



## Child and Elder Abuse in Research FAQ's \*

### 1. What is a mandated reporter?

Mandated reporters are individuals who are obligated by law to report suspected cases of child and/or elder abuse and neglect. In general, any person who has contact with children or the elderly in a professional capacity is a mandated reporter, although laws vary from state to state. For the California Penal Code definition of mandated reporter see (Section 15630 (a) and 11165.7).

### 2. If I am not a licensed, mandated reporter, am I obligated to report any child or elder abuse?

Only mandated reporters are required to make mandatory reports of child and elder abuse. If one is not a mandated reporter, he or she need not make a mandated report.

### 3. If I am a student researcher, am I obligated to report any child or elder abuse?

Students doing research under a mandated reporter should report child or elder abuse to that mandated reporter who is obligated to follow up.

Students doing research under someone who is not a mandated reporter should be provided with a policy of expected behavior by the faculty, school, or department in which they are enrolled.

### 4. When should there be an abuse disclosure notification in consent documents?

Disclosing the obligation to report certain types of neglect and abuse in the informed consent process is only required for research projects involving mandated reporters. However, even though the requirement to report only applies to mandated reporters, Section 11166.05 broadens the scope of possible reporting beyond the mandated areas by allowing (not requiring) mandated reporters to make reports regarding children suffering from "serious emotional damage or... 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". If this is addressed in the informed consent process, the IRB can support reporting for these reasons.

### 5. If I am mandated to report, who do I report to?

California law (Penal Code Section 11165.9.) provides that reports must be made as follows:

**Reports of suspected child abuse or neglect shall be made by mandated reporters,...may be made, to any police department or sheriff's department...** if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies (school district police or security department, or county probation department) shall accept a report of suspected child/elder abuse or neglect whether offered by a mandated reporter or another person...[but] shall immediately refer the case ...to an agency with proper jurisdiction.

**Therefore, the mandated reporting obligation is only satisfied with a report to the police or sheriff's department.**

## 6. What if a child’s response elicits a “reasonable suspicion”? Do I still have to report?

"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. However, for example, the pregnancy of a minor, in it or itself, does not constitute a basis for sexual abuse.

The best course is to determine whether reasonable suspicion exists on a case by case basis, with a general eye towards erring on the conservative side (i.e. **when in doubt, report**). According to Penal Code Section 11172(a), “no mandated reporter shall be civilly or criminally liable for any report required or authorized by [the mandated reporting statute]”. This is even stronger protection than provided those who are “authorized” as opposed to “mandated” reporters, as authorized reporters may face civil/criminal liability if they knowingly or with reckless disregard make a false report. Of course, a careful, case-by-case analysis should still occur, but erring on the side of reporting is a protected decision under the law.

## 7. Types of “assaultive and abusive” conduct that must be reported:

If the study will recruit from populations that might be victims of any of the categories listed in the California Penal Code, the mandated reporter obligation language should be included in the informed consent.

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| (1) Murder, in violation of Section 187.                                                                                        | (13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245. |
| (2) Manslaughter, in violation of Section 192 or 192.5.                                                                         | (14) Rape, in violation of Section 261.                                                                                                                    |
| (3) Mayhem, in violation of Section 203.                                                                                        | (15) Spousal rape, in violation of Section 262.                                                                                                            |
| (4) Aggravated mayhem, in violation of Section 205.                                                                             | (16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.                                                  |
| (5) Torture, in violation of Section 206.                                                                                       | (17) Child abuse or endangerment, in violation of Section 273a or 273d.                                                                                    |
| (6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.                        | (18) Abuse of spouse or cohabitant, in violation of Section 273.5.                                                                                         |
| (7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.            | (19) Sodomy, in violation of Section 286.                                                                                                                  |
| (8) Battery, in violation of Section 242.                                                                                       | (20) Lewd and lascivious acts with a child, in violation of Section 288.                                                                                   |
| (9) Sexual battery, in violation of Section 243.4.                                                                              | (21) Oral copulation, in violation of Section 288a.                                                                                                        |
| (10) Incest, in violation of Section 285.                                                                                       | (22) Sexual penetration, in violation of Section 289.                                                                                                      |
| (11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244. | (23) Elder abuse, in violation of Section 368.                                                                                                             |
| (12) Assault with a stun gun or taser, in violation of Section 244.5.                                                           | (24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.                                                                        |

## Additional Guidance

State of California Office of the Attorney General: <http://ag.ca.gov/bmfea/elder.php>

California Dept of Social Services Child Abuse and Neglect Reporting Guide  
<http://www.cdss.ca.gov/cdssweb/entres/forms/English/PUB132.pdf>