

## 4. Determining Reasonable Suspicion

## **Suggested Guidelines for the Mandated Reporter**

### **Introduction**

The law provides special protection for children because they are among the most defenseless victims of crime. A key legal protection is the requirement that people involved in certain occupations, known as mandated reporters, must report suspected child abuse to law enforcement and/or the Department of Children and Family Services [DCFS]. The objective of reporting suspected child abuse is to protect the child, prevent further abuse or neglect of the child and other children in the home, and begin treatment of the entire family. The infliction of injury, rather than the degree of that injury, is the determinant for intervention. There is a significant chance that a parent or caretaker who begins inflicting minor injuries will cause more severe or even fatal injuries to the child.

All mandated reporters shall report if they have knowledge of or observe a child, defined as any person under age 18, while in their professional capacity or within the scope of the job, and they know or reasonably suspect that the child has been abused. 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. {PC §11 166(a)} "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." People ex rel. Eichenberger v. Stockton Pregnancy Control Medical Clinic, Inc., 203 Cal. App. 3d 255, 239-240 (1988).

This document may assist mandated reporters in making a determination of reasonable suspicion. Because each mandated reporter determines reasonable suspicion based on his or her own training and experience, not every factor in this document will apply to every professional; nor is this document intended to encourage professionals to exceed their scope of practice. These guidelines are prepared to be used in conjunction with the Los Angeles County Child Abuse Protocol.

The mandated reporter should not conduct an investigation. Once he or she determines reasonable suspicion of abuse or neglect exists, the only obligation is to file a report. It is the job of law enforcement, DCFS, and the courts to determine whether or not child abuse has in fact occurred. When a well-meaning mandatory reporter seeks more information than necessary to determine reasonable suspicion, it can inadvertently impact a future investigation. For example, repeated detailed questioning of the child may influence future disclosures or potential testimony. In addition, such a premature investigation may signal a parent to make up explanations or destroy evidence. Any of these situations could doom the child to future abuse.

It is important that the mandated reporter not let denial, fear, or ignorance of the law interfere with providing help to the child and family. Reporting suspected child abuse simply initiates an investigation by trained professionals. At the very least, a professional will evaluate the child's situation. Even if child abuse is not substantiated, but it is determined that the child is at risk, recommendations for counseling and other social service resources can be made to help the child and parent. In addition, multiple reports on a family or child can be identified in a centralized database. For ease, this document uses the term "parent"; however be mindful that it might be a guardian or other caretaker.

**The reporting protocol described in this document is not exhaustive. All reporters must be familiar with and refer to the Child Abuse Reporting Act {Penal Code §11164 et seq.} When reporters are unsure about making reports, they are encouraged to report in order to ensure the protection of the child through an appropriate investigation.**

## **How to Use This Document**

This document is divided by recognized categories of child abuse to help the mandated reporter develop a clear understanding of a given situation and to assist with decision-making. The categories of child abuse are divided into sections: **Definition, Red Flags, Behavioral Indicators** and **Clarifying Questions**. Be aware that the lists and questions included here are not exhaustive. Reporters may observe additional potential signs of child abuse that raise a reasonable suspicion alone or in combination with other factors. This document is not intended to be all-inclusive. When a reporter has developed a reasonable suspicion of child abuse based on that reporter's professional training and experience, a report should be made whether or not the relevant situation is addressed by this document.

**Definitions**, when given, are summaries of categories of child abuse defined in the Penal Code.

**Red Flags** are objective signs and symptoms that heighten a concern for the possibility of child abuse. As with the behavioral indicators, red flags must be taken together with other signs or symptoms. For example:

*A child fell out of a second story window sustaining few or no injuries. However, a search of medical records shows a prior accident(s), or the parent/caretaker reports not seeing the accident happen.*

In this scenario, the nature of the accident by itself is only concerning and not necessarily suspicious. The additional information about the prior accident(s), or that the parent did not see what happened, may raise

concerns of possible neglect. In such a case, a mandated reporter should make a report for suspected child abuse or neglect so that an investigation can be initiated.

