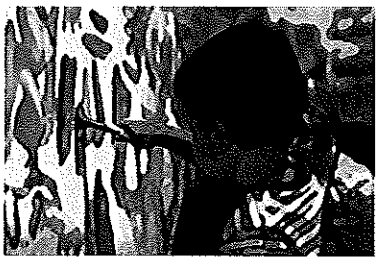
CHILD ABUSE

Educator's Responsibilities



Crime and Violence Prevention Center
California Attorney General's Office

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Please note that the California Child Abuse and Neglect Reporting Act may have been amended since the printing of this material. For the most current reporting law information, please go to www.leginfo.ca.gov. This material has been prepared to assist educators in determining their reporting responsibilities. It is not intended to be and should not be considered legal advice. In the event there are questions about reporting responsibilities in a specific case, the advice of legal counsel should be sought.

Introduction

Tragically, it is estimated that three children die each day in this nation as a result of child abuse and neglect. Every day, thousands of children are abused, often by a member of their own family, an unmarried parent's partner, or a caregiver.

The California Department of Social Services estimated that 378,301 referrals for investigation of child abuse and neglect involving 713,391 children occurred in 2004.

Each incident of child abuse is a national tragedy. No civilized society can overlook the maltreatment of children. Identification of abuse is the first step to strengthening our efforts in prevention and early intervention with children, youth and troubled families. Citizens and professionals who deal with children play a critical role in protecting innocent victims who suffer from abuse.

Under California state law, specific professional groups, including educators, are mandated to report known or suspected child abuse. Knowledge or reasonable suspicion of child abuse is not privileged information and must be reported. This information may be the only way a child receives help.

As an educator, you are in a unique position to help abused and neglected children escape pain, suffering, and even death. This handbook is designed to assist you in identifying the symptoms of child abuse and understanding your reporting responsibilities. It also answers some frequently asked questions. Together, we can stop the abuse and give our children a chance at a safe, happy, and productive life.

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What Is Child Abuse?

Mandated reporters (see page 14) are required by law to report known or suspected child abuse.

The law defines child abuse as:

- Physical abuse
- Physical neglect
- Sexual abuse
- Emotional maltreatment

Indicators of child abuse are listed in this section to help educators and other school personnel meet their responsibilities under the Child Abuse and Neglect Reporting Act. (Pen. Code, §11164 et. seq.) Of course, one of the most important reasons for suspecting child abuse is that a child has told you that someone has hurt him or her.

Physical Abuse

The term "child abuse" includes "physical injury inflicted by other than accidental means upon a child by another person." (Pen. Code, §11165.6.) Physical abuse most often involves severe corporal punishment in which a frustrated or angry parent or other caregiver strikes, shakes, or throws a child. Intentional assault such as burning, biting, cutting, poking, twisting limbs, or otherwise torturing a child is also included in this category of child abuse. Indicators of physical abuse can be physical or behavioral.

Physical indicators

The type and location of an injury can help distinguish accidental injuries from injuries inflicted by physical abuse. Typical locations of injuries resulting from abuse are the back surface of a child's body from the neck to the knees, injuries to the face, and injuries to multiple parts of the body. Injuries to the shins, elbows, knees, and forehead are not typically sustained from abuse.

Types of injuries indicative of physical abuse include:

- Bruises
- Burns
- Bite marks
- Abrasions
- Lacerations
- Head injuries
- Internal Injuries
- Fractures

Behavioral indicators

The following behaviors are often exhibited by abused children:

- The child is frightened of parent or caretaker or, at the other extreme, is overprotective of parent or caretaker.
- The child is excessively passive, overly compliant, apathetic, withdrawn, or fearful or, at the other extreme, is excessively aggressive, destructive, or physically violent.
- The child and/or parent or caretaker attempts to hide injuries to the child (e.g., the child wears excessive layers of clothing, especially in hot weather; the child is frequently absent from school or misses physical education classes if changing into gym clothes is required).
- The child is frightened of going home.
- The child is clingy and forms indiscriminate attachments.
- The child is apprehensive when other children cry.
- The child is wary of physical contact with adults.
- The child exhibits drastic behavioral changes in and out of presence of parent or caretaker.
- The child is hypervigilant; the child has difficulty sitting or walking.
- The child suffers from seizures or vomiting.
- The child, as an adolescent, exhibits depression, self-mutilation, suicide attempts, substance abuse, or sleeping and eating disorders.

Additional indicators

Other indicators of physical abuse may include:

- A statement by the child that the injury was caused by abuse. (Please note: abused children may deny abuse.)

- Knowledge that the child's injury is unusual for the child's specific age group (e.g., any fracture in an infant).
- Knowledge of the child's history of previous or recurrent injuries.
- Unexplained injuries (e.g., parent is unable to explain reason for injury; there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis).
- Parent or caretaker delays seeking or fails to seek medical care for the child's injury.

