



Minor Consent, Confidentiality, and Child Abuse Reporting in California



National Center for Youth Law

Minor Consent, Confidentiality, and Child Abuse Reporting in California

Prepared by
Rebecca Gudeman, J.D., M.P.A

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National Center for Youth Law
405 14th St., 15th Floor
Oakland, CA 94612
www.youthlaw.org
www.teenhealthrights.org

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NCYL focuses its work in four areas:

- Safety, Stability, and Well-Being of Abused and Neglected Children
- Access to Quality Health and Mental Health Care
- Financial Stability for Low-Income Families and Children
- Juvenile Justice

Disclaimer: This manual provides information. It does not constitute legal advice or representation. For legal advice, readers should consult their own counsel. This manual presents the state of the law as of October 2006. While we have attempted to assure the information included is accurate as of this date, laws do change, and we cannot guarantee the accuracy of the contents after publication.

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I. Minor Consent

What is the age of majority?

A minor legally becomes an adult at 18 years old in California. Cal. Family Code § 6500.

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 consensual sexual activity with a minor who is under 18 years of age. See, e.g. Cal. Penal Code § 261.5 (prohibiting “unlawful sexual intercourse” with a minor under 18, not the spouse of the perpetrator).

Who generally consents for health care for minors?

Generally, a parent or guardian must consent for health care on behalf of a minor. However, there are exceptions to this rule.

What exceptions allow minors or others to consent for minors’ health care?

■ CONSENT BY OTHERS

▲ 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.

Cal. Family Code § 6911(a).

▲ Letter from Parents, Guardian, or Caretaker

A parent, guardian, or related caregiver¹ 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. Cal. Family Code § 6910.

¹ A related caregiver means a related caregiver who has signed a caregiver consent affidavit. See “Minor Living with Related Caregiver,” *infra*.





When Minors or Others May Consent for Minors' Health Care

■ CONSENT BY OTHERS

- ▲ Consent by court
- ▲ Letter from parents, guardian, or caretaker
- ▲ Caregiver who completes consent affidavit

■ STATUS EXCEPTIONS

- ▲ Emancipated Minor
- ▲ Minor living separate from parents

(cont. next page)

▲ Minor Living with Related Caregiver

A caregiver who is a relative² and who completes a caregiver consent affidavit³ 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.

Cal. Family Code § 6550; Cal. Probate Code §§ 2353, 2356.

▲ Minor Living with Non-related Caregiver

A non-related caregiver who completes a caregiver consent 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 enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils. Cal. Family Code § 6550.

■ MINOR CONSENT BASED ON STATUS

Minors satisfying the following conditions may consent for their own care:

▲ Emancipated Minor

An emancipated minor shall be considered an adult for the purpose of consent to medical, dental, or psychiatric care. Cal. Family Code § 7050(e)(1).

A minor is emancipated if:

- 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" from a court.⁴

Cal. Family Code §§ 7002.

² "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.

³ A form prescribed by Cal. Family Code § 6552. See www.teenhealthrights.org for example.

⁴ 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.



When Minors or Others May Consent for Minors' Health Care
(cont. from previous page)

.....
■ **SERVICE EXCEPTIONS**

- ▲ **Abortion**
- ▲ **Drug and alcohol abuse**
- ▲ **Family planning (Title X-funded)**
- ▲ **Family planning services**
- ▲ **HIV/AIDS**
- ▲ **Infectious contagious diseases (reportable)**
- ▲ **Mental health care**
- ▲ **Pregnancy**
- ▲ **Rape, sexual assault treatment**
- ▲ **Sexually transmitted diseases**
- ▲ **Suspected child abuse victims**

▲ **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.

Cal. Family Code § 6922(a).

■ **MINOR CONSENT BASED ON SERVICES SOUGHT**

Minors seeking services for the following conditions may consent for their own care as described below:

▲ **Abortion**

Minors of any age may consent for the performance of an abortion. *American Academy of Pediatrics v. Lundgren*, 16 Cal.4th 307, 383 (1997).

