

# Minor Consent, Confidentiality, and Mandatory Reporting of Child Abuse in California

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The National Center for Youth Law is a national, non-profit organization that uses the law to improve the lives of poor children. NCYL works to ensure that low-income children have the resources, support and opportunities they need for a healthy and productive future.

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## I. INTRODUCTION

When adolescents seek health services, questions can arise about who may consent for their care and who may access their health information. There also can be questions about when a provider has an affirmative duty to share health information with parents or authorities. The law can help shape the answers to these questions. While there are many factors that health and mental health providers and clinics should take into account in developing adolescent consent, confidentiality and reporting policies and protocols, all such policies and protocols should be grounded in the law.

### What this document does:

- This document provides an overview of the pertinent federal and state medical consent, confidentiality and child abuse reporting laws that apply when adolescents seek health care services on their own from health providers in California.

### What this document does not do:

- The document does not address the confidentiality and reporting laws that may apply in special service settings, such as schools, domestic violence centers, or specialized hospitals or treatment facilities.
- It does not address the laws that may apply with special populations, such as youth in the child welfare or delinquency systems.
- It does not address licensing or ethics.
- It does not provide legal advice.

Please see our website, [www.TeenHealthLaw.org](http://www.TeenHealthLaw.org), for resources that address service provision in other settings and with special populations.

Because this document provides information only, legal questions that require further discussion or decisions should be directed to legal counsel.

## II. GENERAL AGE OF CONSENT INFORMATION

### 1. What is the age of majority/minority?

A minor legally becomes an adult at 18 years of age in California. Persons under age 18 are minors.<sup>1</sup>

### 2. What is the age of consent for sexual activity?

While no statute specifically establishes an age at which a minor legally may consent to sexual activity, there are criminal penalties for sexual activity with a minor who is under 18 years of age.<sup>2</sup> This does not mean that health care providers must report all sexual activity to the police. (*See Section V for discussion of reportable sexual activity.*) It is critical to understand the difference between reportable and illegal acts in this and other contexts.

### 3. What is the age of consent for health care?

Once individuals reach the age of majority, they usually consent for their own health care. However, there are situations in which minors or others may consent for minors' health care. (*See Section III for more.*)

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<sup>1</sup> Cal. Family Code § 6500.

<sup>2</sup> *See, e.g.* Cal. Penal Code § 261.5.



### III. GENERAL HEALTH CARE: Overview of Health Consent and Confidentiality Rules

#### 1. What laws control consent and confidentiality in general medical care?

There are a number of federal and state laws regarding consent to treatment and confidentiality. They apply depending, among other things, on the type of service provided, the funding source, and the agency or clinician providing the service.

#### 2. Who usually consents for a minor's health care?

Usually a parent or legal guardian must consent for health care on behalf of a minor. However, there are exceptions in federal and state law that allow or require minors or others to consent for treatment based on the minor's status or the type of services being sought. The following questions and answers describe relevant exceptions in California law.

#### 3. May other adults consent for a minor's health care?

- *Consent by Court*

Upon application by a minor, a court may grant consent for medical or dental care for the minor if:

1. The minor is 16 years old or older and resides in this state; and
2. The consent of a parent or guardian is necessary to permit the medical care or dental care or both, and the minor has no parent or guardian available to give the consent.<sup>3</sup>

- *Letter from Parents, Guardian, or Caregiver Authorizing Other to Consent*

A parent, guardian, or related caregiver<sup>4</sup> may authorize an adult into whose care a minor has been entrusted to consent to medical or dental care for the minor. The authorization must be in writing.<sup>5</sup>

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<sup>3</sup> Cal. Family Code § 6911(a).

<sup>4</sup> A related caregiver means a related caregiver who has signed a caregiver consent affidavit. See "Minor Living with Related Caregiver," *infra*.

<sup>5</sup> Cal. Family Code § 6910.

- *Minor Living with Related Caregiver*

Some minors may live with a related caregiver who does not have legal custody of the youth. If this caregiver is a relative<sup>6</sup> and completes a “caregiver authorization affidavit,”<sup>7</sup> the caregiver has the same rights to authorize medical, dental, and mental health care for the minor that are given to parents, except:

- If the minor is 14 years of age or older, no surgery may be performed upon the minor without either (1) the consent of both the minor and the caregiver; or (2) a court order, unless it is an emergency;
- The caregiver cannot consent to sterilization;
- The caregiver cannot consent to involuntary placement in a mental health institution;
- The caregiver cannot consent to experimental mental health drugs; and
- The caregiver cannot consent to convulsive treatment.
- If the parent and the caregiver disagree, the parent’s decision will stand as long as it does not jeopardize the life, health, or safety of the minor.

A caregiver’s consent is not required in any case where the minor may consent to his or her own treatment.<sup>8</sup>

- *Minor Living with Non-related Caregiver*

Some minors may live with a caregiver who does not have legal custody of the youth. A non-related caregiver who completes a “caregiver authorization affidavit” may consent to school-related medical care on behalf of a minor. School-related medical care means medical care required by state or local governmental authority as a condition for school

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<sup>6</sup> “Relative caregiver” includes: “spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix “grand” or “great” or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.” Cal. Family Code § 6550.

<sup>7</sup> A form prescribed by Cal. Family Code § 6552. See [www.teenheathlaw.org](http://www.teenheathlaw.org) for an example.

<sup>8</sup> Cal. Family Code § 6550; Cal. Probate Code §§ 2353, 2356.

enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils.<sup>9</sup>

- *Minor in Foster Care or in the Juvenile Justice System*  
At times, other adults may consent to treatment for youth in the foster care and juvenile justice systems. For more information about these rules, see Rebecca Gudeman, *Consent to Medical Treatment for Foster Children: California Law*, and Rebecca Gudeman, *Consent to Medical Treatment for Youth in the Juvenile Justice System: California Law*, available at [www.teenhealthlaw.org](http://www.teenhealthlaw.org).
- *Suspected Child Abuse Victims*  
“A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of a child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.”<sup>10</sup> In addition, “if a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that a child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent. Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.”<sup>11</sup>

#### 4. When can minors consent for their own care?

- *When minors are:*
  - *Emancipated Minor*  
An emancipated minor shall be considered an adult for the purpose of consent to medical, dental, or psychiatric care.<sup>12</sup> A minor is emancipated if:

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<sup>9</sup> Cal. Family Code § 6550.

<sup>10</sup> Cal. Penal Code § 11171.2(a).

<sup>11</sup> Cal. Penal Code § 11171.5(a).

<sup>12</sup> Cal. Family Code § 7050(e)(1).

- The minor has entered into a valid marriage, whether or not the marriage has been dissolved;
- The minor is on active duty with the armed forces of the United States; or
- The minor has received a “declaration of emancipation”<sup>13</sup> from a court.<sup>14</sup>

Pregnancy or parenting status does not emancipate a minor in California nor does living apart from parents. However, pregnant minors and minors living apart may be able to consent to care under other exceptions. (*See, for example, the following bullet for youth living apart from parents*).

- *Minor Living Separate and Apart from Parents*

A minor may consent for his or her medical or dental care if he or she meets the following three requirements:

1. The minor is 15 years of age or older;
2. The minor is living separate and apart from her parents or guardian, whether with or without the consent of a parent or guardian, and regardless of the duration of this separation; and
3. The minor is managing the minor’s own financial affairs, regardless of the source of the minor’s income.<sup>15</sup>

➤ *When minors seek the following medical services:*

- *Abortion*

In 1987, the California legislature passed Health and Safety Code 123450 -- a law that would have required that minors obtain parental consent for abortion. This law never went into effect, though, because the California Supreme Court ruled that minors have a right to privacy guaranteed under the California Constitution, and the parent consent law violated this right.<sup>16</sup> The court ruling means that minors of any age may consent for the performance of an abortion and abortion services cannot be conditioned on

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<sup>13</sup> A court will emancipate a minor if the minor meets the criteria set out in Family Code section 7120 and the court determines that emancipation would not be contrary to the minor’s best interests. *See* Cal. Family Code §§ 7120, 7122.