Physical Neglect

Neglect is the negligent treatment or maltreatment of a child by a parent or caretaker under circumstances indicating harm or threatened harm to the child's health or welfare. (Pen. Code, §11165.2.) It includes both acts and omissions on the part of the parent or caretaker. California law defines two categories of neglect: severe neglect and general neglect.

Severe neglect means the negligent failure of a parent or caretaker to protect the child from severe malnutrition or a medically diagnosed non-organic failure to thrive. It also includes situations where the parent or caretaker willfully causes or permits the body or health of the child to be endangered. This includes the intentional failure to provide adequate food, clothing, shelter, or medical care. (Pen. Code, §11165.2, subd. (a).)

General neglect means the negligent failure of a parent or caretaker to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred. (Pen. Code, §11165.2, subd. (b).)

Indicators of physical neglect

Neglect may be suspected when one or more of the following conditions exist:

- The child is lacking adequate medical or dental care.
- The child is often sleepy or hungry.

- The child is often dirty, demonstrates poor personal hygiene, or is inadequately dressed for weather conditions.
- There is evidence of poor or inadequate supervision for the child's age.
- The conditions in the home are unsafe or unsanitary.
- The child appears to be malnourished.
- The child is depressed, withdrawn, or apathetic, exhibits antisocial or destructive behavior, shows fearfulness, or suffers from substance abuse, speech, eating, or habit disorders (such as biting, rocking, or whining).

While some of these conditions may exist in any home, it is the extreme or persistent presence of these conditions that indicate a degree of neglect. Disarray and an untidy home do not necessarily mean the home is unfit. But extreme conditions resulting in an "unfit home" constitute severe neglect and may justify protective custody and juvenile dependency proceedings.

Sexual Abuse

Sexual abuse is defined as acts of sexual assault or sexual exploitation of a minor. (Pen. Code, §11165.1.) Sexual abuse encompasses a broad spectrum of behavior and may consist of many acts over a long period of time (chronic molestation) or a single incident. Victims range in age from less than one year through adolescence.

Sexual assault includes: rape; gang rape (or rape in concert); statutory rape, when the offender is 21 or older and the victim is under 16; incest; sodomy; lewd or lascivious acts with a child under 14 years of age, or with a 14 or 15 year old when the offender is at least 10 years older; oral copulation; sexual penetration; and child molestation. (Pen. Code, §11165.1, subd. (a).)

Sexual exploitation includes conduct or activities related to child pornography and child prostitution. (Pen. Code, §11165.1, subd. (c).)

The nature of sexual abuse, the guilt and shame of the child victim, and the possible involvement of parents, stepparents,

friends, or others in a child caretaker role, make it extremely difficult for children to report sexual abuse.

Sometimes a child who does seek help is accused of making up stories. Many people do not believe the child because the abuser seems well-adjusted and they cannot believe this person could be capable of sexual abuse. Also, when the matter does come to the attention of authorities, the child may give in to pressure from parents or caretakers and deny that any sexual abuse has occurred. The child may feel guilty about "turning in" the abuser or breaking up the family and therefore recant or change his or her story. This pattern of denial is typical and may unfortunately cause people to be skeptical of a child's complaint of sexual abuse.

The sad reality of sexual abuse is that without third-party reporting, the child often remains trapped in secrecy by shame, fear, and threats by the abuser.

Indicators of sexual abuse

Indicators of sexual abuse may surface through a child's history, physical symptoms, and behavior. Some of these indicators, taken separately, may not be symptomatic of sexual abuse. They are listed below as a guide and should be examined in the context of other factors.

History

- The single most important indicator of sexual abuse is disclosure by a child to a friend, classmate, teacher, friend's mother, or other trusted adult. The disclosure may be direct or indirect (e.g., "I know someone..." or "What would you do if...?" or "I heard something about somebody..."). It is not uncommon for the disclosure by a child experiencing chronic or acute sexual abuse to be delayed. Children rarely fabricate these accounts; they should be taken seriously.
- A child wears torn, stained, or bloody underclothing.
- A child has an injury or disease (such as vaginal trauma or sexually transmitted disease) which is unusual for his or her specific age group.

- A child has a history of previous or recurrent injuries or diseases.
- A child has unexplained injuries or a disease (i.e., parent or caretaker is unable to explain reason for injury or disease); there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis.
- A young girl is pregnant. (Note that pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Pen. Code, §11166, subd. (a)(1).)

Physical symptoms

- Sexually transmitted diseases.
- Genital discharge or infection.
- Physical trauma or irritation to the anal or genital area (e.g., pain, itching, swelling, bruising, bleeding, lacerations, or abrasions), especially if the injuries are unexplained or there is an inconsistent explanation.
- Pain during urination or defecation.
- Difficulty in walking or sitting due to genital or anal pain.
- Psychosomatic symptoms (e.g., stomachaches or headaches).