▲ **Drug- and Alcohol-Related Problems**

"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." Cal. Family Code § 6929(b). However, this statute does not authorize a minor to consent to replacement narcotic abuse treatment. Cal. Family Code § 6929(e).

Consent Note: State law 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. Cal. Family Code § 6929(f).

▲ **Family Planning (Title X-Funded)**

Federal regulations establish special access rules for family planning services funded through Title X. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. 59.5(a)(4). This regulation supersedes any state law to the contrary. *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); see *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W.Va. 1979).

Thus, minors of any age may consent to family planning services when those services are funded in full or in part by Title X monies. For family planning services not funded by Title X, state consent law applies.



▲ Family Planning, Including Contraception

A minor of any age may consent to medical care related to the prevention or treatment of pregnancy. This includes contraception. It does not allow a minor to consent to sterilization. Cal. Family Code § 6925.

▲ HIV/AIDS

To the extent that HIV/AIDS services are funded in full or in part by Title X, minors of any age may consent. See “Title X Family Planning” *supra*.

In other cases, state law applies. California state law provides that minors 12 and older are able to consent to HIV testing and treatment. 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.” Cal. Family Code § 6926(a).

▲ Mental Health Treatment and Counseling

“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.”

Cal. Family Code § 6924(b).

This statute does not authorize a minor to consent to convulsive therapy, psychosurgery, or psychotropic drugs. Cal. Family Code § 6924(f).

▲ Pregnancy

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. Cal. Family Code § 6925.



▲ 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." Cal. Family Code § 6927.

For minors less than 12 years of age:

"A minor 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." Cal. Family Code § 6928(b).

▲ 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." Cal. Family Code § 6928(b).

▲ Sexually Transmitted Diseases

To the extent that STD services are funded in full or in part by Title X, minors of any age may consent. See "Title X Family Planning" *supra*.

In other cases, state law applies: "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." Cal. Family Code § 6926(a).

▲ 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." Cal. Penal Code § 11171.2(a).

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." Cal. Penal Code § 11171.5(a).

II. Confidentiality

Who controls access to medical information?

California’s Confidentiality of Medical Information Act (CMIA) regulates the disclosure of most health care records.⁵ It states that, in general, health care providers cannot share or release individual medical information without written authorization. Cal. Civil Code § 56.10(a).

The authorization must be signed by a parent or guardian when the parent or guardian consented for the minor’s health care. Conversely, the authorization must be signed by the minor when the minor consented for health care or *could have consented* to the care under law. Cal. Civil Code § 56.11(c)(1)&(2).

There are exceptions. State law allows certain persons to inspect records without the need for an authorization. For example, minors have the right to inspect their own records when the records pertain to health care for which the minor consented or could have consented. Cal. Health & Safety Code § 123110(a). And parents and guardians have the right to inspect their children’s records, as long as the records do not pertain to care for which the minor consented or could have consented. Cal. Civil Code § 56.10(b)(7); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Federal regulations also address access to medical records. Federal HIPAA regulations generally restate California law — establishing that when a parent consents for an unemancipated minor’s health care, that parent generally has a right to control access to the minor’s medical information. The HIPAA regulations also honor a minor’s right under state law to control access to her own records when the minor consented for that care. 45 C.F.R. §§ 164.502(a)(1)(i)&(iv); (a)(2)(i); (g)(1); (g)(3)(i).


CMIA and HIPAA establish certain general rules about access to medical information; however, there are exceptions to both the federal and state laws that change access rights in some instances.

What exceptions impact *parent* access to medical information about minors?

▲ When Access Will Have A Detrimental Effect

Under state law, providers may refuse to provide parents or guardians access to a minor’s medical records when “the health care provider determines that access to the patient records requested by the [parent or guardian] would have

⁵ The CMIA applies to most but not all medical records. For example, it does not apply to certain mental health and drug treatment records. Other statutes protect the confidentiality of these records. See Cal. Civil Code § 56.30 for complete CMIA coverage list.



