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# *The California Child Abuse and Neglect Reporting Act: Reporting Rules for Mandated Reporters*

From the National Center for Youth Law, [www.teenhealthlaw.org](http://www.teenhealthlaw.org)

The California Child Abuse and Neglect Reporting Act (CANRA) defines child abuse, establishes procedures to report and investigate child abuse, and imposes an obligation to report child abuse on certain individuals, including most health care providers. "The intent and purpose of [CANRA] is to protect children from abuse and neglect."<sup>1</sup>

This document addresses common questions about CANRA and the obligation to report child abuse. This information is not intended as legal advice. Professionals should consult with legal counsel for guidance on recommended courses of action in individual situations.

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## **WHO: Who must and may report child abuse and neglect?**

### **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 a public or private school.
4. A classified employee of a public school.
5. An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a 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.

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<sup>1</sup> Cal. Penal Code § 11164.



8. An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.
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 a 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 and surgeon; psychiatrist; psychologist; dentist; resident; intern; podiatrist; chiropractor; licensed nurse; dental hygienist; optometrist; marriage and family therapist; clinical social worker; professional clinical counselor; or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
22. An 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 and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
25. An unlicensed associate marriage and family therapist 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 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 a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images 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 5.655 of the California Rules of Court.
36. A custodial officer as defined in Section 831.5.
37. A 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. An associate professional clinical counselor 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 a public or private school that provides any combination of instruction for kindergarten, or grade 1 to 12, inclusive.
- 43 (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.
45. An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.
46. An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.
47. A qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional, as defined in Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.<sup>2</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 their private capacity and not in their professional capacity or within the scope of their employment.<sup>3</sup>

## WHEN: When is a Mandated Reporter Required to Submit a Report?

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

“A mandated reporter shall make a report . . . whenever the mandated reporter, in the mandated reporter’s professional capacity or within the scope of the mandated reporter’s 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>4</sup>

### 2. Must the mandated reporter be physically present with a child for their mandated reporting duty to take effect?

No. A mandated reporter must make a report when the reporter “has knowledge of or observes” a child whom the mandated reporter knows or reasonably suspects has been a victim. This does not

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<sup>2</sup> Cal. Penal Code § 11165.7.

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

<sup>4</sup> Cal. Penal Code § 11166(a).



require the mandated reporter to physically be in the same place with the child before the duty takes effect. Indeed, it does not even require direct observation. Knowledge is sufficient.

### 3. 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 the person’s 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>5</sup>

### 4. 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>6</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>7</sup> On the other hand, CANRA does not explicitly require reports of long ago abuse. For this reason, providers should consult legal counsel for advice on how to handle specific cases.

### 5. 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 the reporter’s “professional capacity or within the scope of the mandated reporter’s employment.” CANRA explicitly states that a mandated reporter whose knowledge of suspected abuse arises while outside their professional capacity or employment may make a child abuse report but is not required to by CANRA.<sup>8</sup>

## WHAT: What is Reportable Abuse and Neglect?

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

CANRA requires reporting of “child abuse or neglect”<sup>9</sup> and defines this to include:

- **Physical injury** inflicted by other than accidental means upon a child by another person;

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<sup>5</sup> Cal. Penal Code § 11166(a)(1).

<sup>6</sup> Cal. Penal Code § 11166(a)(1).

<sup>7</sup> For example, in Minnesota, mandated reporters must report only when children have been abused “within the preceding three years.” Minn. Stat. § 626.556.

<sup>8</sup> Cal. Penal Code § 11166(g).

<sup>9</sup> Cal. Penal Code § 11165.6.



- **Sexual abuse** (as defined in Penal Code section 11165.1);
- **Neglect** (as defined in Penal Code section 11165.2);
- **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); and
- **Unlawful corporal punishment** or injury (as defined in Penal Code section 11165.4.)

In addition, mandated reporters may, but are not required to, report “serious emotional damage.”<sup>10</sup>

These terms are further defined in the following sections.

## 2. 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>11</sup>

## 3. Can a minor perpetrate child abuse against another minor?

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.”

## 4. Must mandated reporters make a report when their client is the perpetrator 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>12</sup> Reporters do not have to know the victim personally. As long as they have facts sufficient to create an objectively reasonable suspicion of abuse, they must make a report.

# WHAT: Emotional Abuse

## 1. 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

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<sup>10</sup> Cal. Penal Code § 11166.05.

<sup>11</sup> *See, e.g.*, Cal. Penal Code § 11165.6 (defining abuse to include “physical injury ... inflicted by...another person”).

<sup>12</sup> Cal. Penal Code § 11166(a).



child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering....”<sup>13</sup> The definition of reportable neglect can be found below.

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>14</sup>

## WHAT: Physical Abuse

### 1. What physical abuse is reportable?

California defines “child abuse”<sup>15</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 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>16</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

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<sup>13</sup> Cal. Penal Code § 11165.3.