<sup>14</sup> Cal. Family Code § 7002.

<sup>15</sup> Cal. Family Code § 6922(a).

<sup>16</sup> *American Academy of Pediatrics v. Lundgren*, 16 Cal.4th 307, 383 (1997).

parental consent or notification.

Because the right to privacy is a constitutionally protected right, this right can only be changed if the California state constitution is first amended to restrict the right to privacy guaranteed to its citizens.

- *Drug and Alcohol Services*

“A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.”<sup>17</sup> However, this statute does not authorize a minor to consent to replacement narcotic abuse treatment.<sup>18</sup>

*Consent Note:* California law also allows a parent or guardian to consent to medical care and counseling for a drug- or alcohol-related problem of a minor when the minor does not consent to the care.<sup>19</sup>

- *Family Planning, Including Contraception*

Under California state law, a minor of any age may consent to medical care related to the prevention or treatment of pregnancy. This includes contraception such as LARCs. It does not allow a minor to consent to sterilization.<sup>20</sup> (See also “Title X funded Care” on page 14.)

- *HIV/AIDS Testing*

California state law provides that minors 12 and older are able to consent to HIV testing and treatment.<sup>21</sup> (See also “Sexually Transmitted Diseases” on page 13.)

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<sup>17</sup> Cal. Family Code § 6929(b).

<sup>18</sup> Cal. Family Code § 6929(e).

<sup>19</sup> Cal. Family Code § 6929(f) (“It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.”).

<sup>20</sup> Cal. Family Code § 6925.

<sup>21</sup> Cal. Health & Safety Code § 121020; Cal. Family Code § 6926(a).

- *Infectious, Contagious, or Communicable Diseases (Reportable)*  
“A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.”<sup>22</sup>
- *Mental Health Treatment and Counseling*  
Two statutes give minors the right to consent to mental health treatment— Family Code 6924 and Health and Safety Code 124260. If a minor meets the criteria under either statute, the minor may consent to his or her own treatment. If the minor meets the criteria under both, the provider may decide which statute to apply.

**Family Code Section 6924** says: “[a] minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied: 1. The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services. 2. The minor (a) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (b) is the alleged victim of incest or child abuse.”

**Health and Safety Code Section 124260** says: “a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services.”

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<sup>22</sup> Cal. Family Code § 6926(a).

In addition to having slightly different eligibility criteria, there are other small differences between the two statutes.<sup>23</sup> Neither statute authorizes a minor to consent to convulsive therapy, psychosurgery, or psychotropic drugs.<sup>24</sup>

- *Pregnancy Testing and Prenatal Care*

A minor of any age may consent to medical care related to the prevention or treatment of pregnancy. This law does not allow a minor to consent to sterilization.<sup>25</sup> (See also *Title X funded care*.)

- *Rape Treatment*

***For minors 12 years of age or older:***

“A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.”<sup>26</sup>

***For minors less than 12 years of age:***

“A minor who is alleged to have been sexually assaulted [including rape] may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.”<sup>27</sup>

- *Sexual Assault Treatment*

“A minor of any age who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.”<sup>28</sup>

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<sup>23</sup> For example, the two laws define “professional person” differently, and funding restrictions apply to Health and Safety Code § 124260. See Cal. Family Code § 6924, Cal. Health & Safety Code § 124260, and Cal. Welfare and Institutions Code § 14029.8. Please see [www.TeenHealthLaw.org](http://www.TeenHealthLaw.org) for more information.

<sup>24</sup> Cal. Family Code § 6924(f); Cal. Health & Safety Code § 124260(e).

<sup>25</sup> Cal. Family Code § 6925.

<sup>26</sup> Cal. Family Code § 6927.

<sup>27</sup> Cal. Family Code § 6928(b).

<sup>28</sup> Cal. Family Code § 6928(b).

- *Sexually Transmitted Diseases*

A minor 12 or older may consent to preventive care, diagnosis and treatment related to a sexually transmitted disease.<sup>29</sup> (See also “Title X Funded Care” on page 14.)

- *Title X Funded Care*

When providing Title X funded care, health care providers must follow federal Title X law and regulations.<sup>30</sup> If a state law conflicts with a Title X regulation, the Title X regulation preempts the state law if the state law would limit access or eligibility to the services provided through Title X.<sup>31</sup>

Federal Title X law and regulations establish special consent rules for services funded through Title X. In short, Title X funded services must be made available to all adolescents, regardless of their age.<sup>32</sup> Courts have held that this rule prohibits implementation of any state law to the contrary, even if the state law explicitly requires parental consent or notification for the same service.<sup>33</sup> Thus, minors of any age may consent to services on their own behalf when those services are funded in full or in part by Title X monies, and Title X service provision cannot be conditioned on parent consent or parent notification.

## 5. What laws protect the confidentiality of health information in California?

Several federal and state laws protect the confidentiality of health information and records. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule protects the privacy of “protected health

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<sup>29</sup> Cal. Family Code § 6926(a).

<sup>30</sup> See 42 U.S.C. § 300; 42 C.F.R. § 59.1.

<sup>31</sup> See *Planned Parenthood Federation v. Heckler*, 712 F. 2d 650, 663-664 (D.C. Cir. 1983) (“[U]nder the Supremacy Clause of the Constitution states are not permitted to establish eligibility standards for federal assistance programs that conflict with the existing federal statutory or regulatory scheme.”); *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); see also *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8<sup>th</sup> Cir. 1997); *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10<sup>th</sup> Cir. 1985); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W.Va. 1979).

<sup>32</sup> See 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(4).

<sup>33</sup> *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8<sup>th</sup> Cir. 1997), *reh. den.* 1997 U.S. App. LEXIS 6564, *cert. den.* 522 U.S. 859 (1997); see *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10<sup>th</sup> Cir. 1985); *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W. Va. 1979).



information”<sup>34</sup> held by “covered”<sup>35</sup> providers.<sup>36</sup> California’s Confidentiality of Medical Information Act (CMIA) also limits the disclosure of most health and mental health care information.<sup>37</sup> Other state statutes specially protect the confidentiality of specific health information. For example, HIV/AIDS information, substance abuse and certain mental health treatment information are all specially protected.<sup>38</sup>

“Covered” health care providers must follow both the federal HIPAA Privacy Rule and state law. In general, if the federal and state laws conflict, and the state law provides greater confidentiality protection than HIPAA, providers must follow state law. When HIPAA provides greater protection, providers must follow HIPAA.<sup>39</sup>

Other federal laws and regulations, such as Title X, also may apply in certain circumstances, depending on, for example, the type of service provided or the funding source for the service.

## **6. What is the confidentiality rule under HIPAA and California law?**

Both HIPAA and CMIA contain the same general rule. Health care providers must keep protected health information generally confidential, but can disclose information if the provider either has a signed authorization allowing for the disclosure, or a specific exception in federal or state law allows or requires the disclosure.<sup>40</sup>

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<sup>34</sup> 45 C.F.R. § 160.103 (defining “protected health information,” “health information,” and “individually identifiable health information”). This includes oral communications as well as written or electronically transmitted information, created or received by a health care provider; that relate to the past, present or future physical or mental health or condition of an individual; and either identify the individual or can be used to identify the individual patient.

<sup>35</sup> All health care providers who transmit health information in electronic form, health plans and health care clearinghouses must follow the HIPAA Privacy Rule. 45 C.F.R. § 160.103. “Health care providers” in this context means individual providers such as physicians, clinical social workers and other medical and mental health practitioners, as well as hospitals, clinics and other organizations that provide, bill for, or are paid for health care. *Id.* These providers are called “covered” providers.

<sup>36</sup> 45 C.F.R. Parts 160 and 164.

<sup>37</sup> *See* Cal. Civil Code § 56 et seq. The CMIA applies to most but not all medical records. For example, it does not apply to certain mental health and drug treatment records. Cal. Civil Code § 56.30.