Generally, health care providers cannot share or release individual medical information without written permission. The permission must be signed by the minor if she consented or could have consented to care under law.

a detrimental effect on the provider’s professional relationship with the minor patient or the minor’s physical safety or psychological well-being.” Cal. Health & Safety Code § 123115(a)(2).

Providers applying this exception in good faith to limit parent access to records shall not be liable for their refusal to share records. Cal. Health & Safety Code § 123115(a)(2).



■ EXCEPTIONS BASED ON MINOR’S STATUS

The following confidentiality rules apply when minors satisfy these status conditions:

▲ 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. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

▲ Minor Living Separate and Apart from Parents

When a minor consents for care under this section, “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 guardian.” Cal. Family Code § 6922(c).

■ EXCEPTIONS BASED ON SERVICES PROVIDED

The following confidentiality rules apply when minors receive these services:

▲ Abortion

A health care provider is not permitted to share information or records regarding abortion services with a parent or legal guardian without the minor’s written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

▲ Drug- and Alcohol-Related Problems

Federal regulations establish special protections for substance abuse treatment records. Providers who meet certain criteria must follow the federal rule. (For criteria, see footnote six below.)⁶

⁶ 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



When Parents May Be Denied Access to Child’s Medical Information

.....
▲ Access will have detrimental effect

■ STATUS EXCEPTIONS

▲ Emancipated minor

▲ Minor living separate from parents

(cont. next page)

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. 42 C.F.R. § 2.14. However, 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 condition to make a rational decision on whether to disclose to her parents. 42 C.F.R. §2.14.

For providers who do not have to follow the federal rules, state law applies. Under state law, if a parent or guardian consents 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.” Cal. Family Code § 6929(g).

State law says that when a minor consents for her own drug or alcohol treatment, a health care provider is not permitted to share records with a parent or legal guardian without the minor’s written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1). At the same time, state law 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. The professional person providing care to the minor must 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).

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

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.

to honor the minor’s right to confidentiality to the extent possible while still involving parents in treatment.

▲ Family Planning (Title X-Funded)

Federal regulations establish special confidentiality protections for family planning information gathered during a Title X funded service. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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.” 42 C.F.R. 59.11. This regulation supersedes any state law to the contrary.

Thus, if a minor receives Title X funded services, the records cannot be disclosed to parents without obtaining the minor’s documented consent.

▲ Family Planning, Including Contraception

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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.” 42 C.F.R. § 59.11.

For all other services, state law applies. California law says that 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. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

▲ HIV/AIDS

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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.” 42 C.F.R. § 59.11.


For all other services, state law applies. California law says that a health care provider is not permitted to share information or records regarding a minor’s

When Parents May Be Denied Access to Child’s Medical Information (cont.)

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■ SERVICE EXCEPTIONS

- ▲ Abortion
- ▲ Drug and alcohol abuse
- ▲ Family planning (Title X-funded)
- ▲ Family planning services
- ▲ HIV/AIDS
- ▲ Infectious contagious diseases (reportable)
- ▲ Mental health care
- ▲ Pregnancy
- ▲ Rape, sexual assault treatment
- ▲ Sexually transmitted diseases
- ▲ Suspected child abuse victims



HIV/AIDS services with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

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

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. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

▲ **Mental Health Treatment and Counseling**

A health care provider is not permitted to share records regarding minor consent mental health care with a parent or legal guardian without the minor's authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

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. The professional must 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. Cal. Family Code § 6924(d).

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

▲ **Pregnancy**

For agencies delivering services funded in full or in part by Title X, federal law mandates that "[a]ll 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." 42 C.F.R. § 59.11.

For all other services, state law applies. California law says that 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. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).



▲ Rape Treatment

For minors 12 and older:

A health care provider is not permitted to share information or records about rape treatment with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

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 sexual assault. Cal. Family Code § 6928(c).

▲ Sexual Assault Treatment

The health care provider 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 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. Cal. Family Code § 6928(c).

