



Confidentiality, Privilege, and Mandated Reporting: A Training for California Domestic Violence Advocates (2018)

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Funding provided by California Partnership to End Domestic Violence.

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Mandated Reporting: Overview of Training

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- **What Laws Apply to Mandated Reporting?**
- **Who Must Report?**
- **What Must Be Reported?**
- **How to Report?**
- **Survivor Attitudes Towards Mandated Reporting**
- **What Happens When a Report Is Made?**
- **Conclusions & Recommendations**

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Different Types of Mandated Reporting Laws

California Mandated Reporting Laws

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Different Types of State Mandated Reporting Requirements:

- First -- **health care providers** must report if a patient shows signs of injury from a firearm or assaultive or abusive conduct.
- Second – **Elder Abuse and Dependent Adult Civil Protection Act** applies to abuse and neglect (including financial abuse) of senior citizens or dependent adults:

California Laws, Cont.

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- **Third -- California's Child Abuse and Neglect Reporting Act ("CANRA")**
 - ▣ Current version found at Penal Code sections 11164-11174.3.
 - ▣ The mandated reporting statute for suspected child abuse & neglect

- ***Today we will focus on mandatory reporting requirements under CANRA***

Purpose of CANRA

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- The intent and purpose of the Child Abuse and Neglect Reporting Act (CANRA; Pen. Code § 11164 et seq.) is to protect children from abuse and neglect.
- California's child abuse reporting law was reenacted in 1980 to overhaul an earlier reporting scheme, with the goal of “increasing the likelihood that child abuse victims would be identified.”

B.H. v. County of San Bernardino (2015) 62 Cal.4th 168

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CANRA in the Context of Other Laws

CANRA in the Context of Federal Laws

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- This training will focus on CANRA, but...

- **Other state and federal laws apply!**
 - ▣ Federal Violence Against Women Act (“VAWA”)
 - ▣ Federal Family Violence Prevention and Services Act (“FVPSA”)
 - ▣ Federal Victims of Crime Act (“VOCA”)

Federal Law Requires Confidentiality and Privacy

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- Many DV shelters and organizations in California receive federal VAWA/VOCA/FVPSA monies, which are administered and distributed through Cal OES.
- Both federal statute, and receipt of federal funds, impose certain legal obligations upon DV organizations and VAWA/FVPSA/VOCA grantees.
- **VAWA/FVPSA/VOCA require grantees to protect confidentiality and privacy of persons receiving or seeking services.** (See e.g. 42 U.S.C. 13925(b)(2).)

Confidentiality Must Be Maintained *Unless* State Law Mandates Disclosure

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- **VAWA/FVPSA/VOCA**, which require confidentiality, **do provide an exception for mandated reporting:**
 - ▣ A mandated reporter is permitted to disclose information when mandated by statute or court.
 - ▣ Information you are mandated to report can be disclosed without violating grant conditions.

If State Law Does Not Mandate You to Report, Disclosure is ONLY at the Request of the Survivor

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- **If you are not mandated to report, disclosure may only be at the request of the survivor under VAWA/VOCA.**
- Professionals working in organizations funded by FVPSA have a similar prohibition, however the federal law also allows those professionals to make child abuse and neglect reports where a state statute expressly permits them to do so (even if it does not mandate such reports.)

Privilege Statute for DV Counselors

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- DV counselor privilege does not mean you cannot report if you are a MANDATED reporter
 - ▣ Evidentiary privilege covering communications between victims and DV counselors.
 - ▣ CANRA is an exception to the DV counselor privilege statute.
 - ▣ Therefore while a domestic violence advocate may protect the confidential communications between the advocate and a survivor, he or she may not rely on the privilege to escape the duty to report child abuse, assuming that the advocate is a mandated reporter.

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Who Is a Mandated Reporter?

Definition of “Mandated Reporter” – Penal Code

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Penal Code section 11165.7(a) defines a mandated reporter to be:

- Doctors, dentists, licensed nurses, other medical personnel, including EMTs;
- Teachers, school employees, day care providers (of a licensed child day care facility), youth camp personnel, and athletic coaches;
- Clinical social workers, professional clinical counselors, social worker interns, clinical counselor trainees, as defined in Bus. & Profs. Sec. 4999.12(g), and associate professional clinical counselors registered under Sec. 4999.42;
- Marriage and family therapists and trainees, as defined in Bus. & Profs. sec. 4980.03(c), and unlicensed associate marriage and family therapist registered under Section 4980.44;

Definition of “Mandated Reporter,” cont.

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- Foster parents, public assistance workers, IHSS workers for children;
- Police officers, firefighters, probation/parole officers and prison guards;
- Alcohol and drug counselors at licensed substance abuse treatment programs;
- A child visitation monitor;
- an employee or volunteer of a Court Appointed Special Advocate program;
- A clergy member; and
- Any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(Penal code section 11165.7(a).)

Definition of Mandated Reporter – cont.

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- **DV Victim Services Agency Employees, DV Advocates, and DV Counselors are NOT specifically listed as a mandated reporter category in Penal Code section 11165.7(a).**

- **But there is one final catch-all category:**
 - ***An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children (Pen. Code sec. 11165.7(a)(8).)***

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Are You a Mandated Reporter?