<sup>38</sup> *See, e.g.*, Cal. Health & Safety Code §§ 120980, 11845.5; Cal. Welf. & Inst. Code § 5328.

<sup>39</sup> 45 C.F.R. § 160.203.

<sup>40</sup> *See* 45 C.F.R. § 164.502; Cal. Civil Code §§ 56.10, 56.11.

## 7. Who may authorize disclosure of a teen's protected health information?

It often depends what the underlying health care was and who consented for the care. Under HIPAA and state law, a parent or guardian usually must sign an authorization to release a minor's protected health information.<sup>41</sup>

However, the minor must sign the authorization to disclose the related records if the minor consented for the underlying care or could have consented to the care under state or federal law.<sup>42</sup> The minor also must sign the authorization in a few other situations, for example, if a court consented for the minor's health care pursuant to state law.<sup>43</sup>

Other laws and regulations contain different rules regarding who must sign an authorization to release records, and these rules may apply depending on the type of service provided or the funding source for the service, among other things. For example, if the records relate to services funded under the federal Title X family planning program, Title X regulations dictate that the minor sign any authorization to release medical information.<sup>44</sup>

## 8. What disclosures are permitted without needing an authorization under HIPAA and California law?

Federal and state confidentiality laws contain many exceptions that allow or require providers to share health information without written authorization. In all cases, disclosure must be limited to the requirement of the law.<sup>45</sup> Examples of permitted disclosures include the following:

- *Reporting Certain Diseases and Conditions to a Public Health Authority*  
State regulations require certain health professionals to report certain diseases to the local health authority.<sup>46</sup>

<sup>41</sup> 45 C.F.R. §§ 164.502(a)(1)(i); (a)(2)(i); (g)(1); (g)(3).

<sup>42</sup> 45 C.F.R. §§ 164.502(a)(1)(i)&(iv); (a)(2)(i);(g)(1); (g)(3)(i); Cal. Civil Code § 56.11(c)(1).

<sup>43</sup> 45 C.F.R. §§ 164.502(a)(1)(i)&(iv); (a)(2)(i);(g)(1); (g)(3)(i).

<sup>44</sup> 42 C.F.R. § 59.11.

<sup>45</sup> See 45 C.F.R. § 164.512(a)(1).

<sup>46</sup> 17 C.C.R. § 2500(b); see 45 C.F.R. § 164.512.

- *Disclosure to Other Health Care Providers For Diagnosis and Treatment Purposes*  
Both HIPAA and CMIA permit, but do not require, health care providers to share health information with other providers of health care, health care service plans, contracts, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient, without need of authorization.<sup>47</sup> However, a recipient of health information pursuant to this exception may not further disclose that medical information—except with an authorization signed by the person authorized to sign, or as otherwise required or permitted by law.<sup>48</sup>
- *For Billing/Payment Purposes*  
Both HIPAA and CMIA permit, but do not require, a health care provider to disclose health information, without need of an authorization, to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made.<sup>49</sup> However, a recipient of health information pursuant to this exception may not further disclose that medical information—except with an authorization signed by the patient or the patient representative, or as otherwise required or permitted by law.<sup>50</sup>
- *Child Abuse Reporting*  
Mandated reporters of child abuse must make a child abuse report whenever they have knowledge of or observe a child in their professional capacity whom they know or reasonably suspect has been the victim of

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<sup>47</sup> Cal. Civil Code § 56.10(c)(1); 45 C.F.R. §164.506(a),(c).

<sup>48</sup> Cal. Civil Code § 56.13.

<sup>49</sup> Cal. Civil Code § 56.10(c)(2); 45 C.F.R. § 164.506.

<sup>50</sup> Cal. Civil Code § 56.13.

child abuse or neglect.<sup>51</sup> To the extent that this reporting requirement conflicts with CMIA, the reporting requirement prevails.<sup>52</sup>

- *Other Disclosures*

There are additional exceptions allowing or requiring disclosures, even absent signed authorization. Please see HIPAA, CMIA and other relevant law and consult legal counsel.

## 9. Do parents have rights to information from the following records?

- *General Health Records*

Under HIPAA and state law, parents and legal guardians usually have the right to inspect their minor children's records, as long as the records do not pertain to care for which the minor consented or could have consented under law.<sup>53</sup>

However, there are exceptions to this rule. For example, a parent does not have access if a court has explicitly removed this right or the provider determines that sharing the records would have a detrimental effect, as described below.

- *Detrimental Effect Exception*

Even if a parent has a general right to inspect records, providers may refuse to provide parents or guardians access to a minor's health records when "the health care provider determines that access to the patient records requested by the [parent or guardian] would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being."<sup>54</sup> Providers applying this exception in good faith to limit parent access to records cannot be held liable for their refusal to share records.<sup>55</sup>

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<sup>51</sup> Cal. Penal Code §§ 11165.7, 11166.

<sup>52</sup> *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 768 (3<sup>rd</sup> Dist. Ct. App. 1988).

<sup>53</sup> Cal. Civil Code §§ 56.10(b)(7), 56.11(c)(1)&(2); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>54</sup> Cal. Health & Safety Code § 123115(a)(2).

<sup>55</sup> Cal. Health & Safety Code § 123115(a)(2).

There is a similar exception under HIPAA. Health care providers who are covered under the HIPAA Privacy Rule may refuse to provide parents access to a minor's health records, even when parents otherwise would have a right of access, if:

- (1) The providers have a "reasonable belief" that:
  - (A) The minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent;  
or
  - (B) Treating such person as the personal representative could endanger the minor;

and:

- (2) The provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to give the parent, guardian or other such access.<sup>56</sup>

Providers should consult with their legal counsel for further information about application of this law.

- *Services for Emancipated Minor*

When an emancipated minor consents for care, a health care provider is not permitted to share information or records with a parent without the minor's written authorization.<sup>57</sup>

- *Services for Minors Living Separate and Apart from Parents*

When a minor consents for his or her own care based on his or her status as a minor living separate and apart from parents, "[a] physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or

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<sup>56</sup> 45 C.F.R. § 164.502(g)(5).

<sup>57</sup> Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

guardian.”<sup>58</sup> This law allows providers to “advise” parents of treatment. It does not give parents a right to inspect or obtain copies of records.

- *Abortion*

A health care provider is not permitted to share information or records regarding abortion services with a parent or guardian without the minor’s written authorization.<sup>59</sup>

- *Drug and Alcohol Services*

Federal regulations establish special protections for substance abuse treatment records. Providers who meet certain criteria must follow the federal rule.<sup>60</sup> For those providers who must comply with federal rules, the federal regulations prohibit disclosing any information to parents without a minor’s written consent if the minor acting alone under applicable state law has the legal capacity to apply for and obtain alcohol or drug abuse treatment.<sup>61</sup> There is one exception: A provider or program may share with parents if the individual or program director (if it is a program) determines the following three conditions are met: (1) that the minor’s situation poses a substantial threat to the life or physical well-being of the minor or another; (2) that this threat may be reduced by communicating relevant facts to the minor’s parents; and (3) that the minor lacks the capacity because of extreme youth or a mental or physical

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<sup>58</sup> Cal. Family Code § 6922(c).

<sup>59</sup> Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>60</sup> Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

1. The individual, program, or facility is federally assisted. (Federally assisted means authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare.) 42 C.F.R. § 2.12;

And:

2. The individual or program:
  - 1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR
  - 2) Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR
  - 3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. § 2.11; 42 C.F.R. § 2.12.