▲ Sexually Transmitted Diseases

For agencies delivering services funded in full or in part by Title X, federal law mandates that "[a]ll 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." 42 C.F.R. § 59.11.

For all other services, state law applies. California law says that a health care provider is not permitted to share information or records regarding a minor's STD services with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

▲ Suspected Child Abuse Victims

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this law in any court proceeding. Cal. Penal Code § 11171.2(b).

In what situations might I be allowed or required to give others access to a minor’s medical information?

State and federal confidentiality laws contain many exceptions that allow or require providers to share medical information, whether or not they have parent or minor authorization. Examples include:

▲ Reporting Certain Diseases and Conditions to Health Authority

“It shall be the duty of every health care provider, knowing of or in attendance on a case or suspected case of any of the diseases or conditions listed [in the regulations], to report to the local health officer for the jurisdiction where the patient resides as required” 17 C.C.R. § 2500(b).

▲ Sharing For Treatment Purposes

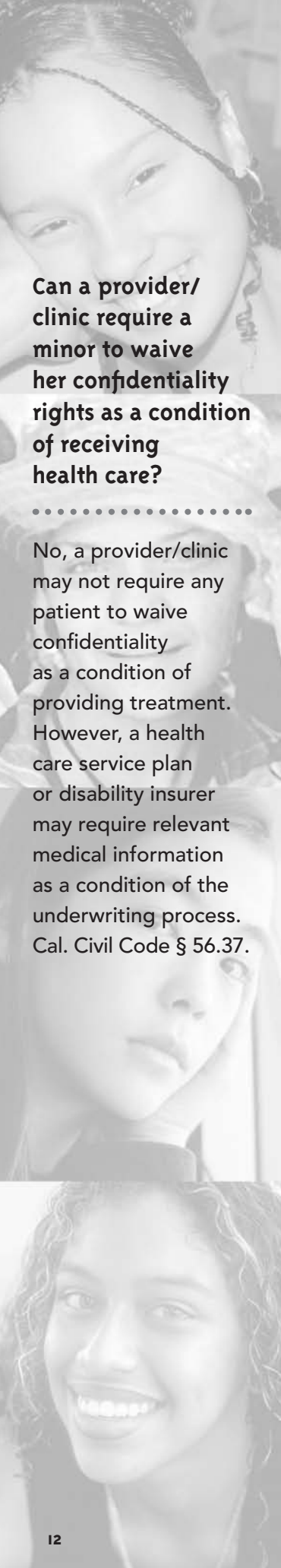
The CMIA permits, but does not require, a health care provider to furnish medical information, without need of an authorization, to providers of health care, health care service plans, contracts, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. Cal. Civil Code § 56.10(c)(1). However, a recipient of medical 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. Cal. Civil Code § 56.13.

▲ Sharing For Payment Purposes

The CMIA permits, but does 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. Cal. Civil Code § 56.10(c)(2). However, a recipient of medical 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. Cal. Civil Code § 56.13.

▲ Reporting Child Abuse

Mandated reporters of child abuse must make a child abuse report whenever they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse or neglect. Cal. Penal Code §§ 11165.7, 11166.



Can a provider/clinic require a minor to waive her confidentiality rights as a condition of receiving health care?

No, a provider/clinic may not require any patient to waive confidentiality as a condition of providing treatment. However, a health care service plan or disability insurer may require relevant medical information as a condition of the underwriting process. Cal. Civil Code § 56.37.

To the extent that this reporting requirement conflicts with CMIA, the reporting requirement prevails. *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 768 (3rd Dist. Ct. App. 1988).

Can individuals be held liable for revealing confidential information outside the exceptions listed in federal or state law?

Providers can only share information without client authorization if 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. Cal. Civil Code §§ 56.35, 56.36. 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. See 42 U.S.C. 1320d-6; 45 C.F.R. § 160, Subpart C.

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 violation as grounds for disciplinary action, including suspension or revocation of the license. Cal. Health & Safety Code § 123110(i).

.....