Sexual behaviors of children

- Detailed and age-inappropriate understanding of sexual behavior (especially by younger children).
- Inappropriate, unusual, or aggressive sexual behavior with peers or toys.
- Compulsive indiscreet masturbation.
- Excessive curiosity about sexual matters and/or genitalia.
- Unusual seductiveness with classmates, teachers, and others.
- Excessive concern about homosexuality, especially by boys.

Behavioral indicators in younger children

- Enuresis (wetting pants or wetting bed).
- Fecal soiling.
- Eating disturbances (such as overeating or undereating).
- Fears or phobias.
- Overly compulsive behavior.

- School problems or significant change in school performance (attitude and grades).
- Age-inappropriate behavior that includes pseudomaturity or regressive behavior (i.e., bed wetting or thumb sucking).
- Inability to concentrate.
- Sleeping disturbances (such as nightmares, fear of falling asleep, fretful sleep pattern or sleeping long hours).
- Drastic behavior changes.
- Speech disorders.
- Frightened of parents or caretaker or of going home.

Behavioral indicators in older children and adolescents

- Withdrawal.
- Chronic fatigue.
- Clinical depression and/or apathy.
- Overly compliant behavior.
- Poor hygiene or excessive bathing.
- Poor peer relations and social skills; inability to make friends; running away from home.
- Aggressive, antisocial, or delinquent behavior.
- Alcohol or drug abuse.
- Prostitution or excessive promiscuity.
- School problems (such as frequent absences or a sudden drop in school performance).
- Refusal to dress for physical education.
- Non-participation in sports and social activities.
- Fear of showers and/or restrooms.
- Fear of home life (as demonstrated by arriving at school early and/or leaving late).
- Sudden fear of other things (such as going outside or participating in familiar activities).
- Extraordinary fear of males.
- Self-consciousness of body beyond that expected for age.
- Sudden acquisition of money, new clothes, or gifts with no reasonable explanation.
- Suicide attempt or other self-destructive behavior.
- Crying without provocation.
- Setting fires.

Incestuous/intrafamilial sexual abuse
Sexual abuse of children within the family is the most hidden form of child abuse. In spite of its taboo and the difficulty of detection, some researchers believe it may be even more common than physical abuse.

In discussing sexual abuse, incest means sexual activity between certain close relatives (e.g., parent and child; siblings; grandparent and grandchild); intrafamilial means sexual activity between persons in a family setting, (e.g., stepparent and stepchild; parent's live-in partner and parent's child).

In most reported cases, the father or a male caretaker is the initiator of sexual activity and the victim is a female child. However, boys are also victims, more often than previously believed. Embarrassment and shame often deter children from reporting sexual abuse.

Sexual abuse of a child may begin at any age, from infancy through adolescence. The first incident of sexual abuse may be followed by guilt-provoking demands for secrecy and threats of terrible harm or consequences if the secret is revealed. The child may then fear disgrace, hatred, or blame for breaking up the family if he or she reveals the secret.

Regardless of how gentle, trivial, or coincidental the first incident may have been, sexual abuse tends to recur and escalate over time. The child may eventually blame himself or herself and believe that he or she may have tempted or provoked the abuser.

Although a mother is usually expected to protect her child, she may purposely stay isolated from the problem. By being distant and uncommunicative, or by disapproving of sexual matters, the mother may cause the child to be afraid to confide in her about the abuse.

One reason for the mother's behavior may be extreme insecurity. The potential loss of her husband or partner, and the economic security he provides, may be so threatening to her that she cannot

allow herself to believe or even to suspect that her child is at risk. Another reason for the mother's behavior may be that she was a victim of sexual abuse herself and she may consequently not trust her judgment or her right to challenge male authority. For these same reasons some mothers actually know their children are sexually abused but choose to look the other way.

Until the child is old enough to realize that incest is not a common occurrence, and until the child is strong enough to obtain help outside the family, there is no escape. This reality may change, though, if the abuse is reported by an outside party.

Extrafamilial sexual abuse

Children who are abused by someone outside their family typically know their molester, commonly through contact at school or in the neighborhood, or through involvement in youth programs, churches, or other recreational activities. People who molest children fall into all age categories, including pre-teens and the elderly. Although there are several classifications of child molesters, pedophiles present the greatest danger to children because their main sexual interest is children.

Pedophiles tend to be well-liked by children. They often choose work in professions or volunteer organizations which allow them easy access to children and in which they can develop the trust and respect of children and their parents. They believe sex with children is appropriate and even beneficial. They lure children into sexual relationships with love, rewards, promises, and gifts.

Although most cases of extrafamilial abuse involve a perpetrator known to the child, cases of abuse by strangers do occur. Typically in these cases, the stranger will entice the child ("Will you help me find my puppy?"); or convince the child that his or her parent requested that the stranger pick up the child; or the stranger may simply abduct the child.

Emotional Maltreatment

Emotional maltreatment consists of emotional abuse and emotional deprivation or neglect.