**Behavioral Indicators** are behaviors that can be observed in a child or parent that may be indicative that the child is a victim of child abuse or the parent is an abuser.

Because children react differently to being abused, there is no single reaction that can be clearly associated with child abuse. There are, however, a number of possible behaviors that have been consistently correlated with abuse. While some of these behaviors may appear more often with one type of abuse than another, they may overlap. The presence of behavioral indicators alone may not be sufficient for reasonable suspicion to prompt a mandatory report. Behavioral indicators are signals to look further to determine if red flags are present or to ask clarifying questions.

**Clarifying Questions** are questions that may be asked of a child or a parent to gain additional information that may be used to determine if reasonable suspicion exists. Questions should be limited to those necessary to determine if reasonable suspicion exists, not to conduct a full-scale investigation.

In some situations, these questions are asked when a mandated reporter is concerned about, but does not yet suspect child abuse. These questions can help a mandated reporter make more accurate assessments in determining whether there is reasonable suspicion of child abuse. This is part of an assessment to determine reasonable suspicion, not an investigation.

Mandated reporters should consider all red flags and behavioral indicators in light of their own professional training and experience.

## **Physical Abuse**

### **1) Definition**

A physical injury to a child inflicted by other than accidental means on a child by another person. Corporal punishment or injury willfully inflicted resulting in a traumatic condition is also reported as child abuse. 'Child Abuse' does not mean a mutual physical contact between minors. {P.C. §§11164-11174.3}

**Children under the age of five years, especially those less than six months are at highest risk for physical abuse.**

## 2) **Red Flags**

- a) Repeated injuries within a short period of time
- b) Scattered history of many accidents, visits to different doctors, or frequent moves
- c) Several hospitals visited in different areas
- d) Injuries found mostly on head and face
- e) Old fractures found on x-ray, without reasonable explanation
- f) Injuries found on physical exam or x-ray which parent did not report
- g) Unexplained bruises
- h) Odd markings
- i) Very rough handling of child
- j) Parent or child gives differing explanations of injury
- k) Inaccurate disclosure of factors surrounding the injury such as dates, times, or causes

## 3) **Behavioral Indicators**

### **Child:**

- a) Very anxious
- b) Treatment sought for or report made of a problem and existing marks or bruises are not mentioned
- c) Accuses a specific person of the injury

### **Parent:**

- a) Describes an accident inconsistent with injuries
- b) Each parent has a different version of what happened, or the child's version is inconsistent with the parents' version.
- c) Vague about the circumstances of the accident
- d) Claims an infant (less than 6 months old) inflicted an injury on him- or herself
- e) Blames the accident on another person. (Effort should be made only to identify this person so that law enforcement or DCFS can later investigate)
- f) Waited a significant amount of time before reporting the accident or bringing the child in for treatment
- g) Makes threats to child, for instance, "...you'll get a whipping with the belt..."
- h) Hits or slaps child
- i) Attributes unbelievable feats to child
- j) Demonstrates inappropriate awareness of severity of situation (either over-reaction or under-reaction)

#### 4) Clarifying Questions

- a) Clarifying Questions
- b) What is the parent's explanation of what happened?
- c) What is the child's explanation of what happened?
- d) Did someone witness the incident?  
What information can the witness provide?
- d) Who brought the child to the hospital?  
What information can the person provide?
- e) Is there a previous history of abuse/neglect/DCFS involvement?
- f) Are there prior similar incidents?  
If so, how many and when?
- g) Where was the parent when the incident occurred?  
Could the parent see or hear the child?
- h) Is the parent's explanation consistent with the child's explanation or the situation?