DV Agency Employees – Three Categories

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- **Category 1: Independently licensed employees**
 - Social Workers
 - Therapists
 - Day Care Providers of a licensed day care facility

- **Likely to be specifically listed as mandated reporter under sec. 11165.7(a)**
 - These employees will further be subject to the ethical and legal requirements of their licensing body – E.g. social workers should be aware of NASW ethics

- **Most likely mandatory reporters under CANRA.**

Who Is a Mandated Reporter, cont.

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- **Category 2:** Employees who are not licensed and whose job duties require direct contact and supervision of children;
 - ▣ Pursuant to CANRA's catch-all policy, these employees would be mandated reporters. (Pen. Code sec. 11165.7(a)(8).)
 - ▣ Examples:
 - Children's case workers who meet with children;
 - Shelter workers who have direct contact with and supervise children;

Who is *Not* a Mandated Reporter

Not a Mandated Reporter

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Category 3: Employees who are not licensed and whose duties do NOT require direct contact and supervision of children;

- Examples:
 - Front office administrative staff;
 - Janitorial staff;
 - Shelter workers at an adults-only shelter;
 - DV advocates or counselors who work only with adults without children;
 - DV advocates or counselors who work only with parents when children are elsewhere (in school, at camp, etc.);

- These employees do not fall under CANRA and are not mandated reporters.

Not Mandated Reporters

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□ Volunteers

- Unless otherwise stated (e.g., CASAs), volunteers are NOT mandated reporters.

□ Attorneys & Agents of Attorneys

- Attorneys are not mandated reporters, but are instead required to maintain client confidentiality pursuant to state statute and professional rules of conduct.
- Any person who would otherwise be a mandated reporter pursuant to the statute may not be a mandated reporter if they are acting *as an agent of an attorney*; e.g., licensed social worker who works as an investigator at a law office.

Can a Non-mandated Employee Make a Report?

Employees Who Are Not Mandated Reporters May Not Make a Report Absent Client Consent

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- *Anyone* can make a report of child abuse or neglect.
- BUT DV Agency professionals who are not mandated reporters are prohibited from making a report (absent client consent) if their Agency is covered by VAWA/VOCA's mandate for privacy & confidentiality.
- Therefore, DV victim services agency employees who are not mandatory reporters are violating federal law if they use confidential information to make a child abuse report.

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Quiz

Small Group Work - Quiz

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- Sheila's job title is "DV Advocate." She works at a shelter which allows adults only, no children. She is also pursuing a MFT, and is a trainee at a local therapist's office, although she is not yet licensed.
- Jane's job title is "DV Counselor." She works at a family shelter. Jane meets with her adult clients and accompanies them to court and various appointments; the shelter also has a day care on site, which all non-school-age children attend.
- Is Sheila or Jane a mandated reporter?

Small Group Work - Quiz

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- Is Sheila or Jane a mandated reporter?
- Sheila IS a mandated reporter because she is specifically listed under CANRA (MFT Trainee).
- Jane is NOT a mandated reporter because her job duties don't include direct contact with **and** supervision of children.

Employer-Provided Mandated Reporter Statement

Quiz, cont.

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- Should Sheila and Jane have signed the “Statement Acknowledging Requirement to Report Child Abuse” prior to beginning their employment?

Employer-Provided Mandated Reporter Statement

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- Employers must provide employees who are mandated reporters with the statement indicating that s/he has knowledge of CANRA's provisions and informing the employee that s/he is a mandated reporter who has reporting obligations and confidentiality rights. (Pen. Code sec. 11166.5.)

- ***This statement must be signed by all employees who are mandated reporters,***
 - ▣ ***NOT by volunteers***
 - ▣ ***NOT by members of the staff who do not have direct contact with and supervise children as part of their official duties.***

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Liability Issues

Mandated Reporters *Must* Report, When Required

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- Liability for failure to make a required report –
 - A mandated reporter who fails to make a required report is subject to fines and criminal penalties
 - See *People v. Davis* (2005) 126 Cal.App.4th 1416, 1420 [nursing home administrator convicted for failure to report suspected abuse of a dependent adult in violation of the Elder Abuse and Dependent Adult Civil Protection Act]
 - Possible civil liability, i.e., for monetary damages

Immunity for Making a Mandated Report

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- Mandated reporters have immunity from criminal and civil liability for reporting
- ANY person who makes a report, including non-mandated reporters, has immunity UNLESS report is proven false AND person knew the report was false or acted in reckless disregard of its truth or falsity.
- Immunity also granted to any person who provides investigating agency access to the alleged child-victim from civil or criminal liability as a result of providing that access.

Additional Safeguards for Mandated Reporters

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- No liability for photographing the victim
- No supervisor can impede making of a report or sanction the reporter
- Supposed to be informed of the results of the investigation.
- Mandated reporter's name shall be kept confidential from his/her employer -- BUT mandated reporters may waive confidentiality

Mandated Report is Confidential By Law

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- Identity and the contents of the report are confidential; may only be disclosed to specified persons and agencies, disclosing the report to others can result in criminal penalties (misdemeanor and fines).