Emotional abuse

Mandated reporters **may** report suspected emotional abuse. (Pen. Code, §11166.05.) However, suspected cases of severe emotional abuse that constitute willfully causing or permitting a child to suffer unjustifiable mental suffering **must** be reported. (Pen. Code, §11165.3.)

Just as physical injuries can incapacitate and scar a child, emotional maltreatment can similarly cripple and handicap a child emotionally, behaviorally, and intellectually. Severe psychological disorders have been traced to excessively distorted parental attitudes and actions. Emotional and behavioral problems, in varying degrees, are common among children whose parents abuse them emotionally.

Examples of how parents inflict emotional abuse on their children include excessive verbal assaults (such as belittling, screaming, threatening, blaming, or using sarcasm); unpredictable responses or inconsistency; continual negative moods; constant family discord; and double-message communication.

Behavioral indicators of emotional abuse

Emotional abuse may be suspected if a child:

- Is withdrawn, depressed, or apathetic.
- Is clingy and forms indiscriminate attachments.
- "Acts out" and is considered a behavior problem.
- Exhibits exaggerated fearfulness.
- Is overly rigid in conforming to instructions of teachers, doctors, and other adults.
- Suffers from sleep, speech, or eating disorders.
- Displays signs of emotional turmoil that include repetitive, rhythmic movements (such as rocking, whining, or picking at scabs).
- Pays inordinate attention to details or exhibits little or no verbal or physical communication with others.

- Suffers from enuresis (wetting pants or bed) or fecal soiling.
- Unwittingly makes comments such as "Mommy always tells me I'm bad."

The behavioral patterns mentioned may, of course, be due to other causes, but the suspicion of emotional abuse should not be dismissed.

Behavioral indicators of parents or caretakers

The following behavior exhibited by a parent or caretaker may suggest that a child is being emotionally abused:

- The parent or caretaker burdens the child with demands which are based on unreasonable or impossible expectations or are beyond his or her development capacity.
- The child is used as a "battleground" for marital conflicts.
- The child is used to satisfy the parent's or caretaker's own ego needs and the child is neither old nor mature enough to understand.
- The child is "objectified" by the parent or caretaker (i.e., the parent or caretaker refers to the child as "it" — "it" cried or "it" died).
- The child is exposed to or a witness of domestic violence.

Emotional abuse can become a self-fulfilling prophecy. For example, if a child is degraded enough, the child may "live up" to the image communicated by the abusing parent or caretaker.

Emotional abuse is very difficult to prove. Cumulative documentation by a law enforcement or child welfare agency may be necessary for effective intervention. Therefore, emotionally abused children should be referred for treatment as soon as possible.

Emotional deprivation

Emotional deprivation or neglect has been defined as "the deprivation suffered by children when their parents do not provide the normal experiences producing feelings of being loved, wanted, secure and worthy." (Child Abuse Prevention Handbook...and intervention guide, January 2006, Page 11)

Behavioral indicators of emotional deprivation
Emotional deprivation may be suspected if a child:

- Refuses to eat adequate amounts of food and thus is very frail.
- Is unable to perform normal learned functions for a given age (such as walking or talking).
- Displays antisocial behavior (such as aggression or disruption) or obvious delinquent behavior (such as drug abuse or vandalism); conversely, an emotionally deprived child may be abnormally unresponsive, sad, or withdrawn.
- Constantly "seeks out" and "pesters" other adults (such as teachers or neighbors) for attention and affection.
- Displays exaggerated fears.

When a parent ignores a child because of the parent's use of drugs or alcohol, psychiatric disturbances, personal problems, or other preoccupying situations, serious consequences may occur. However, these situations are not reportable unless they constitute a form of legally defined abuse.

What Is Not Child Abuse?

Listed below are descriptions of situations or circumstances which are not child abuse for purposes of the California Child Abuse and Neglect Reporting Act:

- Corporal punishment that is not cruel or inhuman or does not result in a traumatic condition. (Pen. Code, § 11165.4.)
- Injuries caused by two children fighting during a mutual altercation. (Pen. Code, §11165.6.)
- 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. (Pen. Code, §11165.6.)
- Reasonable and necessary force used by public school officials to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of a weapon or other dangerous objects. (Pen. Code, §11165.4.)

- Voluntary sexual conduct between minors who are both under the age of 14 and who are of similar age and sophistication. (People v. Stockton Pregnancy Control Medical Clinic, Inc. (1988) 203 Cal.App.3d 225, 233-240.)
- Pregnancy of a minor, does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse. (Pen. Code, §11166, subd. (a)(1).)
- Treatment by spiritual means as provided by 16509.1 of the Welfare and Institutions Code. (Pen. Code, §11165.2 (b).)
- An informed and appropriate medical decision. (Pen. Code, §11165.2 (b).)
- Not receiving specific medical treatment for religious reasons. (Pen. Code, § 11165.2 (b).)
- Positive toxicology screen at the time of delivery of an infant. (Pen. Code, §11165.13.)