#### Sexual Abuse

##### 1) Definition

**Sexual abuse** means either sexual assault or sexual exploitation {PC §11165.1}

- a) Sexual assault includes violations of the following crimes {PC §11165.1(a)}
  - Rape {PC §261}
  - Statutory rape -- sexual intercourse where one party is under age 16 & the other is age 21 or over {PC §261.5(d)}
  - Rape in concert {PC §264.1}
  - Incest {PC §285}
  - Sodomy {PC §286}
  - Lewd act on a child {PC §288 (a), (b), or (c)(1)}
  - Sexual penetration {PC §289}
  - Oral copulation {PC §288a}
  - Child annoying {PC §647.6}

The conduct amounting to sexual assault includes, but is not limited to {PC §11165.1(b)}

- any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is an emission of semen
- any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person

- any intrusion by one person into the genitals or anal opening of another person, including the use of any body part or object for this purpose, unless the act is performed for a valid medical purpose
  - intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities, interactions with or demonstrations of affection for the child, or acts performed for a valid medical purpose
  - intentional masturbation in the presence of a child
- b) Sexual exploitation includes {PC §11165.1(c)}
- preparing, selling, or distributing matter depicting a minor engaged in obscene acts
  - coercing a child to engage in prostitution or coercing parental consent for a child to engage in prostitution
  - depicting a child in or creating, developing, or trading photos of minors engaged in obscene sexual conduct

**2) Red Flags**

- a) Oral report of abuse made by the child, parent or third party
- b) Pregnancy (in and of itself is not reasonable suspicion, the circumstances, for example, the age of the mother and father, must be evaluated)
- c) Sexually transmitted diseases
- d) Genital or anal injuries consistent with sexual abuse
- e) Difficulty walking or sitting
- f) Pain, swelling, or itching in the genital area
- g) Sophisticated knowledge of sexual behavior or terminology
- h) Poor self-esteem
- i) Discomfort with peers
- j) Substance abuse
- k) Self-mutilation
- l) Wariness of physical contact

### **3) Behavioral Indicators**

#### **Of Children Generally:**

- a) Detailed and age-inappropriate understanding of sexual behavior
- b) Inappropriate, unusual, or aggressive sexual behavior with peers/toys
- c) Compulsive indiscrete masturbation
- d) Excessive curiosity about sexual matters
- e) Seductive behavior with classmates, teachers, or others
- f) Excessive concern about homosexuality
- g) Fear of parent or of going home
- h) Noticeable change in behavior, for instance, sleep disturbances, significant change in disposition or demeanor, drop in grades, or changed attitude toward school
- i) Regressive behavior, for instance, bedwetting
- j) Sexual acting out
- k) Seductive behavior

#### **Of Child Under Age 5:**

- a) Bed wetting (enuresis-non-organic)
- b) Fecal soiling
- c) Fears/phobias
- d) Overly compulsive behavior
- e) School problems or significant change in school performance Age-inappropriate behavior (pseudomaturity or regressive behaviors)
- f) Inability to concentrate
- g) Drastic behavior changes
- h) Sleep disturbances
- i) Speech disorders

#### **Of School-Age Child or Adolescent:**

- a) Withdrawal
- b) Chronic fatigue
- c) Clinical depression or apathy
- d) Overly compliant behavior
- e) Poor peer relations, inability to make friends
- f) Acting out, runaway, aggressive, antisocial, or delinquent behavior
- g) Alcohol or drug abuse
- h) Excessive promiscuity, prostitution
- i) School problems, negative changes in school performance
- j) Refusal to dress for physical education
- k) Fear of showers or restrooms
- l) Fear of home situation

#### 4) Clarifying Questions

Only appropriately trained professionals should perform interviews of sexual abuse victims. Often a mandated reporter who has not received training in interviewing victims of child abuse will hear the disclosure first. In these situations, the following guidelines are strongly suggested:

- a) The mandated reporter should provide a quiet, private place in which to listen and document any disclosures
- b) **At no time** should the mandated reporter assume an investigative role or attempt to obtain a detailed or extensive history of the abuse. The reporter should **only** obtain sufficient information so as to enable the report to form a reasonable suspicion
- c) Questions should be open-ended, and the child should not be given promises that cannot be guaranteed
- d) While the reporter may continue to provide reassurance to the child, further questions about abuse should not be asked once the disclosure has been made
- e) Questions should be limited to those necessary to complete the required reporting form