- A mandated reporter may NOT give a copy of the report to the person who reports the abuse
 - *Cuff v. Grossmont Union High School District* (2013) 221 Cal.App.4th 582 [CANRA strictly limits to whom the mandatory reporter may provide SCAR and expressly prohibits a mandatory reporter from disclosing SCAR to, e.g., the father, whose information caused the report to be made]

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Do I Tell the Survivor I'm Making a Mandated Report?

Telling the Survivor:

Tension between Federal Law and CANRA

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- CANRA – provides that the identity of reporter is confidential
- VAWA/FVPSA/VOCA provide, when disclosure is required, e.g., when a mandated report is made -- that you:
 - “Make reasonable attempts to provide notice to victims affected by disclosure”
 - “Take steps necessary to protect the privacy and safety of the persons affected by release”
- **Tension: If the identity of the mandated reporter is confidential, how can a mandated reporter notify the survivor that a disclosure has been made?**

So What Do You Do?

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Answer: If you are a DV provider subject to VAWA/VOCA/FVPSA, you tell the survivor you are making the mandated report.

- CANRA does not prohibit a mandated reporter from disclosing to the subject of a report that a report is being made.
- Federal VAWA/VOCA/FVPSA laws, which require you to make reasonable attempts to provide notice to victims and take steps necessary to protect their privacy and safety, trump your right to confidentiality.
- The California DSS Office of Child Abuse Prevention specifically notes that it is not a legal requirement to tell the client a report is being made, but, *if safe to do so*, may be advisable.

When Must a Mandated Reporter Report?

Within Scope of Job or Professional Capacity

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- Must learn of suspected child abuse or neglect within scope of employment or professional capacity:
 - ▣ CANRA requires that a mandated reporter who has knowledge of or who observes a child ***in his or her professional capacity or within the scope of his or her employment***, whom he or she ***knows or reasonably suspects*** has been a victim of child abuse, to report to a child protective agency immediately or as soon as practically possible, within 36 hours
- NOT at your job/NOT through your work... no need to report

“Knows or Reasonably Suspects”

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“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.”
 - ▣ Any reasonable suspicion is sufficient
 - ▣ Does not require certainty that child abuse or neglect has occurred
 - ▣ May be based on any credible information, including statements from other individuals

Reasonable Suspicion, cont.

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- Reasonable suspicion is broadly defined to prevent delays in reporting, which can hinder investigations by authorities.
 - ▣ Assembly Bill 2380, enacted in 2010, clarified and broadened the definition of “reasonable suspicion”
 - ▣ Mandated reporters had stated that they felt they had to wait until they have concrete evidence before they can notify the authorities.
 - ▣ Consequently, many mandated reporters were failing to properly report their reasonable suspicions of child abuse or neglect – e.g. doctors waiting to report until a specific medical diagnosis had been determined.

Reasonable Suspicion, cont.

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Reasonable suspicion is objectively defined, NOT subjectively defined

- **Key test:** Would a reasonable person in the same position have suspected abuse?
 - Using your judgment, based on your training and experience

- When you determine that a reasonable suspicion of abuse does exist, CANRA does NOT allow you to investigate, determine that no abuse occurred, and then not report – this is not allowed; it is the responsibility of outside agency to investigate reports and to determine whether abuse occurred.

“*Only* if You Know” – No Investigation Required

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- A mandated reporter is **ONLY** required to report if they know or reasonably suspect child abuse or neglect
- Mandated reporters are **NOT** required to investigate
- So if you *think* there might be abuse, but do not know or have reasonable suspicion, you do *not* need to report nor do you need to investigate
- (On the other hand, if you **DO** know that was abuse and/or you **DO** have reasonable suspicion, do not delay reporting in order to investigate)

Must Involve Abuse or Neglect of a Child

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Only suspected abuse or neglect of a child must be reported under CANRA, NOT abuse or neglect of an adult

- If a victim is under age 18, the abuse must be reported.
- Note: There is no time limitation for the reporting of child abuse.
- Your client is 17 years old, and reports being molested at age 4.
 - ▣ Is a mandated reporter required to report? YES

What if the Victim is Now Over the Age of 18?

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- If an adult reports that he or she was abused or neglected as a child, mandated reporters **do not** have to report it, **unless** there is reasonable suspicion or knowledge that another child under the age of 18 is **presently** at risk.

Identity of Perpetrator Does Not Matter

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- CANRA's definition of "child abuse or neglect" includes acts of child abuse or neglect *committed by any person*
 - ▣ Person does not have to be parent, guardian, or other custodian of the child to be reportable

What Must a Mandated Reporter Report?

What Must a Mandated Reporter Report?

- There is a distinction between what MUST be reported versus what MAY be reported.
- This distinction is important – because VAWA/VOCA exempts mandated reports, but does NOT exempt permissive reports (although FVPSA does)
- DV victim services agency employees who ARE a mandatory reporters are violating the law (VAWA/VOCA) if they use confidential information to make a child abuse report that is not required.

What a Mandated Reporter MUST Report:

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- A mandated reporter must report “child abuse or neglect” as defined by CANRA (Pen. Code sec. 11165.6):
 - Non-accidental physical injury or death,
 - sexual abuse,
 - Neglect – whether severe, or general,
 - the willful harming or injuring of a child, or
 - the endangering of the person or health of a child, or permitting unjustifiable physical pain or mental suffering,
 - unlawful corporal punishment or injury.