What Are Educator's Responsibilities?

School teachers, principals, counselors, nurses, supervisors of child welfare and attendance, and other designated school personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.**

In the discussion below, answers are provided to some of the common concerns expressed by educators regarding their legal responsibility to report known or reasonably suspected child abuse.

What does the Child Abuse and Neglect Reporting Act require?

The Child Abuse and Neglect Reporting Act (Pen. Code, §11164 et seq.) requires certain professionals and lay persons

who have a special working relationship or regular contact with children to report known or suspected child abuse to the proper authorities. The following is an excerpt from the law:

> *(a) ...a mandated reporter shall make a report to [the police or sheriff's department, the county probation department (if designated by the county to receive such 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 practicably possible by telephone and the mandated reporter shall prepare and send, fax or electronically transmit a written followup report thereof 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 relating to the incident.*
>
> *(1) For the purposes of this article, "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....(Pen. Code, §11166.)*

Which professionals are required by law to report suspected child abuse?

Penal Code section 11165.7 defines "mandated reporters" of child abuse as follows:

(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 public school.
(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 or 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 local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
(20) A firefighter, except for volunteer 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 ap pointed 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 (d) 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 custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

Are volunteers mandated reporters?

No, unless otherwise specified in the law. However, volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse and are further encouraged to report known or suspected instances of child abuse and neglect to an agency specified in 11165.9. (Pen Code, §11165.7 (b).) Public and private organizations are encouraged to provide their volunteers with training on identification and reporting of child abuse and neglect. (Pen. Code, §11165.7 (f).)

Does the law provide immunity from civil or criminal liability for mandated reporters?

Yes. Mandated reporters are provided immunity from civil or criminal liability as a result of making a required or authorized report of known or suspected child abuse.

This immunity applies even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse and neglect

outside his or her professional capacity or outside the scope of his or her employment. (Pen. Code, §11172, subd. (a).)

Other persons who report are not liable either civil or criminally unless it can be proven that a false report was made and that the person who made it knew the report was false or made the report with reckless disregard of its truth or falsity. Any person who makes such a report is liable for any damages caused. (Pen. Code, §11172, subd. (a).)

May a mandated reporter who is sued for reporting child abuse be reimbursed for attorney's fees?

Yes. In the event a civil action is brought against a mandated reporter as a result of a required or authorized report of child abuse, he or she may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in the action if he or she prevails in the action or the court dismisses the action upon a demurrer or motion for summary judgment. The maximum hourly rate for recovery of attorney's fees is that charged by the State Attorney General at the time of the award and the maximum recovery is $50,000. Public entities providing a defense pursuant to Government Code Section 995 may not file a claim for attorney's fees and costs. (Pen. Code, §11172, subd. (c).)

Are employers required to inform mandated reporters of their legal responsibilities to report?

Yes. Any mandated reporter who enters into employment on and after January 1, 1985, "prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166 and of his or her confidentiality rights under subdivision (d) of Section 11167. The employer shall provide a copy of Sections 11165.7, 11166, and 11167 to the employee." (Pen. Code, §11166.5, subd. (a).)

Further, employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by the Child Abuse and Neglect Reporting Act. The training shall include training in child abuse identification and reporting. Whether or not employers provide training, they shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights. (Pen. Code, §11165.7 (c).)

School districts that do not train their employees who are mandated reporters in the duties of mandated reporters under the Child Abuse and Neglect Reporting Act shall report to the State Department of Education the reasons why this training is not provided. (Pen. Code, §11165.7 (d).)

Unless otherwise provided, the absence of training shall not excuse a mandated reporter from the duties imposed by the Child Abuse and Neglect Reporting Act. (Pen. Code, §11165.7 (e).)

If I do not report, may I be prosecuted?
Yes. Failure to report by telephone immediately, or as soon as practicably possible, and in writing within 36 hours is 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 imprisonment and fine." (Pen. Code, §11166, subd. (c).) However, if the mandated reporter's willful failure to report child abuse or neglect results in great bodily injury or death to a child, the mandated reporter "shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment." (Pen. Code, §11166.01 (b).) Basically, the purpose of this potential penalty is to ensure that mandated reporters will report all known or reasonably suspected incidents of child abuse immediately to the local police or sheriff's department, the county probation department (if designated by the county to receive such reports), or the county welfare department.

May I lose my credentials if I fail to report?
Yes. Educators who fail to report risk loss of their license or credential. "The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke, or suspend [a credential] for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system...." (Educ. Code, §44421.) Moreover, a failure to report may result in personal civil liability. (See Landeros v. Flood (1975) 17Cal.3d 399, 423-415.)