Providers who reveal confidential information in violation of California’s Confidentiality of Medical Information Act can be held criminally and civilly liable, and put their medical license at risk.

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III. Child Abuse Reporting Requirements

■ AM I A MANDATED REPORTER?

Who is a mandated reporter?

Mandated reporters include all of the following:

(Reporters in the health care professions are highlighted in **bold**.)

1. A teacher.
2. An instructional aide.
3. A teacher's aide or teacher's assistant employed by any public or private school.
4. A classified employee of any public school.
5. An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
6. An administrator of a public or private day camp.
7. An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
8. An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
9. Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
10. A licensee, an administrator, or an employee of a licensed community care or child day care facility.
11. A Head Start program teacher.
12. A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
13. A public assistance worker.
14. An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
15. A social worker, probation officer, or parole officer.
16. An employee of a school district police or security department.
17. Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
18. A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with

an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

19. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
20. A firefighter, except for volunteer firefighters.
21. A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family, and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
22. Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
23. A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
24. A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
25. An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.
26. A state or county public health employee who treats a minor for venereal disease or any other condition.
27. A coroner.
28. A medical examiner, or any other person who performs autopsies.
29. A commercial film and photographic print processor, as specified in subdivision (d) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.
30. A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.
31. An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
 - a. "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.





b. "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

- 32. A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.
- 33. Any custodian of records of a clergy member, as specified in this section and subdivision (c) 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.

Cal. Penal Code § 11165.7.

May I report child abuse even if I am 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 report the known or suspected instance of child abuse or neglect. Cal. Penal Code § 11166(g).

■ WHEN IS A MANDATED REPORTER REQUIRED TO SUBMIT A REPORT?

When must I 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." Cal. Penal Code § 11166(a).

What if I am 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.” Cal. Penal Code § 11166(a)(1).

■ IS THIS A TYPE OF ACTIVITY THAT MUST BE REPORTED?

What constitutes abuse or neglect?

The Child Abuse and Neglect Reporting Act (CANRA) defines “child abuse or neglect” to include:

- physical injury inflicted by other than accidental means upon a child by another person;
- sexual abuse (as defined in Penal Code section 11165.1);⁷
- neglect (as defined in Penal Code section 11165.2);⁸
- 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);⁹ and
- unlawful corporal punishment or injury (as defined in Penal Code section 11165.4.)¹⁰

Cal. Penal Code § 11165.6.

⁷ See “What Sexual Activity Must be Reported,” *infra*.

⁸ 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.”)

⁹ Cal. Penal Code § 11165.3 (“As used in this article, “the willful harming or injuring of a child or the endangering of the person or health of a child,” means 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.”)

¹⁰ Cal. Penal Code § 11165.4 (“As used in this article, “unlawful corporal punishment or injury” means 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.”)





In addition, mandated reporters may, but are not required to, report “serious emotional damage.”¹¹ Cal. Penal Code § 11166.05.

■ WHAT SEXUAL ACTIVITY MUST BE REPORTED?

What sexual activity am I mandated to report?

Mandated reporters must report sexual abuse. California law defines sexual abuse as “sexual assault” or “sexual exploitation.” Cal. Penal Code § 11165.1.

The law in turn defines these terms. Specifically, it states that conduct in violation of any of the following statutes is “sexual assault” or “sexual exploitation” and is reportable:

- 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);
- Penal Code section 288(a), 288(b), or 288(c)(1) (certain violations of Lewd or Lascivious Acts upon a Child);
- Penal Code section 261.5(d) (certain violations of Statutory Rape);
- Conduct involving matter depicting a minor engaged in obscene acts in violation of Penal Code section 311.2 (Preparing, selling, or distributing obscene matter); or
- Penal Code section 311.4(a) (Employment of minor to perform obscene acts).

Reports also are mandated for many prostitution and pornography related offenses.¹²

Cal. Penal Code § 11165.1.

¹¹ Cal. Penal Code § 11166.05 (“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 to an agency specified in Section 11165.9.”)