<sup>61</sup> 42 C.F.R. § 2.14.

condition to make a rational decision on whether to disclose to her parents.<sup>62</sup>

For providers who do not have to follow the federal rules, state law applies and access depends on who consented for the minor's care. Under state law, if a parent or guardian consented for a minor's drug or alcohol treatment, "the physician [must] disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure."<sup>63</sup>

By contrast, when the minor consented for her own drug or alcohol treatment, the health care provider is not permitted to share records with a parent or legal guardian without the minor's written authorization.<sup>64</sup> However, state law also requires health care providers to involve the minor's parent or guardian in the treatment plan, if appropriate, as determined by the professional person or treatment facility treating the minor.<sup>65</sup> Involving parents in treatment will necessitate sharing certain otherwise confidential information; but having them participate does not mean parents have a right to access all confidential records. Providers should attempt to honor the minor's right to confidentiality to the extent possible while still involving parents in treatment.

- *Family Planning, Including Contraception*

California law prohibits a health care provider from sharing information or records regarding the prevention or treatment of a minor's pregnancy with a parent or legal guardian without the minor's written authorization.<sup>66</sup> (See also "Title X Funded Care" on page 24.)

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<sup>62</sup> 42 C.F.R. §2.14.

<sup>63</sup> Cal. Family Code § 6929(g).

<sup>64</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>65</sup> State law requires the professional person providing care to the minor to state in the minor's treatment record whether and when the professional attempted to contact the minor's parent or guardian, and whether the attempt was successful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian. Cal. Family Code § 6929(c).

<sup>66</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

- *HIV / AIDS*

California law prohibits health care providers from sharing information or records regarding a minor's HIV/AIDS services with a parent or legal guardian without the minor's written authorization.<sup>67</sup> (See also "Title X Funded Care" on page 24.)

- *Infectious, Contagious, or Communicable Diseases (Reportable)*

For minors 12 years of age or older, a health care provider is not permitted to share information or records regarding a minor's treatment for reportable diseases with a parent or legal guardian without the minor's written authorization.<sup>68</sup>

- *Mental Health Treatment and Counseling*

A health care provider is not permitted to share information or records regarding minor consent mental health care with a parent or legal guardian without the minor's authorization.<sup>69</sup> At the same time, state law requires health care providers to involve a parent or guardian in the minor's treatment unless, in the opinion of the professional person who is treating the minor, the involvement would be inappropriate. When services are provided under Health & Safety Code Section 124260, the provider must consult with the minor before determining whether or not to involve the parent or guardian. There is no consultation requirement for services under Family Code Section 6924. Both laws require the professional to state in the client record whether and when the professional attempted to contact the minor's parent or guardian, and whether the attempt was successful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.<sup>70</sup> Involving parents in treatment will necessitate sharing certain otherwise confidential information; however, having them participate does not mean parents have a right to access all confidential records. Providers should attempt to honor the minor's right

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<sup>67</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>68</sup> Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>69</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>70</sup> Cal. Family Code § 6924(d); Cal. Health & Safety Code § 124260(c).



to confidentiality to the extent possible while still involving parents in treatment.

- *Pregnancy*

A health care provider is not permitted to share information or records regarding the prevention or treatment of a minor's pregnancy with a parent or legal guardian without the minor's written authorization.<sup>71</sup> (See also "Title X Funded Care" on page 24.)

- *Rape Treatment*

***For minors 12 and older:***

A health care provider is not permitted to share information or records about rape treatment for a minor 12 and older with a parent or legal guardian without the minor's written authorization.<sup>72</sup>

***For minors under 12 years of age:***

The health care provider must attempt to contact the minor's parent or guardian and must note in the minor's rape treatment record the date and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent or guardian committed the rape.<sup>73</sup>

**Note:** Rape of a minor is considered child abuse under California law and must be reported as such to CPS or the police by mandated reporters. Even if a provider is prohibited from informing a parent about rape treatment, the child abuse authorities investigating a child abuse report legally may disclose to parents that a report was made. (For more information on child abuse reporting requirements, see Section V below.)

- *Sexual Assault Treatment (other than rape)*

A health care provider treating a minor for sexual assault must attempt to contact the minor's parent or guardian and must note in the minor's sexual assault treatment record the date and time of the attempted

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<sup>71</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>72</sup> Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>73</sup> Cal. Family Code § 6928(c).

contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent or guardian committed the sexual assault.<sup>74</sup>

**Note:** Sexual assault of a minor is considered child abuse under California law and must be reported as such to CPS or the police by mandated reporters. (*For more information on child abuse reporting requirements, see Section V below.*)

- *Sexually Transmitted Diseases*

California prohibits a health care provider from sharing information or records regarding a minor's STD services with a parent or legal guardian without the minor's written authorization.<sup>75</sup> (*See also "Title X Funded Care" on page 24.*)

- *Suspected Child Abuse Victims*

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to skeletal X-rays taken to diagnose possible child abuse or neglect and reported pursuant to this law in any court proceeding.<sup>76</sup>

- *Title X Funded Care*

While Title X requires that grantees encourage family participation in Title X projects to the extent practical,<sup>77</sup> health care providers cannot disclose Title X service information to parents without the minor's written consent. The Title X regulations require Title X funded clinics to keep all client information confidential unless (1) the clinic has written authorization for the release, (2) the release is necessary to provide services to the patient, or (3) state or federal law requires the release.<sup>78</sup> No federal or state law

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<sup>74</sup> Cal. Family Code § 6928(c).

<sup>75</sup> Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

<sup>76</sup> Cal. Penal Code § 11171.2(b).

<sup>77</sup> 42 U.S.C. § 300(a) ("To the extent practical, entities which receive grants or contracts under this subsection shall encourage family participation in projects assisted under this subsection.").

<sup>78</sup> 42 C.F.R. § 59.11 ("All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.").

requires disclosure of Title X funded service information to parents.<sup>79</sup> Thus, if a minor receives Title X funded services, records of that service cannot be disclosed to parents without obtaining the minor's documented consent.

The regulations also require that clinics implement "appropriate safeguards for confidentiality."<sup>80</sup>

#### **10. Can individuals be held liable for revealing confidential information outside the exceptions specifically listed in federal or state law?**

Under certain circumstances, yes. Providers can only share protected health information if they have client authorization or an exception in state or federal law specifically allows the release. If no exception applies that would allow a provider to share information, providers who reveal confidential information without authorization may be held liable. For example, providers who reveal confidential information in violation of California's Confidentiality of Medical Information Act can be held criminally and civilly liable.<sup>81</sup> In addition, the Department of Health and Human Services has the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules.<sup>82</sup> Beyond criminal and civil sanction, professionals who violate confidentiality also put their medical license at risk. For example, certain health care providers who "willfully" fail to respect the laws related to patient access to health records (Health and Safety Code sections 123110 et seq.) are guilty of "unprofessional conduct." State law requires the state agency, board or commission that issued the providers' professional license to consider such a

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<sup>79</sup> 42 C.F.R. § 59.11. Even if there were a federal regulation or state law to this effect, Title X's confidentiality protections likely would prohibit disclosure. *See e.g. Planned Parenthood v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983)(holding that new Title X federal regulations drafted by DHHS that would have required informing parents about Title X services to adolescents were unlawful because they were inconsistent with Congressional intent and undermined the fundamental purpose of the Title X program). If any state or federal rule is passed that appears to require parent notification regarding Title X services, providers should consult legal counsel for advice.

<sup>80</sup> 42 C.F.R. § 59.11("All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.").

<sup>81</sup> Cal. Civil Code §§ 56.35, 56.36.

<sup>82</sup> *See* 42 U.S.C. 1320d-6; 45 C.F.R. § 160, Subpart C.

violation as grounds for disciplinary action, including suspension or revocation of the license.<sup>83</sup>

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<sup>83</sup> Cal. Health & Safety Code § 123110(i).

## V. MANDATORY CHILD ABUSE REPORTING REQUIREMENTS

Every state has laws that require certain individuals to report suspected child abuse. Those laws describe who must report, what must be reported, and how and when to report. California's reporting laws are found in the California Child Abuse and Neglect Reporting Act (CANRA). The following summarizes CANRA as of August 2015.

### **A. Who Must Report?**

#### **1. Who is a mandated reporter?**

Mandated reporters include all 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 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 State 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 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 (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 California 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.
  38. An alcohol and drug counselor. As used in this article, an “alcohol and drug counselor” is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.