How do I report?
A mandated reporter must immediately, or as soon as practicably possible, report by telephone a known or suspected incidence of child abuse (Pen. Code, §11166. subd. (a)) to the police or sheriff's department, county probation department (if designated by the county to receive mandated reports), or county welfare department. The following information, if known, shall be provided at the time of the call:

- Name, business address, and telephone number of the mandated reporter.
- Child's name, address and present location and, where applicable, the child's school, grade and class.
- Names, addresses, and telephone number of the child's parents or guardians.
- Source of the information that lead to the suspicion of child abuse.
- Name, address, telephone number and other personal information of person(s) who might have abused the child. (Pen. Code, §11167, subd. (a).)

The mandated reporter shall make a report even if some of this information is not known or uncertain to him or her. (Pen. Code, §11167, subd. (a).)

The call must be followed within 36 hours by a followup written report to be sent, faxed or electronically transmitted to the agency to which the telephone report was made. (Pen. Code, §11166, subd. (a).) The written report must be filed on Department of Justice Form SS 8572, that can be downloaded from the Attorney

General's Web site at *www.ag.ca.gov*. (Click on Child Protection Program, click on Forms, click on Suspected Child Abuse Report Form. Instructions on completing the form are also included on the site. (See Appendix for a sample of this form.)

Does the law allow schools to develop special procedures for reporting child abuse?

Yes. It has been the practice of many schools to develop special procedures for reporting child abuse. School personnel who are mandated to report should be aware, however, that regardless of the existence of such procedures, reporting to a police or sheriff's department, probation department, or welfare department is still required by law, and "good intentions" may not be a defense in a criminal or civil action initiated for failure to report.

Furthermore, reporting is an individual responsibility. A mandated reporter may not be absolved of responsibility by relying on a supervisor or administrator to meet his or her individual reporting responsibility. (Pen. Code, §11166, subd. (i)(3).)

The law protects an individual who reports known or suspected child abuse to a police or sheriff's department, probation department, or welfare department so that he or she may do so without fear of any sanction for making the report. The supervisor or administrator may ask that the employee notify him or her that a report is being made; however, the employee cannot be prohibited or impeded from making a report directly to a police or sheriff's department, probation department, or welfare department. (Pen. Code, §11166, subd. (j) (1).) Furthermore, an employee making a report may not be required to disclose his or her identity to the employer. (Pen. Code, §11166, subd. (j) (2).) In addition, any supervisor or administrator who "impedes or inhibits" the reporting responsibility is punishable by a fine not to exceed one thousand dollars ($1,000) or by not more than six months in a county jail, or by both a fine and imprisonment. (Pen. Code, §11166.01 (a).) However, if great bodily injury or death to a child results from "impeding or inhibiting" the reporting of child abuse and neglect, the person is subject to a fine of not more than five thousand dollars ($5,000), by not more than one year in a county

jail, or by both a fine and imprisonment. (Pen. Code, §11166.01 (b).)

When two or more mandated reporters jointly have knowledge of a known or suspected instance of child abuse, they may elect one person to report. However, if the person elected to report fails to do so and the other person has knowledge of that fact, then the other person is responsible for making the report. (Pen. Code, §11166, subd. (h).)

What happens to the report?
Reports of child abuse are investigated either by the local law enforcement agency and/or by the county probation or welfare department. Reports received by the county probation or welfare department, except for reports involving general neglect and reports based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, shall be cross-reported immediately, or as soon as possible, to the local law enforcement agency having jurisdiction. (Pen. Code, §11166, subd. (j).) Law enforcement is also required to cross-report immediately, or as soon as possible, to the county welfare or probation department. (Pen. Code, §11166, subd. (k).) The reporting law is designed to ensure that law enforcement, county welfare, and probation departments receive and review all reports whether initially reported to them or to another agency designated in Penal Code section 11165.9. (Pen. Code, §11166, subds. (j) (k).)

Those required to report child abuse should be aware that reporting does not always mean that criminal or civil proceedings will be initiated against the suspected abuser. If an investigation does not reveal evidence of child abuse but suggests a potential of abuse or other family problems a child welfare agency may intervene and offer appropriate services to prevent abuse before it happens.

Are mandated reporters required to give their names when they make a report?
Yes. (Pen. Code, §11167, subd. (a).)

Is the identity of a mandated reporter confidential?
Yes. The identify of a person who reports known or suspected child abuse is confidential and may only be disclosed as follows:

- Between agencies receiving or investigating the report.
- To the district attorney in a criminal prosecution.
- To the district attorney in an action initiated under Welfare and Institutions Code Section 602 (minors violating laws defining crime, wards of court) arising from alleged child abuse.
- To the child's appointed counsel pursuant to Welfare and Institutions Code Section 317, subdivision (c).
- To the county counsel or district attorney in a proceeding under Family Code Section 7800 et seq. (termination of parental rights) or Welfare and Institutions Code Section 300 (dependent children).
- To a licensing agency when abuse in out-of-home care is reasonably suspected.
- By court order.
- When the reporter waives confidentiality. (Pen. Code, §11167, subd. (d) (1).)