¹² Specifically, reports are required about:

- 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.



I know I need to report certain violations of “lewd and lascivious acts,” but 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.” Cal. Penal Code § 288; see *People v. Martinez*, 45 Cal. Rptr.2d 905 (1995).

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. 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).

What “lewd and lascivious acts” must I report as child abuse?

Reporters must report:

- 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 24 years old or older, irrespective of consent.*
- Any lewd and lascivious touching of a child 15 years old, if the other person is 25 years old or older, irrespective of consent.*

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

I know I need to report certain “statutory rape” violations, but what is “statutory rape?”

California Penal Code section 261.5 makes it illegal to have sexual intercourse¹³ with a minor under 18 years old who is not the spouse of the perpetrator, irrespective of consent. There is a graduated scale of penalties for violations of this statute, with the severity of the penalty dependant on the age difference between the two partners. Colloquially known as “statutory rape,” this statute in fact is

* Reportable if the other person is at least 10 years older, measuring from the birth date of the person to the birth date of the child. Cal. Penal Code § 288(c).

¹³ While the term “sexual intercourse” is not defined in this statute, the California Supreme Court has stated that in the context of rape, the term “sexual intercourse” refers to vaginal penetration. *People v. Stitely*, 35 Cal.4th 514, 554 (2005); *People v. Holt*, 15 Cal.4th 619, 676, 63 Cal.Rptr.2d 782 (1997).



entitled “unlawful sexual intercourse with a person under 18.” Cal. Penal Code § 261.5.

What “statutory rape” violations must I report?

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

- Sexual intercourse with a minor accomplished with the use of force, violence, duress, menace or fear of immediate and unlawful bodily injury to the victim or another, or intercourse accomplished in any other way without consent.
- 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 14 or 15 years old and a partner 21 years old or older, irrespective of consent.

Cal. Penal Code §§ 11165.1, 261.5; *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

Should intercourse be reported based on ages of patient and partner alone?

Age of Partner →

Age of Patient
↓

	12	13	14	15	16	17	18	19	20	21	22
11	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
12	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
13	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
14	Y	Y	N	N	N	N	N	N	N	Y	Y
15	Y	Y	N	N	N	N	N	N	N	Y	Y
16	Y	Y	N	N	N	N	N	N	N	N	N
17	Y	Y	N	N	N	N	N	N	N	N	N
18	Y	Y	N	N	N	N	N	N	N	N	N
19	Y	Y	N	N	N	N	N	N	N	N	N
20	Y	Y	N	N	N	N	N	N	N	N	N

KEY: Y Yes, report required based solely on age difference between patient and partner
 N No, report not required unless other evidence of abuse



**Mandated Reporters
Should Not Report
Consensual
Intercourse**

**When There Are
No Other Indications
of Abuse and:**

.....

- A minor and her partner are both under age 14
- A minor is age 14 or 15 and her partner is over 14 but under 21
- A minor and her partner are both 16 or older

I know I need to report any nonconsensual sexual activity with a minor and even some instances of consensual sexual activity with a minor. What sexual activity with a minor should *not* be reported?

Because both state and federal law protect the confidentiality of information received in the course of providing care, 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 her health care is protected by confidentiality rules, and mandated reporters cannot share it with CPS or the police without the minor’s consent.

With this in mind, mandated reporters should not report *consensual* intercourse when there are no other indications of abuse and:

- A minor is under 14 years old and his or her partner is under 14 years old.
- A minor is 14 or 15 years old and his or her partner is over 14 years old but under 21 years old.
- A minor is 16 years old or older and his or her partner is 16 or older.

Cal. Penal Code §§ 11165.1, 261.5; *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

Mandated reporters also should not report *consensual* touching that otherwise may be deemed a ‘lewd and lascivious act’ when there are no other indications of abuse and:

- A minor is under 14 years old and his or her partner is under 14 years old.
- A minor is 14 years old and his or her partner is under 24 years old.
- A minor is 15 years old and his or her partner is under 25 years old.