39. A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.
40. A clinical counselor intern registered under Section 4999.42 of the Business and Professions Code.
41. An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.
42. An athletic coach, athletic administrator, or athletic direction employed by an public or private school that provides any combination of instruction for kindergarten, or grade 1 to 12, inclusive.

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- (A) A commercial computer technician as specific in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United State Code.
- (B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to



receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

- (44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.<sup>84</sup>

## **2. May someone report child abuse even if not a mandated reporter?**

Any 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, but is not required, report the known or suspected instance of child abuse or neglect. For purposes of this section, this includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.<sup>85</sup>

## **3. Do Title X providers follow the same child abuse reporting rules?**

The Title X regulations require that providers comply with any applicable mandated abuse reporting law.<sup>86</sup> Because CANRA compels reporting once the reporting obligation has been triggered, Title X providers who are mandated reporters must comply with CANRA. Title X regulations do not include their own child abuse reporting requirements or alter the following state reporting obligations in any way.

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<sup>84</sup> Cal. Penal Code § 11165.7.

<sup>85</sup> Cal. Penal Code § 11166(g).

<sup>86</sup> See 42 C.F.R. § 59.11.

## **B. When is a Mandated Reporter Required to Submit an Abuse Report?**

### **1. When must a mandated reporter report abuse?**

“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.”<sup>87</sup>

### **2. What if a mandated reporter is not sure that abuse has occurred?**

Confirmation of abuse is not required. Reporters must report whenever they have “reasonable suspicion” that abuse has occurred.

“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. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.”<sup>88</sup>

### **3. Must a mandated reporter make a report if the abuse happened a long time ago?**

The Child Abuse and Neglect Reporting Act (CANRA) requires mandated reporters to report whenever they reasonably suspect that a minor has been abused.<sup>89</sup> The Act does not explicitly relieve reporters of their reporting duty simply because acts occurred many years ago. (This contrasts with reporting statutes in some other states.)<sup>90</sup> On the other hand, CANRA does not explicitly require reports of long ago abuse. For this reason, providers should consult legal counsel for further advice.

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<sup>87</sup> Cal. Penal Code § 11166(a).

<sup>88</sup> Cal. Penal Code § 11166(a)(1).

<sup>89</sup> Cal. Penal Code § 11166(a)(1).

<sup>90</sup> For example, in Minnesota, mandated reporters must report only when children have been abused “within the preceding three years.” Minn. Stat. § 626.556.

#### **4. Must a reporter make a report if the reporter observes something outside of a work setting?**

A mandated reporter's mandatory duty is only triggered when the reporter's knowledge or observations of suspected abuse or neglect arise within "his or her professional capacity or within the scope of his or her employment." A mandated reporter whose knowledge of suspected abuse arises in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment may make a child abuse report but is not required to by CANRA.<sup>91</sup>

### **C. What Type of Activity Must Be Reported?**

#### **1. What constitutes reportable child abuse or neglect?**

CANRA defines "child abuse or neglect"<sup>92</sup> to include:

- Physical injury inflicted by other than accidental means upon a child by another person;<sup>93</sup>
- Sexual abuse (as defined in Penal Code section 11165.1);<sup>94</sup>
- Neglect (as defined in Penal Code section 11165.2);<sup>95</sup>

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<sup>91</sup> Cal. Penal Code § 11166(g).

<sup>92</sup> Cal. Penal Code § 11165.6.

<sup>93</sup> Cal. Penal Code § 11165.6

<sup>94</sup> See "*What Sexual Activity Must be Reported?*" for more detail.

<sup>95</sup> Cal. Penal Code § 11165.2 ("As used in this article, "neglect" 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.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic 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, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means 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. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.")

- The willful harming or injuring of a child or the endangering of the person or health of a child (as defined in Penal Code section 11165.3);<sup>96</sup> and
- Unlawful corporal punishment or injury (as defined in Penal Code section 11165.4.)<sup>97</sup>

In addition, mandated reporters may, but are not required to, report “serious emotional damage.”<sup>98</sup>

Many of these terms are further defined in the following sections.

## **2. Must mandated reporters file a child abuse report against a perpetrator who is also a teen?**

Child abuse can be perpetrated by juveniles under California law. The definition of what is reportable abuse is not limited to abuse perpetrated by an adult. *See, e.g.,* Cal. Penal Code § 11165.6. Thus, acts by one minor against another must be reported if the acts meet the legal definition of “child abuse.”

## **3. Is child abuse only reportable if perpetrated by relatives or caregivers?**

No. Child abuse is defined under California law to include acts by both related and unrelated individuals. It is not limited to abuse perpetrated by a parent or caregiver.<sup>99</sup>

## **4. Must mandated reporters make a report when their client is the “abuser” rather than the victim?**

Yes. A mandated reporter must report child abuse “whenever the mandated reporter ... has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.”<sup>100</sup> Reporters do not have to know the victim personally. As long as they have facts

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<sup>96</sup> Cal. Penal Code § 11165.3.

<sup>97</sup> Cal. Penal Code § 11165.4.

<sup>98</sup> Cal. Penal Code § 11166.05.

<sup>99</sup> *See, e.g.,* Cal. Penal Code § 11165.6 (defining abuse to include “physical injury ... inflicted by ... another person”).

<sup>100</sup> Cal. Penal Code § 11166(a).

sufficient to create an objectively reasonable suspicion of abuse, they must make a report.

#### **D. Is Emotional Abuse Reportable?**

It depends. If the emotional abuse rises to the level of neglect or “willful harming,” then it must be reported. “Willful harming” means “a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering....”<sup>101</sup> The definition of reportable neglect can be found in footnote 94.

CANRA also states that “serious emotional damage,” while not a mandatory report, may be reported. CANRA states: “Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report.”<sup>102</sup>

#### **E. What Physical Injuries Must Be Reported?**

##### **1. What physical abuse is reportable?**

California defines “child abuse”<sup>103</sup> to include any of the following:

- Physical injury or death inflicted by other than accidental means upon a child by another person,
- Willful harming or injuring of a child or the endangering of the person or health of a child, and
- Unlawful corporal punishment.

##### **2. What is the “willful harming” of a child?**

“Willful harming or injuring of a child or the endangering of the person or health of a child” is defined by state law to mean “a situation in which any

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<sup>101</sup> Cal. Penal Code § 11165.3.

<sup>102</sup> Cal. Penal Code § 11166.05.

<sup>103</sup> Cal. Penal Code § 11165.6.

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.”<sup>104</sup>

### **3. What is “unlawful corporal punishment?”**

“Unlawful corporal punishment or injury” is defined 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 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, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. 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.”<sup>105</sup>

### **4. What is a reportable “physical injury?”**

Reportable abuse includes “physical injury or death inflicted by other than accidental means upon a child by another person.”<sup>106</sup> There is no statutory definition of “physical injury” or guidance on how to assess intent for this purpose; however, case law can help provide an understanding of how courts interpret these terms. Legal counsel can provide further guidance.

While the law does not explicitly define reportable physical injury, it does provide two situations in which intentional injury is not reportable. California law states that “a mutual affray between minors” need not be reported.<sup>107</sup>

“Mutual affray” is not explicitly defined by the statute. Black’s law dictionary

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<sup>104</sup> Cal. Penal Code § 11165.3.

<sup>105</sup> Cal. Penal Code § 11165.4.

<sup>106</sup> Cal. Penal Code § 11165.6.

<sup>107</sup> Cal. Penal Code § 11165.6.

defines “mutual affray” as “a consensual fight on equal terms.” *See* Black’s Law Dictionary (8th ed. 2004).