Are reports of suspected child abuse confidential?
Yes. Required reports of suspected child abuse are confidential. The reports, and the information contained therein, may be disclosed only to the following:

- To persons or agencies to whom the reporter's identity may be disclosed. (See above.)
- To persons or agencies to whom disclosure of information maintained in the Department of Justice's Child Abuse Central Index is permitted under Penal Code Section 11170, subdivision (b), or Penal Code Section 11170.5, subdivision (a).
- To persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Penal Code Section 11174 (investigation of abuse in out-of-home care).
- To multidisciplinary personnel teams as defined in Welfare and Institutions Code Section 18951, subdivision (d).
- To persons or agencies responsible for the licensing of facilities that care for children, as specified in Penal Code Section 11165.7.

- To the State Department of Social Services or any county licensing agency which has contracted with the state when an individual has applied for a community care license or child day care license, when an individual has applied for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.
- To hospital scan teams.
- To coroners and medical examiners when conducting a postmortem examination of a child.
- To the Board of Prison Terms when subpoenaed for parole revocation proceedings against a parolee charged with abuse.
- To personnel from an agency responsible for making a placement of a child.
- To persons who have been identified by the Department of Justice pursuant to Penal Code Section 11170, subdivision (b) (6) or (c), as listed in the Child Abuse Central Index. (The report may be redacted in order to maintain the confi dentiality of the person who made the report.)
- To out-of-state law enforcement agencies conducting an investigation of child abuse, but only when the agency makes the request for the report in writing and on official letterhead and identifies the suspected abuser or victim by name.
- To persons who have verified with the Department of Justice pursuant to Penal Code Section 11170, subdivision (e), that they are listed in the Child Abuse Central Index. (The report may be redacted in order to maintain the confidentiality of the person who made the report.)
- To the chairperson of a county child death review team, or to his or her designee. (Pen. Code, § 11167.5, subd. (b).)

Any violation of these confidentiality provisions is a misdemeanor punishable by up to six months in the county jail or by a fine of $500 or by both. (Pen. Code, § 11167.5 subd. (a).)

May a school district release information from a pupil's record in an emergency without parental consent or judicial order?

Yes. If a law enforcement agency needs information from a pupil's record in an emergency to protect the health or safety of that student or another person, the school may disclose that information (Educ. Code, §49076, subd. (b)(1).) This is a closely limited rule and, in fact, replaces a statute that had given more disclosure rights to the police.

Thus, if a law enforcement agency needs information from a school record, it must comply with Education Code Section 49076, subdivision (b)(1). When grounds for access are not clearly established, consultation with county counsel or school district legal staff is advisable.

Is a school official required to notify a parent, guardian, or responsible relative when a minor pupil who is a victim of suspected child abuse is released into the custody of a peace officer?

No. If a school releases a minor pupil who is suspected of being abused into the custody of a peace officer, and the school later receives an inquiry from the minor's parent or guardian as to the student's location, the parent or guardian should be referred to the law enforcement agency that took the minor into protective custody. The law specifies that:

> [T]he school official shall provide the peace officer with the address and telephone number of the minor's parent or guardian. The peace officer shall take immediate steps to notify the parent, guardian, or responsible relative of the minor that the minor is in custody and the place where he or she is being held. If the officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held, or that the disclosure would cause the custody of the minor to be disturbed, the officer may refuse to disclose the place where the minor is being held for a period

not to exceed 24 hours. The officer shall, however, inform the parent, guardian, or responsible relative whether the child requires and is receiving medical or other treatment. The juvenile court shall review any decision not to disclose the place where the minor is being held at a subsequent detention hearing. (Educ. Code, §48906.)

Before releasing a child who is suspected of being abused to a peace officer, the school should obtain the officer's name, badge number, and telephone number so that it can later give it to a parent or guardian who inquires about the child's removal.

May school personnel be present during an officer's interview of a child abuse victim on school grounds?
Yes. The child must be given the option of being interviewed in private or selecting any adult who is a member of the school staff, including any certificated or classified employee or volunteer aide, to be present during the interview. The purpose of having a staff member at the interview is to lend support to the child and help him or her feel as comfortable as possible. However, the staff member must not participate in the interview or discuss the facts or circumstances of the case with the child. Furthermore, the staff member is subject to the reporting law's confidentiality requirements. A violation of confidentiality is a misdemeanor punishable by up to six months in jail or by a fine of $500 or by both. Lastly, a staff member selected by a child may decline the request to be present at the interview. (Pen. Code, §11174.3, subd. (a).)