What a Mandated Reporter MAY Report:

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- MAY report a child who is suffering serious emotional damage or at substantial risk of suffering serious emotional damage.
 - ▣ For instance, when a child exhibits severe anxiety, depression, withdrawal, or displays untoward aggressive behavior towards self or others. (Pen. Code sec. 11166.05.)

- Again, you would violate VAWA/VOCA confidentiality provisions if you make such a report, since it is not required.
 - ▣ However, a mandated reporter employed by a program receiving FVPSA funding ONLY may make such a report, as it is expressly permitted.

Not Reportable – Not Child Abuse/Neglect

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Not reportable:

- *Accidental physical injury*
 - ▣ Child falls off a slide
 - ▣ Child runs into a door
- *Normal cuts & bruises*
 - ▣ Often found in active toddlers & young children from play
 - ▣ Siblings may have cuts & bruises from roughhousing & aggressive play

Not Reportable, cont. – “Mutual Affray”

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Not reportable:

- “Child abuse or neglect” does not include a mutual affray between minors.
 - ▣ *“Mutual affray” between minors*
 - E.g., physical fight at a high school

- Injuries inflicted by a peace officer acting with reasonable and necessary force

Not Reportable – “Status Issues”

Not reportable:

- ❑ **Certain “Status Issues,” in and of themselves, are NOT reportable.**
 - ❑ Alcohol and/or drug abuse in and of itself not reportable
 - Alcohol and drug abuse, or both alcohol and drug abuse, in and of itself, is not a sufficient basis for reporting child abuse and neglect. (Pen. Code 11165.7(a)(38).)
 - ❑ A positive toxicology report at time of infant’s delivery in and of itself not reportable. However, maternal substance abuse requires an assessment of needs of mother & child. (Pen. Code 11165.13.)

Not Reportable – Status Issues, cont.

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Not reportable:

- ❑ Other not-reportable status issues:
 - ❑ Homelessness of minor in and of itself not reportable.
 - ❑ Unaccompanied minors – in and of itself not reportable.
 - ❑ Minor's pregnancy in and of itself not reportable.

(Pen. Code secs. 11165.15, 11166(a)(1).)

Not Reportable – Medical Treatment

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- **Failure** to receive medical treatment for religious reasons – not reportable.
- Alternatively, **receipt** of medical treatment authorized by a parent in conjunction with a medical professional – not reportable.
- Issues here frequently arise in conjunction with medically-fragile children.

(Pen. Code sec. 11165.2)

Not Reportable – Appropriate Corporal Punishment

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- Corporal punishment in and of itself not reportable. “Corporal” means “of the body,” so this could include spanking, push-ups, carrying heavy objects, etc.
- California law specifically allows for reasonable parental discipline, including “reasonable and age appropriate spanking to the buttocks” (Welf. & Inst. Code section 300(a).)
- If you report corporal punishment that constitutes reasonable parental discipline, you will be violating the confidentiality provisions of VOCA/VAWA and FVPSA

What is “Appropriate Parental Discipline”?

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The intent of the reporting law is not to interfere with appropriate parental discipline, but to respond to extreme or inappropriate discipline which is abusive.

- (*Gonzalez v. Santa Clara County Department of Social Services* (2014) 223 Cal.App.4th 72 [mother's hitting child with wooden spoon not reportable as child abuse if reasonable imposition of discipline].)

Reportable corporal punishment:

- If the discipline is excessive or forceful enough to leave injuries, physical abuse has occurred.
 - Use of instruments (belts, wires, spoons) increases the likelihood of injuries
 - Does not include excessive punishment of young children
 - Discipline should be age-appropriate

Not Reportable—Consensual Sex Between Same-Age Minors

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- Consensual, voluntary, sexual acts between minors of the same age is not reportable.
- **Reminder: You are not obligated to ask minor clients about the age of the minors' sexual partners for the purpose of reporting abuse.**

National Center for Youth Law – www.youthlaw.org

When Mandated Reporters in California Must Report Consensual Disparate Age Sexual Intercourse to Child Abuse Authorities

Age of Partner	12	13	14	15	16	17	18	19	20	21	22
Age of Client											
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

Reportable -- Sexual Abuse & Exploitation

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Mandated reporters *must* report sexual exploitation and sexual abuse of a child, including:

- Sexual exploitation – includes downloading or streaming child pornography on computer or cell phone
- Sexual Assault
- Rape
- Statutory Rape – if the child is under 16 and the partner is over 21
- General sexual acts
- Depicting a child engaging in obscene acts via photos or videos

Sexual Abuse, cont.

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- Sexual activity, when coerced or in any other way not voluntary, must be reported, irrespective of the ages of the partners and even if both partners are the same age.
 - ▣ Not voluntary when against the victim's will by means of force or duress
 - ▣ Not voluntary when the victim is unconscious or so intoxicated that he or she cannot resist.

When Is It “Abuse” for Reporting Purposes?

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- 17 year old young man & 16 year old young woman are dating.
- They have had consensual sex.
- He slaps her repeatedly and she is bruised.
- He sexually assaults her on a date.

When Is It “Abuse” for Reporting Purposes?