Cal. Penal Code §§ 11165.1, 288; *Stockton*, 249 Cal. Rptr. at 769; *Planned Parenthood*, 226 Cal. Rptr. at 381.

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.” *Stockton*, 249 Cal. Rptr. at 769.

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.

How do I know if my client’s sexual activity truly was consensual?

Many providers are concerned that sexual activity described as consensual sometimes may not be consensual in fact. For example, providers may suspect coercion based on additional facts they have learned about the activity or its context. In determining whether an act truly was consensual, 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.” *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 769 (3rd Dist. Ct. App. 1988). If providers have a reasonable suspicion sexual activity was coerced, they should make a child abuse report, irrespective of claimed consent by their client.

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. Cal. Penal Code § 11166(a)(1); *Stockton*, 249 Cal. Rptr. at 769. 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. *Stockton* at 767. 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.” *Id.* at 769.

Do I have to make a report if my client was the “abuser” rather than the victim?

Yes. A mandated reporter must report child abuse “whenever the mandated reporter . . . has knowledge of . . . a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.” Cal. Penal Code § 11166(a). 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 report.



Do I have to make a report if the abuse happened a long time ago?

Yes. CANRA requires mandated reporters to report abuse of minors. It does not relieve reporters of their reporting duty simply because acts occurred several years ago. (This contrasts with reporting statutes in some other states.)¹⁴

Requiring reports of abuse, even if the abuse occurred long ago, makes some sense. While the victim of long ago abuse may no longer be at risk, the abuser may still be abusing other children. For the same reason, many believe mandated reporters should report when an adult reveals past child abuse.

■ HOW DOES REPORTING WORK?

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).

Cal. Penal Code § 11165.9.

If I have a client from another county or state, do I have to file my report with an agency in the county or state in which she resides?

No. 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. 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. Cal. Penal Code § 11165.9.

Can an agency refuse to accept my report and tell me 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.” Cal. Penal Code § 11165.9.

¹⁴ For example, in Minnesota, mandated reporters must report only children who have been abused “within the preceding three years.” Minn. Stat. § 626.556.



How do I make a report?

“A mandated reporter must make an initial report immediately or as soon as is practicably possible by telephone. The mandated reporter then must prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.” Cal. Penal Code § 11166(a).

What information must I include in my 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;
- 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.

Cal. Penal Code § 11167(a).

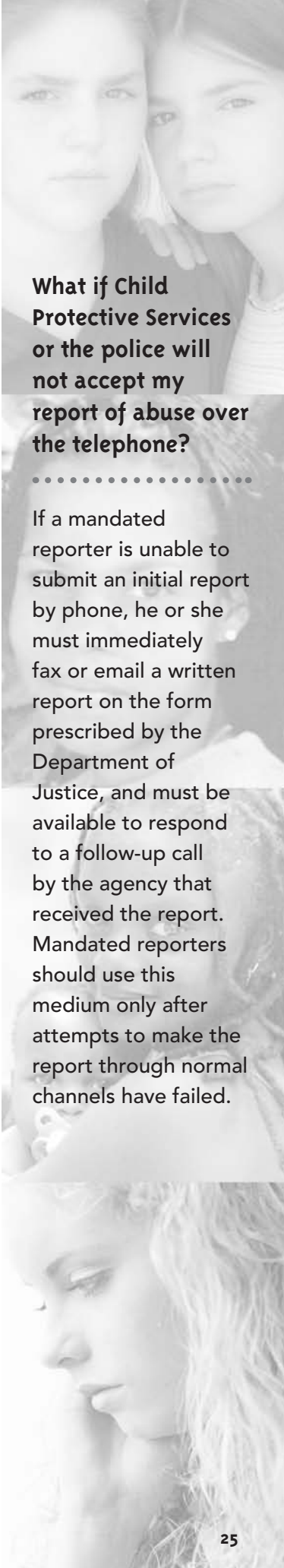
If I don’t have all the necessary information, is a report still required?

