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# **CHILD ABUSE REPORTING LAW FOR SCHOOL ADMINISTRATORS**

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How to Avoid Criminal Prosecution, Civil Liability, and Adverse Media Scrutiny

January 8, 2013, Santa Clara County Office of Education, 1pm – 2pm

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# Why Are We Here?

## Reporting Law & Suicide Prevention

- While there are many reasons why a child or adolescent may contemplate suicide, abuse and neglect are often contributing factors.
- Adolescents and adults who commit suicide are more likely than their peers to have experienced child abuse or other adverse childhood experiences.
- Children often confide in teachers about their personal problems.

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# Why Are We Here?

- Help School Administrators better understand the following:
  - Obligations under the Reporting Law
  - How to avoid criminal prosecution for failure to report suspected child abuse
  - How to avoid civil liability for failure to report suspected child abuse
  - How to comply with the Reporting Law while at the same time follow applicable personnel policy and procedures

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# Your Panel

- Melissa Suarez, Acting Manager, Child Abuse Hotline, SCC Dept. of Family & Children's Services
- Kimberly Warsaw, Deputy County Counsel, Santa Clara County
- Alison Filo, Deputy District Attorney, Santa Clara County
- John Yeh, Esq., Burke, Williams & Sorenson LLP
- L. Michael Clark, Superior Court Judge, Santa Clara County

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# Quick Survey

- Please help us identify how we can better serve you by completing a brief survey.

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# Presentation Outline

- 1. What does the Reporting Act require?
- 2. Who are mandated reporters?
- 3. What is the definition of child abuse?
- 4. What is “reasonable suspicion?”
- 5. How do you report suspected abuse?
- 6. What is your liability for failing to report?
- 7. What is your immunity for reporting?
- 8. How do you comply with the Reporting Act while at the same time follow personnel and HR policies and procedures?

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# 1. WHAT DOES THE CHILD ABUSE REPORTING ACT REQUIRE?

- Penal Code § 11166(a)
- “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.”

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## 2. WHO ARE MANDATED REPORTERS?

- Under California Penal Code section 11167.5(a), the list of mandated reporters is extensive.
- The list includes the following:
  - (1) A teacher.
  - (2) An instructional aide.
  - (3) A teacher's aide or teacher's assistant employed by any public or private school.
  - (4) A classified employee of any public school.
  - (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.



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- **(6) An administrator of a public or private day camp.**
  - **(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.**
  - **(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.**
  - **(9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.**

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# New Mandated Reporters

## As of January 1, 2013

- An employee or administrator of a public or private postsecondary 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. (AB 1434)
- An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12. (AB 1435)
- Any athletic coach, assistant coach, or graduate assistant involved in coaching at a public or private post-secondary institution. (SB 1264)
- Commercial computer technicians. (AB 1817)
- Commercial photograph processors or computer-generated image processors. (AB 1713)

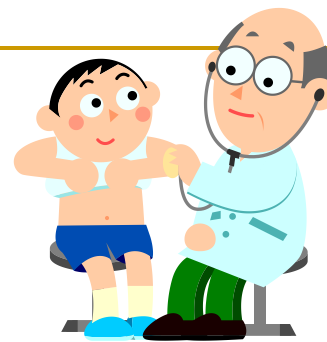
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# In General, Volunteers are **NOT** Mandated Reporters

- “**Volunteers** of public or private organizations whose duties require direct contact with and supervision of children are **not mandated** reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect . . . .”
- Cal. Penal Code section 11165.6(b)

# 3. What is Child Abuse?

## Four Categories



- 1. Physical Abuse – § 11165.3, 11165.4
  - Unlawful Corporal Punishment Or Injury
  - Willful Harming or Injuring of a Child, Unjustifiable Physical Pain, or Endangering
- 2. Physical Neglect – § 11165.2
  - Severe Neglect – malnutrition, failure to thrive
  - General Neglect – food, clothing, shelter, medical care, supervision

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# Child Abuse:

## Four Categories

- 3. Sexual Abuse - § 11165.1
  - Sexual Assault – any sexual touching
  - Sexual Exploitation – pornography, prostitution
- 4. Emotional Abuse - § 11165.3
  - Unjustifiable Mental Suffering

## 4. WHAT IS “REASONABLE SUSPICION?”



- For the purposes of this article, "**reasonable suspicion**" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. Penal Code § 11166(a)(1).