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- 40 year old man & 16 year old young woman are dating.
- They have had consensual sexual intercourse.
- He slaps her repeatedly and she is bruised.

Reportable – Neglect

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- Definition of “neglect”: 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.
- “Neglect” includes both “acts and omissions.” (act and failing to acting)
- “Neglect” includes both “severe” and “general” neglect

Neglect, cont.

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Severe neglect – easily identifiable, small proportion of reports

- Severe malnutrition
- Failure to thrive – typically for infants
- Intentional failure to provide necessities to a child, or where a caretaker intentionally puts a child's health in danger

General neglect – ***most reports fall into this category***

- Where a parent or guardian fails to provide adequate food, shelter, clothing, medical care, or supervision where no physical injury to the child has occurred.
- Negligent, rather than intentional.

DV in the Home – When to Report?

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- The presence of DV in a home does not automatically constitute reportable child abuse, even if it increases the child's risk of abuse or neglect.
- Must be additional circumstances or factors that cause the mandated reporter to reasonably suspect that the perpetration of DV against a parent has actually endangered or injured the health or safety of a child.
- Look at:
 - ▣ Were objects thrown in or near the presence of a child?
 - ▣ Did the perpetrator strike the victim who was holding the child?
 - ▣ Did the child intervene in the violence?

When to Report DV, cont.

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- The California DSS Office of Child Abuse Prevention states that where there is a case of domestic violence when there is a child in the home, each county handles this issue differently:
 - ▣ In some counties, domestic violence is being reported as emotional abuse (P.C. 11166.05).
 - Emotional abuse is NOT required to be reported, unless it rises to the level that it involves a person willfully causing or permitting any child to suffer unjustifiable physical pain or mental suffering, or endangering the child's person or health (Penal Code 11165.3).
 - ▣ Medical personnel, law enforcement and domestic violence units generally do report where there is DV in the home to CPS.

Suitability of Home

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Beyond abuse/neglect, the suitability of home must be reported under certain circumstances:

- When a mandated reporter makes a mandated report (based on child abuse/neglect)
- AND
- Knows or reasonably suspects that the home in which a child resides is unsuitable for the child because of abuse or neglect of the child,
- Then, the mandated reporter shall also report that fact to the agency. (Pen. Code 11166(f).)

Small Group Activities

Jane Doe is a 25 year old working mother of two. She also attends school. Her son is 8 and his father has never been a part of his life. Her daughter is 3 and her father, John Smith, never lived with Jane and her children. He lives in another state, and only visits occasionally.

- Earlier this month, during one of his visits, Jane told John that she was breaking off their relationship. John, who had never previously assaulted or threatened Jane, flew into a rage. He punched her, kicked her, and threw objects at her. When he left, her head was bleeding profusely.
- Throughout the assault, her daughter was in her crib in another room. Her son was at school. After the attack, John left the apartment. Her head bleeding, Jane called 911. Before the ambulance arrived, Jane arranged with her neighbor and sometimes baby-sitter, Anna, to care for her children while she was away at the hospital.
- As a DV counselor, you talked to Jane while she was at the hospital. Do you make a report?

Jane – Do You Make a Report?

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- Are you a mandated reporter?
 - ▣ Are you specifically listed under the 44 CANRA categories?
 - ▣ What are your job duties? Supervise children?
 - ▣ Did you learn about the incident in the course of your job?
- Did the incident constitute child abuse or neglect?
 - ▣ Was the child present? (i.e., not adult DV alone)
 - ▣ Was the child injured/physically at risk?
 - ▣ Do you have a “reasonable suspicion”?

Small Groups, cont.

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- Derrick is a 16 year old high school student who called the domestic violence hotline while you were working. Derrick has been secretly meeting up and making out with the quarterback of the football team at his school. When the quarterback wanted to go further, Derrick said he would if they could go public about their relationship because Derrick was tired of being in the closet. The other boy became angry, threatened to kill Derrick if he told anybody, and punched him in the ribs once. Derrick told you, “it got worse from there” but he didn’t want to say how.
- Derrick says he’s feeling pretty confused about whether he wants to keep seeing the other boy secretly, but also that he is afraid the boy will come after him if he breaks things off completely. He says you are the only person he has told about the making out or the assault.

Do you make a report?

Survivor Attitudes Towards Mandated Reporting

DV Survivors May Fail to Disclose Abuse Because of Mandatory Reporting Laws

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- Studies have shown that battered women with children are not likely to report abuse due to fear of losing custody of their children.
 - ▣ In one series of focus groups, 43% of participants stated that they were not likely to seek support from social services due to the fear of losing their children.
 - ▣ Another 2005 study found that victims were not in support of reporting laws due to perceived revictimization by multiple systems.