#### Neglect

##### 1) Definition

- a) **GENERAL NEGLECT** is the negligent failure by a parent that causes or permits the child to be placed in a situation where his or her person or health is endangered. This definition includes severe malnutrition, failure to provide adequate food, clothing, shelter, medical or dental care, supervision issues or leaving young children without supervision. General neglect includes both emotional and physical abuse.
- b) **SEVERE NEGLECT** means the negligent treatment or maltreatment of a child by a parent failing to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive, situations where the parent 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. This includes the intentional failure to provide adequate food, clothing, shelter or medical care, not due to a lack of resources.
- c) **NON-ORGANIC FAILURE TO THRIVE (NOFTT)** is defined as a patient with a height and/or weight below the fifth (5th) percentile when plotted on a standardized growth chart, or a fall of two (2)

percentiles of height and/or weight on growth chart curves. The origin of NOFTT may have a

psychosocial component such as low income, unfamiliarity with how to properly prepare formula, inability to buy food, and environmental or parental neglect.

## 2) Red Flags

- a) Consistently hungry, tired, or dirty
- b) Unattended medical problems
- c) Developmental delay
- d) Poor social relations with peers
- e) Erratic school attendance
- f) Inadequate supervision
- g) Low self-esteem
- h) Lacking medical or dental care
- i) Dirty, poor personal hygiene, dressed inappropriately for weather
- j) Evidence of poor supervision, left home alone
- k) Home conditions:
  - unsanitary
  - lack heating or plumbing
  - hazardous
  - inadequate sleeping arrangements
  - poor nutritional quality of food
  - poor food quality
  - unprepared meals
  - spoiled food in the refrigerator/cupboards

## 3) Behavioral Indicators

### Of Child:

- a) Always sleepy or hungry
- b) Depression, withdrawn, or apathetic
- c) Antisocial, destructive behaviors

## 4) Clarifying Questions

- a) What is the parent's explanation of what happened?
- b) What is the child's explanation of what happened?
- c) Did someone witness the incident?  
What information can the witness provide?
- d) Who brought the child to the hospital?  
What information can the person provide?

- e) Is there a previous history of abuse/neglect/DCFS involvement?
- f) Are there prior similar incidents?  
If so, how many and when?

## **Emotional Abuse**

**Reasonable Suspicion of emotional abuse is not a Mandated Report. It is a discretionary report.**

### **1) Definition**

**EMOTIONAL ABUSE** is defined as repetitive, verbally assaultive behavior towards a child. This can include belittling, screaming, threats, blaming, and sarcasm, and may also include constant family discord, witnessed spousal abuse, and unpredictable reactions. The abuse may scar and incapacitate a child emotionally, behaviorally, and intellectually.

### **2) Red Flags**

- a) Very controlling behavior by the parent
- b) Depressed child
- c) Child has unreasonably high expectations of self
- d) Isolated child
- e) Trouble developing relationships with peers
- f) Behavioral Indicators

### **3) Behavioral Indicators**

#### **Of Child:**

- a) Withdrawn, depressed apathetic
- b) Clingy and forms indiscriminate attachments
- c) Acts out and is a behavior problem
- d) Exhibits exaggerated fear
- e) Overly rigid in conforming to instructions of authority figures
- f) Uncontrolled urination or bowel movements
- g) Suffers from sleep, speech, or eating disorders
- h) Pays inordinate attention to details
- i) Exhibits little or no verbal or physical communication with others
- j) Makes statements like, "Mommy or Daddy always tells me I'm bad," or makes other disclosures about parental behaviors which may indicate emotional abuse
- k) Experiences substance abuse problems

## **Of Parents:**

- a) Places unreasonable or impossible expectations that do not consider the child's developmental capacity
- b) Child is used as a pawn in marital conflicts
- c) Child is used to satisfy ego needs of the parent/caretaker and is too young to understand
- d) Child is objectified, for instance, referred to as "it" by the parent

## **4) Clarifying Questions**

We provide no specific questions that one would ask regarding emotional abuse. The crucial factors include the objective observations of the parent-child interaction and any disclosures the child makes.