The law also states that “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” is not reportable abuse.<sup>108</sup>

### **5. Is physical abuse of a teen by a dating partner reportable?**

In some cases, yes. Child abuse is defined under California law to include acts by both related and unrelated individuals.<sup>109</sup> It is not limited to abuse perpetrated by a parent or caregiver. Child abuse also can be perpetrated by juveniles. It is not limited to acts by adults.<sup>110</sup> Thus, abusive acts by a dating partner, irrespective of the age of the partner, must be reported as child abuse if the acts meet the definition of child abuse under California law.<sup>111</sup>

## **F. What Sexual Activity Must Be Reported?**

### **1. What sexual activity qualifies as reportable child abuse?**

CANRA defines child abuse to include “sexual abuse.”<sup>112</sup> CANRA defines sexual abuse as (a) “sexual assault” and (b) “sexual exploitation.”<sup>113</sup> The law in turn defines these terms as follows.

#### **(a) Sexual Assault:**

CANRA defines reportable “sexual assault” as conduct in violation of any of the following statutes:

- Penal Code section 261(Rape);
- Penal Code section 264.1(Rape in Concert);
- Penal Code section 285 (Incest);
- Penal Code section 289 (Sexual Penetration);

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<sup>108</sup> Cal. Penal Code § 11165.6.

<sup>109</sup> *See, e.g.*, Cal. Penal Code § 11165.6 (defining abuse to include “physical injury ... inflicted by...another person”).

<sup>110</sup> *See id.*

<sup>111</sup> This document does not address whether mandated reporters must ever make a neglect report in response to teen dating violence.

<sup>112</sup> Cal. Penal Code § 11165.6.

<sup>113</sup> Cal. Penal Code § 11165.1.

- Penal Code section 647.6 (Child Molestation);
- Penal Code section 286 (Sodomy);
- Penal Code section 288a (Oral Copulation);
- Sections (a), (b), and (c)(1) of Penal Code 288 (certain violations of Lewd or Lascivious Acts upon a Child);
- Section 261.5(d) of Penal Code 261.5 (certain violations of Statutory Rape);

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“Rape,” “Lewd and Lascivious Acts,” and “Statutory Rape” are described in greater detail in questions 2-8 below.

**(b) Sexual Exploitation:**

CANRA states that reportable “sexual exploitation” includes any of the following:

- Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
- Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.
- Any person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media or exchanges, any film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of

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<sup>114</sup> Cal. Penal Code § 11165.1(a&b).



obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.”<sup>115</sup>

“Exploitation” is further addressed in Section G.

## 2. What is “rape” for child abuse reporting purposes?

California Penal Code section 261 makes it illegal to have sexual intercourse<sup>116</sup> with someone who is not the spouse of the perpetrator,<sup>117</sup> under a variety of circumstances, including intercourse:

- Accomplished against a person’s will through the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on that or another person;
- Accomplished under threat of future retaliation, where there is a reasonable possibility that the perpetrator will execute the threat;<sup>118</sup>
- Where the person is unconscious of the nature of the act, and this is known to the accused;
- Where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person, and the victim has a reasonable belief that the perpetrator is a public official;<sup>119</sup>
- Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief;

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<sup>115</sup> Cal. Penal Code § 11165.1(c).

<sup>116</sup> The California Supreme Court has stated that in the context of rape, the term “sexual intercourse” refers only to vaginal penetration or intercourse. *People v. Stitely*, 35 Cal. 4th 514, 554 (2005); *People v. Holt*, 15 Cal. 4th 619, 676, 63 Cal. Rptr. 2d 782 (1997).

<sup>117</sup> A separate statute makes spousal rape a crime. See Penal Code §262.

<sup>118</sup> Cal. Penal Code §261(a)(5) (“As used in this paragraph, ‘threatening to retaliate’ means a threat to kidnap or falsely imprison, or to inflict extreme pain, seriously bodily injury, or death.”)

<sup>119</sup> Cal. Penal Code §261(a)(7) (“As used in this paragraph, ‘public official’ means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.”)

- Where the person is incapable of giving legal consent because of mental disorder or developmental or physical disability and this is known or reasonably should be known, to the perpetrator; or
- Where the person was prevented from resisting by an intoxicating, anesthetic, or controlled substance and this condition was known, or reasonably should have been known, to the perpetrator.<sup>120</sup>

As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.<sup>121</sup>

### **3. What is reportable as "rape"?**

Mandated reporters must make a child abuse report any time they know or reasonably suspect that a minor has been the victim of rape.<sup>122</sup> Rape for this purpose is defined in question 2 above.

### **4. How do clinicians know if their client's sexual activity occurred under "duress?"**

Under California law, rape includes sexual intercourse accomplished against a person's will through the use of "duress." Rape is reportable as child abuse. At times, providers may be concerned that sexual activity described as voluntary by their patient actually may have been accomplished against the client's will through the use of "duress." Providers may suspect "duress" based on additional facts they have learned about the sexual activity or its context.

In this context, sexual activity occurred under "duress" and is reportable if one person used "a direct or implied threat of force, violence, danger, or retribution

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<sup>120</sup> Cal. Penal Code § 261(a).

<sup>121</sup> *Id.* at (b).

<sup>122</sup> Cal. Penal Code § 11165.6.

sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted.”<sup>123</sup>

In assessing whether sexual activity occurred under duress, providers should consider “[t]he total circumstances, including the age of the victim, and his or her relationship to the defendant” among other things. *See* Cal. Penal Code § 261(b). More generally, treating professionals should “evaluate facts known to them in light of their training and experience to determine whether they have an objectively reasonable suspicion of child abuse.”<sup>124</sup> If clinicians have a reasonable suspicion that sexual activity with a minor was accomplished through the use of duress, they must make a child abuse report.<sup>125</sup>

## 5. What is “statutory rape?”

California Penal Code section 261.5 makes it illegal to have sexual intercourse with a minor under 18 years old who is not the spouse of the perpetrator, irrespective of consent. There is a graduated scale of criminal and civil penalties for violations of this statute, with the severity of the penalty dependent on the age difference between the two partners. Colloquially known as “statutory rape,” this statute in fact is entitled “unlawful sexual intercourse with a person under 18.”<sup>126</sup> While sexual intercourse is not specifically defined in this statute, the California Supreme Court has stated that in the context of rape, the term “sexual intercourse” refers to vaginal penetration.<sup>127</sup> Additional criminal statutes address the legality of other forms of sexual activity.

## 6. What “statutory rape” must a mandated reporter report as child abuse?

Reporters do not have to report all instances of “unlawful sexual intercourse” (statutory rape). CANRA requires reporters to report knowledge or reasonable suspicion of:

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<sup>123</sup> Cal. Penal Code § 261(b).

<sup>124</sup> *See People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 769 (3<sup>rd</sup> Dist. Ct. App. 1988).

<sup>125</sup> *See* Section (C)(2) for further information regarding the “reasonable suspicion” standard.

<sup>126</sup> Cal. Penal Code § 261.5.

<sup>127</sup> *People v. Stitely*, 35 Cal.4<sup>th</sup> 514, 554 (2005); *People v. Holt*, 15 Cal.4<sup>th</sup> 619, 676, 63 Cal. Rptr.2d 782 (1997).

- Sexual intercourse between a minor who is under 14 years old and a partner 14 years old or older, irrespective of consent.
- Sexual intercourse between a minor who is under 16 years old and a partner 21 years old or older, irrespective of consent.<sup>128</sup>

### **7. What are “lewd and lascivious acts?”**

A “lewd and lascivious act” is an intentional touching of the body, or any part or member thereof, of a child “with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of that person or the child.”<sup>129</sup>

Courts have also held that a defendant need not touch the victim in order to violate section 288.<sup>130</sup> A person also commits a lewd and lascivious act if that person “willfully cause[s] a child to touch her own body, the [person’s] body, or the body of someone else” with the required intent.<sup>131</sup> The law criminalizes any lewd and lascivious acts committed “by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.” It also criminalizes acts with minors based on the age of the minor and age of the perpetrator. Generally, charges brought under this section involve severely exploitative behavior. For example, prosecutors often use the statute to prosecute adults who have molested very young children.<sup>132</sup>

### **8. What “lewd and lascivious acts” must a mandated reporter report as child abuse?**

Reporters must report knowledge or reasonable suspicion of:<sup>133</sup>

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<sup>128</sup> Cal. Penal Code §§ 11165.1, 288, 261.5(d); *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

<sup>129</sup> Cal. Penal Code § 288; see *People v. Martinez*, 45 Cal. Rptr. 2d 905, 917 (1995)(...“we adhere to the long-standing rule that section 288 is violated by ‘any touching’ of an underage child accomplished with the intent of arousing the sexual desires of either the perpetrator or the child.”); see *People v. Shockley*, 58 Cal. 4th 400, 407 (2014)(“... battery is not a lesser included offense of lewd conduct.”).