Appendix

Suspected Child Abuse Report
DOJ SS 8572

SUSPECTED CHILD ABUSE REPORT

To Be Completed by **Mandated Child Abuse Reporters**
Pursuant to Penal Code Section 11166

PLEASE PRINT OR TYPE

CASE NAME: _____

CASE NUMBER: _____

A. REPORTING PARTY

NAME OF MANDATED REPORTER | TITLE | MANDATED REPORTER CATEGORY

REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS Street City Zip | DID MANDATED REPORTER IN THESS THE INCIDENT? ☐ YES ☐ NO

REPORTER'S TELEPHONE (DAYTIME) ( ) | SIGNATURE | TODAY'S DATE

B. REPORT NOTIFICATION

☐ LAW ENFORCEMENT ☐ COUNTY PROBATION | AGENCY

☐ COUNTY WELFARE / CPS (Child Protective Services)

ADDRESS Street City Zip | DATE/TIME OF PHONE CALL

OFFICIAL CONTACTED - TITLE | TELEPHONE ( )

C. VICTIM *One report per victim*

NAME (LAST, FIRST, MIDDLE) | BIRTHDATE OR APPROX. AGE | SEX | ETHNICITY

ADDRESS Street City Zip | TELEPHONE ( )

PRESENT LOCATION OF VICTIM | SCHOOL | CLASS | GRADE

PHYS'CALLY DISABLED? ☐ YES ☐ NO | DEVELOPMENTALLY DISABLED? ☐ YES ☐ NO | OTHER DISABILITY (SPECIFY) | PRIMARY LANGUAGE SPOKEN IN HOME

IN FOSTER CARE? ☐ YES ☐ NO | IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: ☐ DAY CARE ☐ CHILD CARE CENTER ☐ FOSTER FAMILY HOME ☐ FAMILY FRIEND ☐ GROUP HOME OR INSTITUTION ☐ RELATIVE'S HOME | TYPE OF ABUSE (CHECK ONE OR MORE): ☐ PHYSICAL ☐ MENTAL ☐ SEXUAL ☐ NEGLECT ☐ OTHER (SPECIFY)

RELATIONSHIP TO SUSPECT | PHOTOS TAKEN? ☐ YES ☐ NO | DID THE INCIDENT RESULT IN DEATH? VICTIM'S DEATH? ☐ YES ☐ NO ☐ UNK

D. INVOLVED PARTIES

VICTIM'S SIBLINGS

NAME BIRTHDATE SEX ETHNICITY | NAME BIRTHDATE SEX ETHNICITY

1. _____ 2. _____ 3. _____ 4. _____

VICTIM'S PARENT/GUARDIANS

NAME (LAST, FIRST, MIDDLE) | BIRTHDATE OR APPROX. AGE | SEX | ETHNICITY

ADDRESS Street City Zip | HOME PHONE ( ) | BUSINESS PHONE ( )

NAME (LAST, FIRST, MIDDLE) | BIRTHDATE OR APPROX. AGE | SEX | ETHNICITY

ADDRESS Street City Zip | HOME PHONE ( ) | BUSINESS PHONE ( )

SUSPECT

SUSPECT'S NAME (LAST, FIRST, MIDDLE) | BIRTHDATE OR APPROX. AGE | SEX | ETHNICITY

ADDRESS Street City Zip | TELEPHONE ( )

OTHER RELEVANT INFORMATION

E. INCIDENT INFORMATION

IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX ☐ | IF MULTIPLE VICTIMS, INDICATE NUMBER

DATE / TIME OF INCIDENT | PLACE OF INCIDENT

NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)

SS 8572 (Rev. 12/02) ***DEFINITIONS AND INSTRUCTIONS ON REVERSE***

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

(front)

Suspected Child Abuse Report
DOJ SS 8572

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM SS 8572

All Penal Code (PC) references are located in Article 2.5 of the PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: http://www.leginfo.ca.gov/calaw.html (specify "Penal Code" and search for Sections 11164-11174.3). A mandated reporter must complete and submit the form SS 8572 even if some of the requested information is not known. (PC Section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

- Mandated child abuse reporters include all those individuals and entities listed in PC Section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

- Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC Section 11165.9.)

III. REPORTING RESPONSIBILITIES

- Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof ***within 36 hours*** of receiving the information concerning the incident. (PC Section 11166(a).)
- No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC Section 11172(a).)

IV. INSTRUCTIONS

- **SECTION A - REPORTING PARTY:** Enter the mandated reporter's name, title, category (from PC Section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes-no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (Continued)

- **SECTION B - REPORT NOTIFICATION:** Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.
- **SECTION C - VICTIM (One Report per Victim):** Enter the victim's name, address, telephone number, birth date or approximate age, sex, ethnicity, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes-no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes-no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes-no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.
- **SECTION D - INVOLVED PARTIES:** Enter the requested information for: Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).
- **SECTION E - INCIDENT INFORMATION:** If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

- **Reporting Party:** After completing Form SS 8572, retain the yellow copy for your records and submit the top three copies to the designated agency.
- **Designated Agency:** ***Within 36 hours*** of receipt of Form SS 8572, send **white copy** to police or sheriff's department, **blue copy** to county welfare or probation department, and **green copy** to district attorney's office.

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian

(back)

Acknowledgments

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