<sup>14</sup> Cal. Penal Code § 11166.05.

<sup>15</sup> Cal. Penal Code § 11165.6.

<sup>16</sup> Cal. Penal Code § 11165.3.



and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.”<sup>17</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>18</sup> There is no statutory definition of “physical injury” or guidance on how to assess intent for this purpose. 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>19</sup> “Mutual affray” is not explicitly defined by the statute. Black’s law dictionary 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>20</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>21</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>22</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>23</sup>

## WHAT: Sexual Abuse

### 1. What qualifies as reportable sexual abuse?

CANRA defines child abuse to include “sexual abuse.”<sup>24</sup> CANRA defines sexual abuse as

- “sexual assault” and
- “sexual exploitation.”<sup>25</sup>

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<sup>17</sup> Cal. Penal Code § 11165.4.

<sup>18</sup> Cal. Penal Code § 11165.6.

<sup>19</sup> Cal. Penal Code § 11165.6.

<sup>20</sup> Cal. Penal Code § 11165.6.

<sup>21</sup> See, e.g., Cal. Penal Code § 11165.6 (defining abuse to include “physical injury ... inflicted by...another person”).

<sup>22</sup> See *id.*

<sup>23</sup> This document does not address whether mandated reporters must ever make a neglect report in response to teen dating violence.

<sup>24</sup> Cal. Penal Code § 11165.6.

<sup>25</sup> Cal. Penal Code § 11165.1.



## Sexual Assault

CANRA defines reportable “sexual assault”<sup>26</sup> 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);
- 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).

“Rape,” “Lewd and Lascivious Acts,” and “Statutory Rape” are described in greater detail in questions 2-9 below.

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

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>27</sup> Rape is defined in California Penal Code section 261. Section 261 makes it illegal to have sexual intercourse<sup>28</sup> with someone who is not the spouse of the perpetrator,<sup>29</sup> under a variety of circumstances, including intercourse:

- Accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
- Accomplished under threat of future retaliation, where there is a reasonable possibility that the perpetrator will execute the threat;<sup>30</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>31</sup>

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<sup>26</sup> Cal. Penal Code § 11165.1(a&b).

<sup>27</sup> Cal. Penal Code § 11165.6.

<sup>28</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>29</sup> A separate statute makes spousal rape a crime. See Penal Code §262.

<sup>30</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>31</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 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;
- 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>32</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>33</sup>

## 2. 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 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>34</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>35</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.

## 3. 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

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<sup>32</sup> Cal. Penal Code § 261(a).

<sup>33</sup> *Id.* at (b).

<sup>34</sup> Cal. Penal Code § 261(b).

<sup>35</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).



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>36</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>37</sup> Additional criminal statutes address the legality of other forms of sexual activity with a minor.

#### 4. 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:

- 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>38</sup>

#### 5. 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>39</sup> Courts have also held that a defendant need not touch the victim in order to violate section 288.<sup>40</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>41</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 young children.<sup>42</sup>

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<sup>36</sup> Cal. Penal Code § 261.5.

<sup>37</sup> *People v. Stitely*, 35 Cal.4th 514, 554 (2005); *People v. Holt*, 15 Cal.4th 619, 676, 63 Cal. Rptr.2d 782 (1997).

<sup>38</sup> Cal. Penal Code §§ 11165.1, 288, 261.5(d); *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

<sup>39</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>40</sup> *People v. Austin*, 111 Cal.App.3d 110, 114-115 (1980).

<sup>41</sup> *People v. Lopez*, 111 Cal. Rptr. 3d 232, 238 (2010).

<sup>42</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).



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

Reporters must report knowledge or reasonable suspicion of:<sup>43</sup>

- 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>44</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>45</sup>

## 7. 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.
- 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>46</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>47</sup>

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<sup>43</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).

<sup>44</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>45</sup> *Id.*

<sup>46</sup> Cal. Penal Code §§ 11165.1, 261.5; *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

<sup>47</sup> *Id.*



- 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>48</sup>
- One person is 15 years old and his or her partner is under 25 years old.<sup>49</sup>

**8. 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 and Neglect 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>50</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 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.

**9. Does pregnancy or a sexually transmitted infection 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>51</sup> This means it should not be reported absent other evidence of abuse.

However, pregnancy or a sexually transmitted infection, when combined with additional information, may present a reasonable suspicion that child abuse has occurred.<sup>52</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>53</sup>

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<sup>48</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>49</sup> *Id.*

<sup>50</sup> *Stockton*, 249 Cal. Rptr. at 769.

<sup>51</sup> Cal. Penal Code § 11166(a)(1); *Stockton*, 249 Cal. Rptr. at 769.

<sup>52</sup> *Stockton* at 767.