Youth May Fail to Disclose Abuse Because of Mandatory Reporting Laws

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- Youth experiencing intimate partner violence frequently avoid bringing their concerns to an otherwise trusted adult because of the fear that person will break confidentiality and report IPV to child welfare or law enforcement based on mandatory reporting laws.
- Almost 50% of teen respondents in a survey conducted by the National LGBTQ DV Capacity Building Learning Center said they had avoided reaching out for help because of fears of mandatory reporting

Survivor Reactions to Mandated Reporter Warnings

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- People minimized their experiences
 - ▣ “I lied to them and said I was fine”
- People held back important details
 - ▣ “It made me hold back things that I thought they would tell the school”
 - ▣ “left out any physical parts of the abuse of the children”
- People stopped talking
 - ▣ “I didn’t want my kids taken away, so I didn’t talk”
 - ▣ “I did not want to share any information because I was afraid if the police or anyone else came to the house to ask about the abuse I would be killed afterward”
- People stopped reaching out for help
 - ▣ “I talk to no one, there's no one I can trust, no one I can turn to and nowhere I can go”

A Mandated Report May Make Things Worse

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- One survey found that:
 - ▣ Over **50%** of respondents of all ages, all genders, and all races consistently indicated that the outcomes of mandatory reports had made their situation “***much worse.***”
 - ▣ **12%** of respondents reported that it made the situation “**a little worse.**”
 - ▣ 20% of respondents reported that it made “no difference”
 - ▣ 15% of respondents reported that it made things “a little better”
 - ▣ 3% of respondents reported that it made things “a lot better.”

Making Things Worse, cont.

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Possible Adverse Outcomes for a Mandated Report:

- Never assume that making a report is neutral or will increase victim safety
 - ▣ Report could anger abuser
 - ▣ Report could put victim and children in increased danger
 - ▣ Abuser may have specifically threatened her – if she ever told anyone;
 - ▣ She believes she will ultimately have to return to abuser
 - ▣ Abuser does not know where she is; investigation will reveal county of residence/shelter
 - ▣ Abuser may be part of local law enforcement/child welfare/court system (esp. in rural counties)

Making Things Worse, cont.

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Possible Adverse Outcomes for a Mandated Report:

- Client will have to cooperate with intrusive and time-intensive investigation into very personal life & parenting choices; inevitably will be judged by social workers, other authority figures;
- Could lose her job if employer finds out about the report; could lose her job if she has to take substantial time off to deal with investigation;
- Perceived or Actual Re-victimization by Multiple Systems:
 - ▣ Victim may have had past negative interactions with police/child welfare/family court
 - ▣ Belief that a report will be pointless and/or will simply embolden abuser;
- Destroys Trust in Service Providers -- May destroy or harm her trust in DV shelter, shelter providers, & other supportive services providers;

Survivor Stories

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- Made things better... (3%)
 - “He got more counseling & better meds”
 - “The report got us away from our abuser”
 - “I was given a TRO and CPS started monitoring abuser’s actions”
- Made no difference... (20%)
 - “CPS came to investigate/interview, but did nothing after that”
 - “He was arrested, but case dismissed for lack of evidence”
- Made things worse... (Over 50%)
 - “Police and CPS did nothing, and abuser went on a rampage”
 - “Cops never arrested him, so now he knows he can get away with anything”
 - “Report made the stalking more active and gave him more information, which caused him to violate the restraining order”

2015 Study by National LGBTQ DV Capacity Building Learning Center

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- 1 in 10 participants said that someone they turned to for help reported them to an official or authority figure
 - ▣ Only 3 in 10 received any preparation before report made.
- 1 in 7 were warned when reaching out for help that person would have to report
 - ▣ Of these, 44% were warned they would be reported to police, and 24% to CPS.
 - ▣ 12% were never told to whom the report would be made.
- 6 in 10 said the warning changed what they decided to share.
- 1 in 3 said they had not asked anyone to help for fear of being reported.

When Your Client *Wants* You to Report

Some Clients *May Want* a Report Made, Whether Voluntary or Mandated

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Survivor *wants* governmental agencies to be involved (police/district attorney/child welfare services)

- May want to leave abuser, and needs outside agency help & services
- May want criminal charges brought against abuser & this is a first step
- May want services for the family, and may see this as an entry point
- May want a record or investigation of an incident of abuse or neglect, especially if perpetrated by the abuser, for purposes of a family court restraining order, divorce, etc.
- May want an investigation to exonerate themselves

What to Do When the Client *Wants* a Report Made

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- If client requests that a report be made, discuss expectations & consequences first with the client
 - ▣ Client may have unrealistic expectations of what report will achieve
 - ▣ Client may not understand possible negative consequences of a report
 - ▣ Can she get the socio-legal result she wants without making a report?

- Who should make the report?
 - ▣ You or the Client?
 - ▣ Client's Wishes, Safety Planning, Other Considerations

Safety Planning

Tell the Victim You Are Reporting!

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- CANRA does NOT prevent a mandated reporter from disclosing that she/he is making a mandated report
 - ▣ Note: do NOT give the victim a copy of the mandated report; that is expressly prohibited by CANRA.

- Does survivor want to make report with you?

How could that improve the situation?

Safety Planning a Mandated Report Is Critical

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- Traditional safety planning
 - ▣ Does she have a safe place to stay? Important documents?
 - ▣ Will the report cause the abuser to learn her location?
 - ▣ Does abuser have access to firearms?
 - ▣ Does she have a plan not to return to him?
 - ▣ Does she want or need a Domestic Violence Restraining Order?
 - ▣ Does she want or need to file in Family Court for custody of the children?

Safety Planning, cont.

