

Santa Clara County Child Abuse Council

**CHILD ABUSE
REPORTING GUIDELINES FOR SEXUAL ACTIVITY
BETWEEN AND WITH MINORS**

This a guide for mandated reporters and the information contained in this document is designed to assist those mandated by California Child abuse Reporting Laws to determine their reporting responsibilities. It is not intended to be and should not be considered legal advice. In the event there are questions regarding reporting responsibilities in a specific case, the advice of legal counsel should be sought. This guide incorporates changes in the Child abuse Reporting Law, effective January 1998. For more detailed information refer to Penal Code Section 11164 & 11165.1 et.al.

- I. INVOLUNTARY SEXUAL ACTIVITY is always reportable.
- II. INCEST, even if voluntary, is always reportable. Incest is a marriage or act of intercourse between parents and children; ancestors and descendants of every degree; brother and sisters of half and whole blood and uncles and nieces or aunts and nephews (Family Code § 2200.)
- III. VOLUNTARY SEXUAL ACTIVITY may or may not be reportable. Even if the behavior is voluntary, there are circumstances where the behavior is abusive, either by Penal Code definition or because of an exploitive relationship, and this behavior must be reported. Review either section A, B, or C and section D, below. In addition, if there is reasonable suspicion of sexual abuse prior to the consensual activity, the abuse must be reported.

A.

("Child" refers to the persons that the mandated child abuse reporter is involved with)			
Child is 13-years-old or younger and partner is:	Definitions and Comments	Mandatory Report	Not Mandatory Report
<ul style="list-style-type: none"> • 13-years-old or younger and <ul style="list-style-type: none"> ○ of similar chronological or maturational age as the child, and ○ the sexual behavior is voluntary and consensual, and ○ there are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship 	See, <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245		X
<ul style="list-style-type: none"> • 13-years-old or younger, and <ul style="list-style-type: none"> ○ there is a disparity in chronological or maturational age, and/or ○ there are indications of intimidation, coercion, bribery or other indications of an exploitive relationship 		X	
<ul style="list-style-type: none"> • 14-years-old or older 		X	
<ul style="list-style-type: none"> • of any age and <ul style="list-style-type: none"> ○ has committed lewd and lascivious acts with the child 	The perpetrator has the intent of "Arousing, appealing, to or gratifying the lust, passions, or sexual desire of the perpetrator or the child."	X	
<ul style="list-style-type: none"> • 14-years-old or older and <ul style="list-style-type: none"> ○ the alleged spouse of the child 	The appropriate authority will determine the legality of the marriage.	X	

B.

("Child" refers to the persons that the mandated child abuse reporter is involved with)			
Child is 14 or 15-years-old and partner is:	Definitions and Comments	Mandatory Report	Not Mandatory Report
<ul style="list-style-type: none"> • 13-years-old or younger 		X	
<ul style="list-style-type: none"> • from 14-years-old to 20 years-old and <ul style="list-style-type: none"> ○ there is no indication of abuse and ○ there is no evidence of an exploitive relationship and ○ unlawful sexual intercourse has occurred between the child and partner 			X
<ul style="list-style-type: none"> • 21-years-old or older and <ul style="list-style-type: none"> ○ unlawful sexual intercourse has occurred between the child and partner 		X	
<ul style="list-style-type: none"> • more than 10 years older than the child and <ul style="list-style-type: none"> ○ lewd and lascivious acts have been committed 	The perpetrator has the intent of "Arousing, appealing, to or gratifying the lust, passions, or sexual desire of the perpetrator or the child."	X	
<ul style="list-style-type: none"> • 21-years-old or older and <ul style="list-style-type: none"> ○ the alleged spouse of the child 	The appropriate authority will determine the legality of the marriage.	X	

C.

("Child" refers to the persons that the mandated child abuse reporter is involved with)			
Child is 16 or 17-years-old and partner is:	Definitions and Comments	Mandatory Report	Not Mandatory Report
<ul style="list-style-type: none"> • 13-years-old or younger 		X	
<ul style="list-style-type: none"> • 14-years-old or older and <ul style="list-style-type: none"> ○ unlawful sexual intercourse has occurred and ○ there is no indication of an exploitive relationship 			X
<ul style="list-style-type: none"> • 14-years-old or older and <ul style="list-style-type: none"> ○ unlawful sexual intercourse has occurred between the child and partner and ○ there is evidence of an exploitive relationship 		X	
<ul style="list-style-type: none"> • the alleged spouse and <ul style="list-style-type: none"> ➢ there is evidence of an exploitive relationship 	The appropriate authority will determine the legality of the marriage.	X	

D.

Child is under the age of 18 and the partner is:			
<ul style="list-style-type: none"> • of any age and <ul style="list-style-type: none"> ○ sodomy, oral copulation, penetration or a genital or anal opening by a foreign object has occurred and ○ the act(s) have been consensual or not consensual 		X	

Mandated reports of sexual activity must be reported to either the Department of Family & Children's Services (DFCS) or to the appropriate police jurisdiction. This information will then be cross-reported to the other agency. Reporting does not necessarily mean that a civil or criminal proceeding will be initiated against the suspected abuser.

Failure to report known or reasonable suspicion of child abuse, including sexual abuse, is a misdemeanor. Mandated reporters are provided immunity from civil or criminal liability as a result of making a mandated report of child abuse.