<sup>130</sup> *People v. Austin*, 111 Cal.App.3d 110, 114-115 (1980).

<sup>131</sup> *People v. Lopez*, 111 Cal. Rptr. 3d 232, 238 (2010).

<sup>132</sup> See e.g., *Shumante v. Newland*, 75 F. Supp.2d 1076 (N.D. Cal. 1999) (kindergarten teacher convicted of lewd and lascivious acts for molesting 16 children).

<sup>133</sup> Cal. Penal Code §§ 11165.1(a), 288; *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 769 (3<sup>rd</sup> Dist. Ct. App. 1989); *Planned Parenthood Affiliates of California v. Van De Kamp*, 226 Cal. Rptr. 361, 381 (1st Dist. Ct. App. 1986).

- Any lewd and lascivious touching of a minor accomplished with the use of force, violence, duress, menace or fear of immediate and unlawful bodily injury to the victim or another.
- Any lewd and lascivious touching of a child under 14 years old, if the other person is 14 years old or older, irrespective of consent.
- Any lewd and lascivious touching of a child 14 years old, if the other person is at least 10 years older (24 years old or older), irrespective of consent.<sup>134</sup>
- Any lewd and lascivious touching of a child 15 years old, if the other person is at least 10 years older (25 years old or older), irrespective of consent.<sup>135</sup>

### 9. What sexual activity with a minor should not be reported as child abuse?

State and federal law protect the confidentiality of information received in the course of providing health care. There is an exception for mandated child abuse reporting. If a mandated reporter reasonably suspects a minor has been the victim of abuse, the reporter must disclose relevant information to the appropriate authorities. However, if a child abuse report is not required by state law, and a provider has no other reason to suspect abuse, any information a provider learns about a minor's sexual activity while providing health care is protected by confidentiality rules, and mandated reporters cannot share it with CPS or the police without the minor's permission.

With this in mind, mandated reporters should not report **voluntary intercourse** by a minor **when there is no indication of neglect, abuse or duress and:**

- One person is under 14 years old and his or her partner is under 14 years old.

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<sup>134</sup> Reportable if one person is at least 10 years older, measuring from the birthdate of the person to the birth date of the child. *See* Cal. Penal Code § 288(c).

<sup>135</sup> *Id.*

- One person is 14 or 15 years old and his or her partner is at least 14 years old but under 21 years old.
- One person is 16 years old or older and his or her partner is 16 or older.<sup>136</sup>

Mandated reporters also should not report **voluntary “touching”** that otherwise may be deemed a ‘lewd and lascivious act’ **when there is no other indication of abuse, neglect or duress and:**<sup>137</sup>

- One person is under 14 years old and his or her partner is under 14 years old.
- One person is 14 years old and his or her partner is under 24 years old.<sup>138</sup>
- One person is 15 years old and his or her partner is under 25 years old.<sup>139</sup>

**10. For the purposes of child abuse reporting, does a mandated reporter have a legal duty to try to ascertain the ages of the minor’s partners?**

No. No statute or case obligates providers to ask their minor patients about the age of the minors’ sexual partners for the purpose of reporting abuse.

In response to this question, a California court said: “Nothing in the [Child Abuse Reporting] Act requires health care practitioners to obtain information they would not ordinarily obtain in the course of providing care and treatment according to standards prevailing in the medical profession.”<sup>140</sup>

With this in mind, an individual health care provider’s practice in eliciting information that is relevant to child abuse reporting issues should be shaped by his or her professional judgment. In addition, the provider’s practice may be directed by the policies and protocols of the particular family planning clinic or

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<sup>136</sup> Cal. Penal Code §§ 11165.1, 261.5; *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

<sup>137</sup> *Id.*

<sup>138</sup> Age as measured from the birthdate of the older person to the birth date of the child. *See* Cal. Penal Code § 288(c)(1).

<sup>139</sup> *Id.*

<sup>140</sup> *Stockton*, 249 Cal. Rptr. at 769.

other site in which the provider works. Health care providers are encouraged to consult with their own clinics and institutions, including legal counsel for those institutions, in determining the scope of questions to ask.

### **11. Does pregnancy or a sexually transmitted disease automatically require an abuse report?**

No. Pregnancy or evidence of a sexually transmitted disease does not, in and of itself, constitute sufficient evidence to establish a reasonable suspicion of sexual abuse.<sup>141</sup> This means it should not be reported absent other evidence of abuse.

However, pregnancy or an STD, when combined with additional information, may present a reasonable suspicion that child abuse has occurred.<sup>142</sup> For this reason, treating professionals “must evaluate facts known to them in light of their training and experience to determine whether they have an objectively reasonable suspicion of child abuse.”<sup>143</sup>

## **G. What is reportable as sexual exploitation?**

### **1. What is exploitation for reporting purposes?**

CANRA states that reportable “sexual exploitation” includes any of the following:

- Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
- Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual

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<sup>141</sup> Cal. Penal Code § 11166(a)(1); *Stockton*, 249 Cal. Rptr. at 769.

<sup>142</sup> *Stockton* at 767.

<sup>143</sup> *Id.* at 769.

conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

- Any person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media or exchanges, any film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.”<sup>144</sup>

## **2. Does a mandated reporter need to report child prostitution as child abuse?**

Yes in many cases. Mandated reporters must make a child abuse report if the mandated reporter knows or reasonably suspects “sexual exploitation.” “Sexual exploitation” is defined by CANRA to include knowledge or reasonable suspicion of the following:

1. That a minor is or has been involved in prostitution or a live performance involving obscene sexual conduct, or posed or modeled alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction involving obscene sexual conduct; and
2. “Any person” knowingly promoted, aided, assisted, employed, used, persuaded, induced or coerced the minor to engage in this behavior, or “[a] person responsible for the minor’s welfare”<sup>145</sup> knowingly permitted or encouraged the minor to engage in this behavior.<sup>146</sup>

Reporters also must make a report when they know or reasonably suspect that a minor has been neglected. Neglect includes the negligent failure of a person

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<sup>144</sup> Cal. Penal Code § 11165.1(c).

<sup>145</sup> For the purpose of this section, “person responsible for a child’s welfare” means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.” Cal. Penal Code § 11165.1(c)(2).

<sup>146</sup> Cal. Penal Code § 11165.1(c)(2).



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. A parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution is neglecting a minor when there are “circumstances indicating harm or threatened harm to the child’s health or welfare. [Neglect] includes both acts and omissions on the part of the responsible person.”<sup>147</sup> *See footnote 94 for a full definition of neglect.*

## **H. How Does Reporting Work?**

### **1. To whom should reports be made?**

Reports of suspected child abuse or neglect should be made to any one of the following:

- 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 (often referred to as CWA or CPS).<sup>148</sup>

### **2. Does a mandated reporter have to file the report in the county or state in which the client resides?**

No. Reporters may file their mandated abuse reports with the appropriate agency in any county in California. California law obligates the police, CPS, and the other agencies responsible for receiving child abuse reports to accept every child abuse report made to them, even if the agency lacks jurisdiction over the case. If the agency does not have jurisdiction over a particular case, the agency is obligated to immediately refer the case to the proper authorities via telephone, fax, or electronic transmission. The only exception to this rule is that an agency may refuse a report if the agency can immediately electronically transfer the reporter’s call to an agency with proper jurisdiction.<sup>149</sup>

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<sup>147</sup> Cal. Penal Code §§ 11165.2, 11165.6.