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.” Cal. Penal Code § 11167(a).

May we establish internal procedures to streamline reporting in our clinic?

Yes. “Internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.” Cal. Penal Code § 11166(i).

“However, the internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.” Cal. Penal Code § 11166(i).



In addition, the internal procedures cannot require sharing 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.

Will a report to my 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.” Cal. Penal Code § 11166(h).

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.” Cal. Penal Code § 11166(i)(3).

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■ WHAT ARE THE CONSEQUENCES OF MY REPORTING DECISION?

What will Child Protective Services do after I make my 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. 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.”¹⁵ How CPS proceeds from there will depend on this evaluation. Cal. Penal Code § 11165.12.

¹⁵ (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.

What if Child Protective Services or the police will not accept my report of abuse over the telephone?

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If a mandated reporter is unable to submit an initial report by phone, he or she must immediately fax or email a written report on the form prescribed by the Department of Justice, and must be available to respond to a follow-up call by the agency that received the report. Mandated reporters should use this medium only after attempts to make the report through normal channels have failed.



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.

Will my identity and my report be confidential?

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.

Cal. Penal Code § 11167(d)(1).

In addition, the reports themselves are confidential and may only be disclosed in limited contexts. Cal. Penal Code § 11167.5. 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.” Cal. Penal Code § 11167.5.

Will I find out what happened with my report?

“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 to report of the results of the investigation and of any action the agency is taking with regard to the child or family.” Cal. Penal Code § 11170(b)(2).

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-

(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.” Cal. Penal Code § 11165.12.

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.” Cal. Penal Code § 11172(a).

Can individuals be held liable for not making reports?

Yes. “Any 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.” Cal. Penal Code § 11166(c).

■ DO MEDICAL RECORDS REMAIN CONFIDENTIAL IN CASES OF ALLEGED ABUSE?

When must confidential medical 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. *Stockton*, 249 Cal. Rptr. at 768. 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; rather, the provider should use his or her discretion to decide what and how much should be shared.

Do the medical records I provide CPS or the police remain confidential?

For the most part, yes. The records you provide 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.” Cal. Penal Code § 11167.5(e).

How should a subpoena or other legal request for confidential information be handled?

While both federal and state law 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.

■ WHAT ARE THE POTENTIAL CRIMINAL CHARGES ARISING OUT OF ABUSE REPORTS?

Will the police be informed of any 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).

In addition to being used as indicators of abuse or neglect for child welfare purposes, will sexual activity uncovered during an abuse/neglect investigation be prosecuted?

Perhaps. The police and prosecutor will decide how best to investigate and possibly prosecute criminal incidents. Some counties may have policies that outline the types of cases they are most likely to prosecute. Because the prosecutor has some discretion, it is helpful to speak to your local welfare, police, and prosecutor's office about local practice if you have questions about how such charges are handled in your jurisdiction.

In a case involving consensual sexual activity between minors uncovered during an abuse/neglect investigation, who, if anyone, may be prosecuted?

The minor's partner may be prosecuted. In some cases, both the minor and her partner may be prosecuted if they each can be charged with a sexual crime against the other.

The police and prosecutor's office will decide who to charge and with what. Because the prosecutor has some discretion, it is helpful to speak to your local welfare, police, and prosecutor's office about local practice if you have questions about how such charges are handled in your jurisdiction.

In a criminal case involving sexual acts, will the offender be required to register as a sex offender?

Persons convicted of certain offenses must register as sex offenders under California law. Minors convicted of certain crimes also must register as sex offenders. Qualifying offenses include, but are not limited to, violations of Penal Code sections 264.1; 288; 289; 261(a)(1)(2)(3)(4) or (6); 264.1; 266c; and 288.5. Cal. Penal Code § 290(d).

In addition, a court may order a person convicted of another offense to register as a sex offender if the court finds that at the time of conviction or sentencing, the person committed the offense “as a result of sexual compulsion or for purposes of sexual gratification.” Cal. Penal Code § 290(a)(2)(E).

