute child abuse or neglect.

15. What is an inconclusive report?

Section 11165.12 defines an inconclusive report as a report which is determined by the investigator who conducted the investigation not to be unfounded but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred.

16. When is a mandated reporter required to make a child abuse report to the appropriate agency?

Section 11166 requires a mandated reporter to make a report to a police department, sheriff's department, county probation department, if designated by the county to receive mandated reports, or the County Welfare Department, whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practically possible by telephone, and the mandated reporter shall prepare and send a written report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses related to the incident.

Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect shall bring the situation to the attention of the agency to which the child abuse report is made at the time the report is made.

17. How is reasonable suspicion defined?

Section 11166(a)(1) defines reasonable suspicion means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. The pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. Reasonable suspicion does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any reasonable suspicion is sufficient.

18. What is the penalty for failure of a mandated reporter to make a mandated report?

Section 11166(b) states that any mandated reporter who fails to report an incident of known or reasonable suspected child abuse or neglect, as required by law, is guilty of a misdemeanor punishable by up to six months' confinement in a county jail or by a fine of \$1,000 or both.

19. May other persons report child abuse?

Section 11166 states that any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency.

20. May two or more persons (who are required to report) make a joint child abuse report?

Yes. Section 11166(f) states that when two or more persons who are required to report child abuse jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

21. May a mandated reporter report serious emotional damages?

Yes. Section 11166.05 states that a mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damages or is at a substantial risk of suffering serious emotional damages may make a child abuse report. The serious emotional damage may be evidenced by behavior, including, but not limited to, severe anxiety, depression, withdrawal or outward aggressive behavior toward self or others.

22. May a supervisor or administrator halt the reporting process?

Section 11166(g) states that the reporting duties with respect to child abuse are individual and no supervisor or administrator may impede or inhibit reporting and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate

reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the child abuse reporting laws. In addition, the internal procedures cannot require any employee required to make child abuse reports to disclose his or her identity to the employer and reporting the information to an employer, supervisor, school principal, school counselor, co-worker, or other person shall not be a substitute for making the mandated report to the appropriate agency.

23. Is the identity of persons who report child abuse confidential?

Yes. Section 11167 requires reports of suspected child abuse or neglect shall be confidential and disclosed only among the agencies receiving or investigating mandated reports or to the district attorney in a criminal prosecution. No agency or person may disclose the identity of any person who reports child abuse to the person's employer, except with the employee's consent or by court order. Any violation of the confidentiality requirement is a misdemeanor punishable by imprisonment in a county jail not to exceed six months by a fine of \$500 or both.

24. Is there a specified form for written reports by mandated reporters?

Yes. Section 11168 requires that the written reports be submitted on forms adopted by the Department of Justice.

25. Can a mandated reporter be held civilly liable for making a false report?

Section 11172 states that no mandated reporter who reports a known or suspected instance of child abuse or neglect shall be civilly or criminally liable for any report required or authorized by the child abuse reporting law even if the knowledge of possible abuse was acquired outside of the scope of his or her employment or professional capacity. Section 11172(c) states that if a mandated reporter is sued and incurs any legal fees or costs to defend any type of civil or criminal action, the mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs and the State Board of Control shall allow that claim if the requirements of the child abuse reporting law were met. A mandated reporter may only be held liable for making a false child abuse report if the person knew the report was false or made the report with reckless disregard for the truth or falsity of the report.

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