



# SISC *Risk Management Bulletin*

## Child Abuse and Neglect Reporting Law

July 2004

### Background

Recently the SISC II program has experienced an extraordinary increase in the number of claims and lawsuits due to inappropriate sexual behaviors involving students and school district staff. This increase is occurring at an alarming rate. Often, a major point of contention in these cases is whether district staff knew and whether the obligations under the mandated reporting law were fulfilled.

The purpose of this bulletin is to offer direction to district administrators to help them protect the students they are charged with, and to help mitigate the potential for adverse liability should an incident occur.

The California Child Abuse Reporting Law is found in Penal Code (P.C.) Sections 11164-11174.4. The original report law mandated only physicians to report incidents of abuse. Today, the law has been dramatically expanded to include a broad range of individuals who are now considered "mandated reporters". For public school districts, those individuals include:

- A teacher
- An instructional aide
- A teacher's aide/assistant
- A classified employee
- An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee
- An employee of a school district police or security department



P.C. Section 11165.7 provides a complete listing of the individuals defined under the law as mandated reporters.

### Reporting Responsibility

Under the law, when the victim is a child (person under the age of 18) and the perpetrator is any person (including another child), the following types of abuse must be reported:

- A physical injury inflicted by other than accidental means upon a child. A mutual altercation between minors or the reasonable force used by a peace officer acting within the scope of employment is not "reportable".
- Sexual abuse of a child, including both sexual assault and sexual exploitation. "Sexual assault" includes rape; gang rape (or rape in concert); statutory rape, when the offender is 21 or older and the victim is under 16; incest; sodomy; lewd or lascivious acts with a child under 14 years of age, or with a 14 or 15 year old when the offender is at least 10 years older; oral copulation; sexual penetration; and child molestation. "Sexual exploitation" includes preparing, selling, or distributing pornographic materials involving children; employing a minor to perform in pornography; and employing or coercing a child to engage in prostitution.

Consensual sexual activity involving children over 14 years of age (or 16 if the partner is over 21) may not be considered abuse. An individual must use professional judgment in making an assessment as to whether an abusive situation exists relative to consensual relationships.

- Willful cruelty or unjustifiable punishment, including inflicting or permitting unjustifiable physical pain or mental suffering, or endangering the child's person or health. Mental suffering in and of itself is not required to be reported. However, it may be reported if the situation warrants.
- Willful infliction of cruel or inhuman corporal punishment or injury resulting in a traumatic condition.
- Neglect of a child, whether "severe" or "general", by a person responsible for the child's welfare. The term "neglect" includes both acts or omissions harming or threatening to harm the child's health or welfare.

A mandated reporter should not rely on the above summary to make a decision whether or not an incident requires reporting. The Penal Code provides a detailed listing of the types of abuse that must be reported.

The primary intent of the reporting law is to protect an abused child from further abuse. Mandated reporters should be aware that "abusers" may include someone from the child's home, a relative, another child, a stranger, or an employee of the school district. It is this last category, school district employee, that carries the greatest liability for school districts should there be a suspicion and then a failure to report the suspicion. Although school district administrators should not promote a culture that assumes there will be sexual misconduct by the staff, they must also not turn away from acknowledging the possibility that it might happen.

## Reporting Requirements

P.C. Section 11166 specifies that a mandated reporter shall make a report to an agency specified in Section 11165.9 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. As per P.C. 11166[a][1] "Reasonable suspicion" occurs when "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." Mandated reporters should keep in mind the intent of the law is to protect children from harm; therefore, if there is any doubt, make a report.

The report must be made to law enforcement immediately by telephone and in writing within 36 hours. The written report must be made on a specified form.



It is important for mandated reporters to understand that it is the responsibility of the individual, not the district. Simply reporting to a supervisor does not relieve the mandated reporter of his or her responsibility.

Failure to make a required report is punishable by up to six months in jail and/or by \$1,000 fine. Civil liability for damages to the victim may also be incurred for failure to report.

## Where to Report

The report must be made to any police department or sheriff's department (not including a school district police or security department), county probation department, if designated by the county to receive mandated reports, or county welfare department.

## Reporting Immunity and Safeguards

Mandated reporters have immunity from criminal or civil liability for any report required under the Child Abuse Reporting Law. If a mandated reporter is sued for making a report, he or she may be able to receive compensation (up to a limit) for legal fees incurred in defending against the action.

In addition, no supervisor or administrator may impede or inhibit a mandated reporter's reporting duties or subject the reporting person to any sanction for making a report. Any supervisor who does so is guilty of an infraction punishable by a fine not to exceed five thousand dollars (\$5,000)

## Training

School districts have responsibilities to train staff regarding the mandated reporting requirements. On or after January 1, 1985 persons entering employment which makes them mandated reporters must sign statements, provided and retained by the school district, informing them that they are mandated reporters and advising them of their reporting responsibilities.

Training in the duties imposed by the reporting law shall include training in child abuse identification and reporting. The absence of training shall not excuse a mandated reporter from the duties imposed by the reporting law.

School district administrators should not take this task lightly. The failure to properly train and notify staff may be held to be negligence, and may become a focal point in a lawsuit filed against the district.

Annual notices should be sent to all staff as a reminder, and if records are not up to date, notices should be reissued for signature of all mandated reporters acknowledging that they received the information.



## Volunteers

Although district volunteers are not required to receive training, if their duties involve direct contact and supervision of children, training as a mandated reporter is encouraged.

## Additional Information

An excellent resource for additional information is the Crime and Violence Prevention center of the California Attorney General's Office. From their website [www.safestate.org](http://www.safestate.org) the following publications can be downloaded:

*Child Abuse* – a two page pamphlet that describes the legal definition of child abuse and indicator for recognizing potential or existing signs of abuse.

*Child Abuse and Neglect Reporting Law, Condensed Version 2004* – this six page document answers the most frequently asked question mandated reporter deal with.

*Child Abuse: Educator's Responsibilities* – this 30 page booklet is an excellent resource that provides detailed information on the reporting law and the indicators for recognizing potential abuse. This is a document every school administrator should have available.

The California Department of Social Services Office of Child Abuse Prevention also has an excellent publication titled *The California Child Abuse & Neglect Reporting Law Issues and Answers for Mandated Reporters* (Publication 132, January 2000).

All of the above publications, as well as the form on page 4, are also available through the SISC website at:

<http://sisc.kern.org/safetyandlosscontrol>.