

CHILD ABUSE REPORTING REQUIREMENTS

Who must report [Penal Code § 11165.7(a)]: Mandated reporters include: (1) a teacher; (3) a teacher's aide or assistant; (5) an administrative officer or supervisor of child welfare and attendance, or a certified pupil personnel employee of a public or private school; (6) an administrator of a public or private day camp; (32) a clergy member. 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 custodian of records of a clergy member.

When is a report required [Pen. C. § 11166]: A mandated reporter shall make a report 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.

Penitential communication exception [Pen. C. § 11166(d)(1)]: There is no duty to report where the knowledge of abuse was acquired in a penitential communication. For the purposes of this subdivision, "'penitential communication' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret." Case law elaborates on the penitential communication exception as follows:

- a. The speaker need not be a member of the congregation or faith of the clergy member.
- b. The communication must be made only to the clergy member, with no others known to be present.
- c. The communication must be intended by speaker to remain confidential. If there is evidence that the penitent expects the communication will be shared with a third party, it is not considered confidential.
- d. There is no requirement that the communication be in the nature of a "confession," i.e. a description of a "flawed act or failure to act," given for the purpose of receiving religious consolation or guidance in return.

What degree of knowledge is required to trigger the obligation to report. [Pen. C. § 11166(a)(1)]: 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. "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." The standard of reasonable suspicion is an objective standard, i.e. whether a reasonable person would entertain a suspicion that abuse occurred. A subjective belief that there is no basis to suspect is not enough to defeat the duty. **COMMENT:** The system is biased in favor of overreporting. Don't try to make the final determination whether abuse has occurred; let the investigating agency do this.

Who is a child [Pen. C. § 11165]: A child is any person under the age of 18.

What constitutes child abuse or neglect [Pen.C. § 11165.6]:“Child abuse or neglect” includes a) physical injury or death inflicted by other than accidental means upon a child by another person; b) sexual abuse; c) neglect; d) the willful harming or injuring of a child or the endangering of the person or health of a child; and e) unlawful corporal punishment or injury. Sexual abuse is defined broadly as sexual assault or sexual exploitation. Sexual assault includes rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, and child molestation. Sexual exploitation involves using, employing, coercing or encouraging a child to participate in prostitution, or any live performance depicting sexual obscenity, or to pose for any visual depiction of obscene sexual conduct.

Neglect [Pen.C. § 11165.2] means 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.

The willful harming or injuring of a child or the endangering of the person or health of a child [Pen. C.§ 11165.3] means a situation in which any person causes or permits any child to suffer unjustifiable physical pain or mental suffering, or 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. **COMMENT:** The broadest and grayest category of abuse is arguably “permitting a child to suffer unjustifiable mental suffering.” This phrase covers a lot of territory. People who work with children need to understand that simply allowing a child (i.e. anyone under the age of 18) to suffer unjustifiable fear is child abuse.

Unlawful corporal punishment or injury [Pen. C. § 11165.4] means a situation where any person 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 a 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. It also does not include the exercise of the degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.

To whom do I report [Pen. C. § 11165.9]: An initial telephone report is required as soon as practicably possible. In San Diego County, reports should be made to the Child Welfare Services Child Abuse Hotline at 858-560-2191. In Imperial Valley, call 760-337-7750. For reports outside these areas, call 800-344-6000. A written follow-up report must be transmitted to the same agency within 36 hours of receiving the information concerning the incident. The written follow-up report is essential to show that the mandated reporter has complied with reporting requirements. It should be provided in every case, even where the mandated reporter believes the incident has been fully addressed through the telephonic report.

What should be in the report? [Pen. C. § 11167(a)] Reports of suspected child abuse or neglect shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child’s name, the child’s address, present location, and, if

applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

Can I rely on the report of another person to satisfy my reporting obligation [Pen. C. § 11166(h)]: With one exception, no. When two or more persons, who are required to report, 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.

Penalty for failing to report [Pen. C. § 11166(c)]: Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

Is the identity of the reporter kept confidential? [Pen. C. § 11167(d)]: With limited exceptions, yes. The identity of any mandated reporter who makes a report is kept confidential, and can only be revealed to the agency investigating the incident, to a prosecutor, or in certain civil actions to address the incident.

Does the mandatory reporter have any immunity? [Pen. C. § 11172(a)] Yes. A mandated reporter has immunity from both civil and criminal liability for a) any report required or authorized by the mandatory reporter law; b) providing access to the suspected victim by a government agency investigating a report of child abuse or neglect; c) taking photographs of the suspected victim, even without parental consent; d) including the photos in the mandated written report. There is no immunity for any use of the photographs other than as part of a mandated written report.

Can a mandated reporter recover attorney fees incurred in defending a civil suit from a report? [Pen. C. § 11172(d)] Yes, where the reporter a) prevails in a civil action b) which is resolved by a formal court proceeding, e.g. a demurrer, a motion for summary judgment, or a trial. The statute does not provided for recovery of attorney fees where the matter is resolved in a mediation, settlement conference, or other voluntary, alternative dispute resolution proceeding.