<sup>148</sup> Cal. Penal Code § 11165.9.

<sup>149</sup> Cal. Penal Code § 11165.9.

### **3. May an agency refuse to accept a child abuse report and tell the reporter to file it with a different agency?**

No. Agencies required to receive child abuse reports “may not refuse to accept a report” for jurisdictional reasons “unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction.”<sup>150</sup>

### **4. How does a reporter make a report and how quickly must the report be made?**

“The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow-up 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 relating to the incident.”<sup>151</sup>

### **5. What information must the reporter include in the report?**

Mandated reports of child abuse or neglect must 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*, also must be included in the report:

- the child’s name;
- the child’s address;
- the child’s present location; and
- if applicable, school, grade, and class;
- the names, addresses, and telephone numbers of the child’s parents or guardians; and

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<sup>150</sup> Cal. Penal Code § 11165.9.

<sup>151</sup> Cal. Penal Code § 11166(a).

- the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child.<sup>152</sup>

**6. If a reporter doesn't have all the necessary information, is a report still required?**

Yes. "The mandated reporter shall make a report even if some of the above information is not known or is uncertain to him or her."<sup>153</sup>

**7. May an agency establish internal procedures to streamline reporting in their clinic?**

Yes. "[I]nternal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article."<sup>154</sup> However, "[t]he internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer."<sup>155</sup> In addition, the internal procedures cannot require health care providers to share confidential information where no exception in state or federal law would allow that sharing. For example, the internal procedure in a medical clinic cannot streamline reports through a staff member who otherwise would not have a legal right to see the confidential medical information being reported.

**8. Will a report to a clinic director or administrator suffice?**

It depends. The law allows a clinic to establish an internal procedure that streamlines reports through a director or administrator. Where no internal procedure exists, the law says that in a situation in which "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

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<sup>152</sup> Cal. Penal Code § 11167(a).

<sup>153</sup> Cal. Penal Code § 11167(a).

<sup>154</sup> Cal. Penal Code § 11166(i).

<sup>155</sup> Cal. Penal Code § 11166(i).

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.”<sup>156</sup>

Ultimately, though, reporting duties are individual. While the law allows for some flexibility to facilitate reporting, absent an internal procedure that allows for it, “[r]eporting ... child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.”<sup>157</sup>

## **9. May health care providers inform parents that they made a child abuse report?**

Yes under certain circumstances. If parents already have a right to access protected information in the medical record under HIPAA and state law (*see question 9 in Section III*), then the clinician may inform the parents about the abuse report. If parents do not have a right to access the minor’s health information under federal or state law, the clinician cannot inform parents about the abuse report without first obtaining the minor’s authorization. The child abuse reporting statute authorizes a clinician to tell CPS and/or the police about abusive situations, but it does not give the clinician the authority to disclose that information to parents.

## **10. Will the police be informed of child abuse reports I make?**

Yes. CPS is mandated to cross-report child abuse to the law enforcement agency having jurisdiction over the case. Cal. Penal Code § 11166(j).

### **I. What are the Consequences of The Reporting Decision?**

#### **1. What will Child Protective Services do after receiving a report?**

The agency that received your report is required to immediately cross-report to the other reporting agencies as well as to the district attorney.<sup>158</sup>

Upon receiving your phone call and written report, CPS will do a risk assessment and decide whether the report warrants investigation. If investigated, CPS will

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<sup>156</sup> Cal. Penal Code § 11166(h).

<sup>157</sup> Cal. Penal Code § 11166(i)(3).

<sup>158</sup> Cal. Penal Code § 11166(j)&(k).

determine whether the report is: “unfounded,” “substantiated,” or “inconclusive.”<sup>159</sup> How CPS proceeds from there will depend on this evaluation.<sup>160</sup>

The response to child abuse reports varies greatly by location. In some places, providers feel that CPS rarely follows up on any abuse reports, particularly those regarding adolescents. In others, providers feel that CPS and the police investigate everything, even groundless reports. Providers are encouraged to consult with their local CPS, police, and district attorneys for insight into their policies and practice. This will allow providers to better inform clients about possible outcomes when abuse reports are made.

## **2. Will a mandated reporter’s identity and report be confidential?**

For the most part, yes. The identity of all persons who report under CANRA shall be confidential and disclosed only:

- among agencies receiving or investigating mandated reports;
- to counsel in certain cases arising out of a report;
- to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected;
- when those persons waive confidentiality; or
- by court order.<sup>161</sup>

In addition, the reports themselves are confidential and may only be disclosed in limited contexts.<sup>162</sup> For the most part, the law only allows these reports to be shared with other agencies involved in investigating, prosecuting, or tracking

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<sup>159</sup> Cal. Penal Code § 11165.12 (“(a) “Unfounded report” means a report that 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, as defined in Section 11165.6.

(b) “Substantiated report” means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred. A substantiated report shall not include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect as defined in Section 11165.6

(c) “Inconclusive report” means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.”).

<sup>160</sup> Cal. Penal Code § 11165.12.

<sup>161</sup> Cal. Penal Code § 11167(d)(1).

<sup>162</sup> Cal. Penal Code § 11167.5.

child abuse, or treating the child victim. Even in these situations, information in the reports cannot be shared “if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.”<sup>163</sup>

### **3. May a mandated reporter find out what happened with the report?**

Yes. “When a report is made . . . , the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.”<sup>164</sup>

### **4. Can individuals be held liable for making reports?**

It depends on whether the reporter was a mandated reporter or not. Mandated reporters are protected by law from civil and criminal liability. However, non-mandated reporters (a.k.a. voluntary reporters) can be held liable for filing a false report if “it can be proven that a false report was made and the person knew that the report was false or . . . made [it] with reckless disregard of the truth or falsity of the report.”<sup>165</sup> Any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused.<sup>166</sup>

### **5. Can individuals be held liable for not making reports?**

Yes. “A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect . . . 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.”<sup>167</sup>

Additionally, 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

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<sup>163</sup> Cal. Penal Code § 11167.5.

<sup>164</sup> Cal. Penal Code § 11170(b)(2).

<sup>165</sup> Cal. Penal Code § 11172(a).

<sup>166</sup> Cal. Penal Code § 11172(a).

<sup>167</sup> Cal. Penal Code § 11166(c).

under this section, the failure to report is a continuing offence until an agency specified in Section 11165.9 discovers the offense.”<sup>168</sup>

## **J. Do Health Records Remain Confidential in Cases of Alleged Abuse?**

### **1. When must confidential health information be shared with CPS or the police?**

A California appellate court ruled that to the extent child abuse reporting requirements conflict with confidentiality rules in California law, the reporting requirements prevail.<sup>169</sup> This means mandated reporters must share medical information relevant to the abuse report with CPS or the police. This does not mean that a minor’s complete medical file loses confidentiality. Providers should speak to legal counsel regarding what and how much to share.

### **2. Do the medical records provided to CPS or the police remain confidential?**

For the most part, yes. The records provided to CPS become part of the child abuse report and file. Child abuse reports and child abuse investigative reports are confidential and may only be disclosed in limited circumstances. The law only allows these reports and their related attachments to be shared with a limited number of other agencies, primarily other agencies involved in investigating or tracking child abuse. Even in these situations, information in the reports cannot be shared “if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.”<sup>170</sup>

### **3. How should a subpoena or other legal request for confidential information be handled?**

While both federal and state laws allow providers to release health information in some circumstances when subpoenaed, there are procedural and substantive standards that must be met before a subpoena is valid. Many subpoenas will not withstand legal challenge. For this reason, when presented with a subpoena, it is always advisable to seek legal counsel before releasing any information.

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<sup>168</sup> Cal. Penal Code 11166(c).

<sup>169</sup> *Stockton*, 249 Cal. Rptr. at 768.

<sup>170</sup> Cal. Penal Code § 11167.5(e).