## **Fatal Child Abuse**

### **1) Definition**

Fatal child abuse involves situations where caregiver abuse or neglect is a significant or primary "cause of death," specifically where a case was reportable independent of the death where indicia of abuse or neglect was serious enough for report of suspicion even if the child had not died.

### **2) Red Flags**

- a) Parent abuse or neglect through commission or omission
- b) Abuse or neglect factors are reportable independent of the death
- c) Child deceased
- d) Death must be reported even if no surviving children remain in the home

### **3) Behavioral Indicators**

Fatal child abuse determination is highly variable, that is, subject to judgment of the medical examiner or coroner. It includes cases on a long spectrum or continuum from obvious caregiver-homicide to malnutrition to delay in seeking medical care. Death or fatality is coded various ways by law enforcement, the coroner, and other professionals. Homicide requires proof of intent that can be difficult to establish. Assault on a child leading to death, however, does not require intent to kill in order to establish a criminal case.

Factors to consider include:

- Fatal injury inflicted with "intent" to seriously harm or kill
- Caretaker suspect
- History consistent with child abuse
- Suicide
- SIDS, Abusive Head Trauma (Shaken Baby Syndrome) or Co-sleeping

**4) Clarifying Questions**

- a) What is the parent's explanation of what happened?
- b) Did someone witness the incident?  
What information can the witness provide?
- c) Who brought the child to the hospital?  
What information can the person provide?
- d) Is there a previous history of abuse/neglect/DCFS involvement?
- e) Are there prior similar incidents?  
If so, how many and when?
- f) Where was the parent when the incident occurred?  
Could the parent see or hear the child?
- g) Is the parent explanation consistent with the situation?

**Munchausen by Proxy or Pediatric Condition Falsification**

For information on Munchausen by Proxy refer to the Index of Appendices of the Los Angeles County Child Abuse Protocol.

**Accidents (Preventable Injuries)**

**1) Definition**

Accidents or preventable injuries are generally not reportable as suspected child abuse. However, if this is a repeat injury, a pattern is emerging, or the parents do not seem to understand when an attempt to educate them is made, a report may be indicated. In these situations, a report may be appropriate as neglect, severe neglect or child endangerment. Report of an accident may even be a cover story to hide child abuse.

Depending on the circumstances involving preventable injuries, if risk factors are present the Child Protection Hotline will take a report.

## **2) Burns, Falls, Ingestions and Near Drowning**

### **a) General Clarifying Questions**

- 1) What is the parent's explanation of what happened?
- 2) What is the child's explanation of what happened?
- 3) Did someone witness the incident?  
What information can the witness provide?
- 4) Who brought the child to the hospital  
What information can the person provide?
- 5) Is there a previous history of abuse/neglect/DCFS involvement?
- 6) Are there prior similar incidents?  
If so, how many and when?
- 7) Where was the parent when the incident occurred?  
Could the parent see or hear the child?
- 8) Is the parent's explanation consistent with the child's explanation or the situation?
- 9) How long was the child left alone?
- 10) Did the injury occur as the result of action or inaction by the parent?
- 11) What is the physical, mental, emotional ability of the parent?

### **b) Specific Clarifying Questions for Ingestions**

- 1) Did the parent know the child was consuming medication, poison, or drugs?
- 2) How accessible was the medication or substance?
- 3) How much was consumed?

## **3) Car Seats/Seat Belts/Bicycle Helmets**

It is a violation of the California Vehicle Code for a parent to fail to properly restrain minors in the vehicle. Failure to properly restrain a child in a car seat endangers the child and should be reported/cross-reported whether or not an injury occurs as a result of the lack of proper restraint.

### **a) Clarifying Questions**

- 1) Why were the seat belts not used?
- 2) Is the parent aware of and willing to comply with the law regarding the use of seat belts and car seats for children?
- 3) Has the parent been referred to a resource that can provide a temporary or free car seat?