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Specialized safety planning – anticipate a CPS case will be opened and that CPS will be investigating victim as well as abuser

- Will abuser tell social worker that she is the one actually abusing the children, that she has mental health issues, is on drugs, etc.?
- Will CPS believe she has failed to protect the children, and file a juvenile dependency to remove the children from her care?
- Can anything be done to anticipate a CPS case or refute abuser's likely accusations against her?
 - ▣ File for DVRO/Custody/Divorce
 - ▣ Document children's well-being in her care

Safety Planning for Teenagers

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- Special considerations for teenagers:
 - ▣ What will happen if a social worker discloses teenager's intimate relationship and any abuse within it to parents, teachers, or other supportive adults?
 - ▣ Will their housing, financial support, or education be threatened?
 - ▣ If applicable, will disclosure of their sexual orientation result in loss of community or family support?

How to Make a Mandated Report

Process & Procedure

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- Follow organizational policy and procedures to *prepare* for report
 - ▣ Per VAWA/VOCA confidentiality provisions, inform your client that you will be making the report
 - ▣ Safety Planning

- Report must be made immediately (or as soon as possible)
 - ▣ Report by phone to your local CWS Hotline
 - ▣ Written report to your local CWS Agency within 36 hours (Pen. Code sec. 11166(a)(1).)

Process & Procedure, cont.

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Use the Department of Justice Form 8572 -- Suspected Child Abuse Report (SCAR)

- May be faxed or submitted electronically
- Provide your name – required by Pen. Code sec. 11167(a).
 - ▣ Mandated reporters must identify themselves
 - ▣ Description of the abuse or neglect, adults involved, location of the child, etc., and suitability of the home, if applicable
- NOTE: Only provide information that the form requires. If form does not require certain information, do not include it.

Process & Procedure, cont.

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- Reports can be made to either local law enforcement or child welfare agency), but reports of general neglect based on parent's substance abuse should be made only to a county welfare or probation department, and not to a law enforcement agency.
- If two or more mandated reporters are working together, only one need make a mandated report.
- Reporting abuse to a supervisor does not substitute for making a mandated report.

After a Report Is Made

What Should You Do?

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- Continue to do advocacy with survivor.
 - ▣ Advocacy includes helping survivor mitigate harm.
- Respect survivor's right to know about report.
- You are NOT mandated to assist in ongoing investigation or participate in monitoring of parents.
- Confidentiality prevents you from participating in the investigation without your client's permission.

What Will CPS/Police Do?

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- If immediate emergency, law enforcement may respond, detain the child under a protective custody warrant.
- County child services agency must forward all reports to law enforcement and to the district attorney, except reports of general neglect or reports alleging inability to care for a child due to parental substance abuse.

Screening the Report

- Usually local child welfare agency assigns a social worker to “screen” the report.
 - ▣ Social worker will investigate within 24 hours to ten days, depending on urgency of report.
 - ▣ Social worker has to power to detain child under a protective custody warrant, as well, in emergencies.
 - ▣ Most referrals not considered emergencies, assigned a 10-day turnaround.

Screening, cont.

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- Social worker will speak with parents, teachers, doctors, child as necessary; child may be interviewed at school; may conduct home visits; may request school or medical records.
 - ▣ Note: Do not assume the child will corroborate survivor's story; do not assume child will disclose abuse; children can be traumatized, distrustful, afraid, fearful of authority figures or of batterer

- Investigator must inform, at the first meeting, the adult subject of the report of the allegations made against them, without revealing identity of mandated reporter.

Substantiated v. Unsubstantiated

After investigation, CPS workers will typically make one of three findings:

- Unsubstantiated (“Unfounded”)
 - Report was false, inherently improbable, involved an accidental injury, no child abuse or neglect.
- Substantiated (“Founded”)
 - Report constitutes child abuse or neglect, based upon evidence that “more likely than not” child abuse or neglect occurred.
- Inconclusive (“Unable to Determine.”)
 - Insufficient evidence to determine whether child abuse or neglect occurred.
- Other: “Evaluated out” -- report not investigated, not enough information to identify family; not abuse/neglect; family already receiving services.

Report Statistics, Nationwide

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In 2011 -- 3.4 million reports nationwide

- ▣ Of these, approximately one-third was screened out – no further follow-up required
 - Not enough information provided
 - Situation does not meet the State’s definition of child “maltreatment”
- ▣ Two-thirds of these were “screened-in” for further investigation

Reports were substantiated for 681,000 children:

- ▣ 78.5% suffered neglect
- ▣ 17.6% were physically abused
- ▣ 9.1% were sexually abused
- ▣ 9% were emotionally or psychologically maltreated
- ▣ 2% were medically neglected

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When a Report is Substantiated

What Happens if Report Substantiated?

Course of action will depend on many factors: severity of maltreatment, child's immediate safety, the risk of future maltreatment, the services available, and whether the child was removed from the home or a court action filed.

- No or low risk—Case closed (one-time incident, child safe)
- Low to moderate risk —Referrals to community-based or voluntary in-home CPS services
- Moderate to high risk — Voluntary in-home CPS services offered; if refused, CPS may seek court intervention.
- High risk – CPS immediately files dependency petition in juvenile dependency court.