# 5. HOW DO YOU REPORT SUSPECTED CHILD ABUSE?

## ■ 1. PHONE IMMEDIATELY

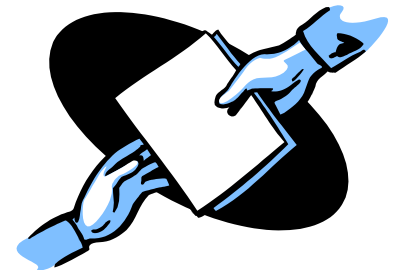
- Police, Sheriff or County Welfare Department
- **Santa Clara County Child Abuse Hotline phone number is 408-299-2071**
- Santa Cruz – 831-454-4222, Monterey 831-899-8001, San Benito 831-636-4190



■ and

## ■ 2. SUBMIT A WRITTEN REPORT

- **WITHIN 36 HOURS**
- Form SS-8572 (Revised 12/02)



# 6. WHAT LIABILITY FOR FAILING TO REPORT?



## ■ CRIMINAL PROSECUTION

- Penal Code § 11166.01, 11172(e)
- Six months county jail plus \$1,000 fine
- 12 months county jail plus \$5,000 if failure to report resulted in death or great bodily injury (new 1/1/06)

## ■ CIVIL LIABILITY

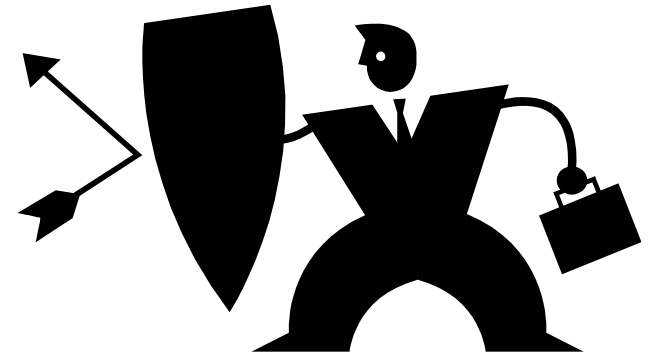
- *Landeros v. Flood* (1975) 17 Cal.3d 399
- You can be sued & face money judgment

## ■ PROFESSIONAL SANCTIONS

- Loss of license and/or employment



# 7. WHAT IMMUNITY FOR REPORTING?



- Penal Code § 11172(c)
- ABSOLUTE CIVIL AND CRIMINAL IMMUNITY
  - Absolute immunity for mandated reports
  - Qualified immunity for permissive reports
  - *Stecks v. Young* (1995) 38 Cal.App.4<sup>th</sup> 365
- REIMBURSEMENT FOR ATTORNEY'S FEES
  - Up to \$50,000

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## 8. How do you comply with the Reporting Act while at the same time follow personnel and HR policies and procedures?

- Duty to report suspected child abuse
- Duty to investigate and manage personnel issues
- Fear of repercussions from the suspect.
- Fear of repercussions from students, teachers and parents
- Fear of adverse media scrutiny
- Other?

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# QUESTIONS TO CONSIDER AS A SCHOOL ADMINISTRATOR

- What is your District's policy regarding Reporting Act training for Administrators?
- Does your HR handbook contain a protocol for making CPS reports regarding school employees or staff?
- What barriers to reporting can you identify and remedy?
- What training needs can you identify?

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# HIPAA and Mandated Reporting: What's a doctor to do?

- HIPAA specifically allows for disclosure of otherwise protected health information to CPS and Law Enforcement for purposes of reporting child abuse and neglect.
  - HIPAA: 45 CFR 164.512 (b)(1)(ii)
  - And now, California Civil Code 56.10(c)(14)
- HIPAA also specifically allows for disclosure to report DV and elder / dependent-adult abuse, with conditions...
  - HIPAA: 45 CFR 164.512 ( c)

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# PRACTICAL TIPS

- You must report suspected child abuse/neglect immediately by phone.
- Call the Child Abuse Hotline if you are uncertain or need a consultation.
- Do NOT check with the parents or suspect first.
- File a written report within 36 hours of making your telephonic report.

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# Questions and Feedback

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# Resources

- Santa Clara County Child Abuse Council:
  - [www.cacsc.org](http://www.cacsc.org)
- Training:
  - <http://mandatedreporterca.com>
- California Codes
  - [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)
- California Attorney General
  - <http://caag.state.ca.us>
- California Department of Social Services
  - [www.dss.cahwnet.gov](http://www.dss.cahwnet.gov)

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# THANK YOU – THE END

- Presentation by the Santa Clara County Child Abuse Council - [www.cacsc.org](http://www.cacsc.org).
- Slides last updated 1/9/13
- LMC / Reporting Law for School Administrators