<sup>53</sup> *Id.* at 769.



## Sexual Exploitation

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

CANRA defines reportable sexual abuse to include sexual exploitation.<sup>54</sup> CANRA defines “sexual exploitation”<sup>55</sup> to include 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).
- A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a 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.
- A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a 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.

CANRA defines “commercial sexual exploitation” which includes:

- The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.<sup>56</sup>
- The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act<sup>57</sup> or subdivision (c) of Section 236.1.

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<sup>54</sup> Cal. Penal Code §§ 11165.6, 11165.1.

<sup>55</sup> Cal. Penal Code § 11165.1(c).

<sup>56</sup> Ca. Penal Code § 236.1(c) (“ Any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking....”).

<sup>57</sup> See Ca. Penal Code § 11165.1(b). Sexual acts described in this section include but are not limited to:

1. Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
2. Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
3. Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.
4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.



## 2. Does a mandated reporter need to report trafficking or the exchanging of sexual acts for money or goods with a minor as child abuse?

Yes. 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:

- 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
- “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>58</sup> knowingly permitted or encouraged the minor to engage in this behavior.<sup>59</sup>

And “commercial sexual exploitation” is defined to include:

- The sexual trafficking of a child, as described in subdivision (c) of Section 236.1; and
- The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section<sup>60</sup> or subdivision (c) of Section 236.1.

## WHAT: Neglect

### 1. What is reportable neglect?

Reporters must make a report when they know or reasonably suspect that a minor has been neglected. “Neglect” means the negligent treatment or the maltreatment of a child by a person

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5. The intentional masturbation of the perpetrator's genitals in the presence of a child.

<sup>58</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>59</sup> Cal. Penal Code § 11165.1(c)(2).

<sup>60</sup> See Ca. Penal Code § 11165.1(b). Sexual acts described in this section include but are not limited to:

- Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
- Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.
- The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
- The intentional masturbation of the perpetrator's genitals in the presence of a child.



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.

Neglect includes 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. 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.”<sup>61</sup>

## HOW: 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>62</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>63</sup>

### 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

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<sup>61</sup> Cal. Penal Code §§ 11165.2, 11165.6.

<sup>62</sup> Cal. Penal Code § 11165.9.

<sup>63</sup> Cal. Penal Code § 11165.9.



jurisdictional reasons “unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction.”<sup>64</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>65</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
- the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child.<sup>66</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>67</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>68</sup> However, “[t]he internal procedures shall not require any employee required to make reports pursuant to

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<sup>64</sup> Cal. Penal Code § 11165.9.

<sup>65</sup> Cal. Penal Code § 11166(a).

<sup>66</sup> Cal. Penal Code § 11167(a).

<sup>67</sup> Cal. Penal Code § 11167(a).

<sup>68</sup> Cal. Penal Code § 11166(i).



this article to disclose his or her identity to the employer.”<sup>69</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 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>70</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>71</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.

# WHAT NEXT: What Happens After a Report is Made?

## 1. What will Child Protective Services or Law Enforcement 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>72</sup>

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<sup>69</sup> Cal. Penal Code § 11166(i).

<sup>70</sup> Cal. Penal Code § 11166(h).

<sup>71</sup> Cal. Penal Code § 11166(i)(3).

<sup>72</sup> Cal. Penal Code § 11166(j)&(k).



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 determine whether the report is: “unfounded,” “substantiated,” or “inconclusive.”<sup>73</sup> How CPS proceeds from there will depend on this evaluation.<sup>74</sup>

## 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>75</sup>

In addition, the reports themselves are confidential and may only be disclosed in limited contexts.<sup>76</sup> For the most part, the law only allows these reports to be shared with other agencies involved in investigating, prosecuting, or tracking 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>77</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>78</sup>

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<sup>73</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 to not 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>74</sup> Cal. Penal Code § 11165.12.

<sup>75</sup> Cal. Penal Code § 11167(d)(1).

<sup>76</sup> Cal. Penal Code § 11167.5.

<sup>77</sup> Cal. Penal Code § 11167.5.

<sup>78</sup> Cal. Penal Code § 11170(b)(2).



#### 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>79</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>80</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>81</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 under this section, the failure to report is a continuing offence until an agency specified in Section 11165.9 discovers the offense.”<sup>82</sup>

Always consult legal counsel for advice on application of these laws.

This document reflects the state of California law as of February 2020. Please check back with the **National Center for Youth Law** for updates.

[www.youthlaw.org](http://www.youthlaw.org) and [www.teenhealthlaw.org](http://www.teenhealthlaw.org)

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<sup>79</sup> Cal. Penal Code § 11172(a).

<sup>80</sup> Cal. Penal Code § 11172(a).

<sup>81</sup> Cal. Penal Code § 11166(c).

<sup>82</sup> Cal. Penal Code § 11166(c).