The Juvenile Dependency System

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- What Is a Juvenile Dependency Case?
 - ▣ CPS will initiate a court action if it determines that the authority of the juvenile court is necessary to keep the child safe.
 - ▣ The statutory purpose of a juvenile dependency case is to protect the child and to preserve the family.
 - ▣ Children may or may not be placed in foster care, or with relatives.
 - ▣ Parents will be given services, and will have to demonstrate progress to have children returned/case dismissed.
 - ▣ If parents do not demonstrate that they can keep a child safe, parental rights may be terminated.

Other Potential Legal Consequences

Other Potential Legal Consequences

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□ Police investigation:

- ▣ In severe cases or fatalities, police will investigate and may file criminal charges
- ▣ Certain types of abuse, such as sexual abuse and serious physical abuse, may be routinely referred to law enforcement.

□ Criminal charges:

- ▣ Police recommend to district attorney whether to file charges; DA decides yes/no

□ Immigration consequences:

- ▣ A substantiated finding of child abuse or neglect could potentially prevent a client from obtaining a desired immigration status; e.g., a legal permanent resident may not be able to naturalize.

Child Abuse Central Index (“CACI”)

Child Abuse Central Index (“CACI”)

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CACI = Child Abuse Central Index

- California’s state child maltreatment registry -- collects information about individuals found to have abused or severely neglected children.
- If abuse or severe neglect substantiated, parent’s name placed on CACI until that person reaches the age of 100 (youths under 18, 10 years)

Consequences of a CACI Listing

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- Placement on CACI may mean:
 - ▣ Being denied employment or volunteer opportunities - Listed person will NOT be able to get job as nurse, daycare provider, teacher, etc.;
 - ▣ May result in custody issues involving their own children (either through juvenile dependency or family court);
 - ▣ Being denied ability to foster or adopt children, including your own relatives (e.g., grandmother adopting grandchildren).
- Many people only find out they are on CACI list after they apply for a job & employer performs background check.
- Notification & Administrative Review Process – difficult & expensive

Conclusions & Recommendations

Conclusions & Recommendations – The Big Picture

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- Both Employees and Managers Should:
 - ▣ Understand the statutory rules around mandated reporting in CA
 - ▣ Know the federal confidentiality laws restricting disclosure of information
 - ▣ Implement consistent practices to provide survivor-centered services

Conclusion & Recommendations, cont.

111

DV Programs should:

- Affirmatively evaluate, position by position, whether employees are or are not mandated reporters;
 - ▣ Does employee fall within one of the specified CANRA mandated reporter categories?
 - ▣ Does employee have “duties” that “require” “direct contact AND supervision of children”?
 - ▣ Ensure mandated reporters understand the *reporting duty is individual*, and no supervisor can prevent or inhibit the making of a mandated report
- Set up internal procedures to facilitate reporting and apprise supervisors and administrators of reports
- Have a group process to share making judgment calls (only one mandated reporter needs to make a report on behalf of the group);

Conclusion & Recommendations, cont.

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DV Programs should:

- Institute standard disclosure policy & ensure compliance with existing and new staff;
 - ▣ Disclosure must be utilized each and every time;
 - ▣ Program must inform clients of mandated reporting law;
 - ▣ Program must make it clear which employees are mandated & which are not.
- Mandated reporters should disclose they are mandated
- Non-mandated reporters should disclose they are *not* mandated

Conclusion & Recommendations, cont.

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DV Programs should:

- Ensure employees who are mandated reporters receive training
 - ▣ Training should include what must be reported
 - ▣ Training should include likely outcomes of a mandated report; what may or may not happen; what officials are likely to be involved
 - ▣ Training should include how best to prepare a client for the making of a report and how to advocate for and support a client after a report is made
- Ensure mandated reporters understand that making a non-mandated report will violate VAWA/VOCA and may violate FVPSA;
- Ensure mandated reporters sign employer-provided mandated reporter statement.

Conclusion & Recommendations, cont.

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DV Programs should:

- Ensure employees and volunteers who are not mandated reporters receive explicit directives & information from management that they are *not* mandated reporters;
- Ensure employees and volunteers who are not mandated reporters be informed of the confidentiality and privacy requirements under VAWA/VOCA/FVPSA federal laws
 - ▣ Making a report will violate VAWA/VOCA, possibly FVPSA, confidentiality
- Ensure employees and volunteers who are not mandated reporters do *not* sign the employer-provided mandated reporter statement

Conclusion & Recommendations, cont.

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DV Programs should:

- Set up an “information wall” between mandated reporters and non-mandated reporters
 - ▣ Freely shared information from a non-mandated reporter to a mandated reporter could result in the mandated reporter making a report
- Consider maintaining two sets of client files (for mandated reporter employees and non-mandated reporter employees)
- Consider limiting type of information kept in client files

Questions?

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The Confidentiality Institute

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The Confidentiality Institute is a federally funded technical service provider and provides up-to-date, state-specific, sophisticated training, toolkits, and on-call technical assistance to help an agency handle its most significant confidentiality and privacy challenges, whenever they arise.

Thank You!

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The development of this product was supported in part by funding awarded by the United States Department of Justice, Victims of Crime Act, 2015-VA- GX-0058, through the California Governor's Office of Emergency Services. The opinions, findings, and conclusions in this publication are those of the author and not necessarily those of Cal OES. Cal OES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and to authorize others to do so.