



Frequently Asked Questions: CONFIDENTIALTY AND MANDATED REPORTING

What is the difference between private and confidential information?

Here is a shorthand way to distinguish between privacy, confidentiality and privilege:

- *Privacy* is a personal choice whether to share information,
- *Confidentiality* is a responsibility to protect someone else's information when they have shared information with you, and
- *Privilege* is a legal rule prohibiting sharing someone else's private information without their permission.¹

Who has to keep information confidential?

Many domestic violence (DV) agencies receive federal funding under VAWA, VOCA, or FVPSA administered through CalOES.² The federal law governing these programs prohibits agencies from disclosing any personally identifying information, such as names of clients or their children or their contact information, without a client's permission. **An exception is if an agency worker is a mandated reporter of child abuse.** This means that other funders cannot require DV agencies to share personally identifying information about their clients.

In California, communications between DV and sexual assault (SA) counselors and their clients are also "privileged" which means the communication must be kept confidential unless the client agrees to the release of the information or a court orders the release.³

What do mandated reporters have to do in California?

Mandated reporters must report child abuse they know about, or reasonably suspect, if they learn about it **while working**. In California, mandated reporters are specifically listed in the Child Abuse and Neglect Reporting Act.⁴ For information about who is a mandated reporter, see FVAP's tip-sheet [here](#).

What does it mean to "reasonably suspect" child abuse?

If you receive credible (believable) information that would cause a reasonable person with your same training and experience to suspect a child has been abused or neglected, that is reasonable suspicion. It does not require certainty, but must be reasonable. If you are not sure, you cannot ask questions or investigate to try to determine whether abuse occurred.

¹ Taken from NNEDV & Confidentiality Institute "A Primer on Privilege & Confidentiality for Victim Service Providers" available at: <https://nnedv.org/mdocs-posts/assessing-organization-readiness-to-provide-online-advocacy-services/>

² 42 USC §13925(b)(2)(B)

³ Cal. Evidence Code §1307

⁴ Cal. Penal Code §11164, et. seq.

What is “child abuse or neglect” that must be reported?

First, the victim of abuse or neglect must currently be under the age of 18. The abuser can be anyone, not just a parent. A mandated reporter must report non-accidental physical injury or death; sexual abuse; neglect; the willful harming of a child; endangering the health of a child; permitting unjustifiable physical pain or mental suffering, or; unlawful corporal punishment.

What is *not* child abuse or neglect?

Accidental falls, normal cuts and bruises, and harm caused through normal play or mutual fighting between children is not child abuse or neglect. A child’s drug or alcohol abuse is not in and of itself reportable, and neither is a child’s positive toxicology report at birth. Homelessness, being unaccompanied, or being pregnant are not reportable. Reasonable physical discipline is not reportable. Also, consensual, voluntary, sexual acts between minors of the same age⁵ are not reportable.

Is witnessing domestic violence abuse?

Each county handles this issue differently. In some counties, domestic violence is considered “emotional abuse.” Mandated reporters are *not* required to report emotional abuse, **unless** it rises to the level that is willfully causing or permitting any child to suffer unjustifiable physical pain or mental suffering, or it endangers the child’s person or health.⁶

What do mandated reporters have to tell their clients when making a report?

Under VAWA, VOCA and FVPSA, mandated reporters must make reasonable attempts to provide notice to their clients who will be affected by a mandated report and take steps necessary to protect the privacy and safety of the persons affected by the mandated report. Ideally, you can discuss the options with your client, including the option to make the report themselves and the pros and cons of self-reporting.

Why aren’t DV advocates mandatory reporters?

The California legislature and the United States Congress believe it is important that survivors of domestic and sexual violence have an advocate who can always support them first, and who victims can talk to without being concerned about being “reported” for any reason. Abusers frequently threaten survivors by telling them that the system will take away their children if the DV is ever reported. When advocates are able to let their clients know that everything they say is confidential, survivors are more likely to discuss all the abuse that has occurred and to be able to begin their healing process. In addition, survivors and their children are frequently in contact with people who **are** mandated reporters like peace officers, court personnel, teachers, therapists and social workers. So giving survivors one “safe” person to talk to doesn’t mean that child abuse won’t get reported by a real mandated reporter.

⁵ There is a chart at www.youthlaw.org that outlines age differences that are reportable sexual abuse, for instance, a 12-year-old having sex with a 14-year-old requires making a mandated reporting.

⁶ California Penal Code section 11166.05

What is the harm in making a report if I am not a mandated reporter?

Studies show that DV survivors and their children do not do well in the child welfare system, where courts are not focused on the best interest of children and don't understand the effects of domestic violence on children. This is particularly true for children of color. A recent national study showed that when survivors were told their advocate was a mandated reporter, survivors minimized, held back details, or just stopped seeking help.⁷ The fear of being reported is also a frequent reason youth survivors of abuse don't seek help.⁸

How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 858-7358 for questions.

*This tip sheet is not providing legal advice and should not replace the advice of an attorney. Last updated 3/1/19. Copyright © Family Violence Appellate Project 2019.

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⁷ Antle, et al. A Qualitative Evaluation of the Effects of Mandatory Reporting of Domestic Violence on Victims and Their Children, *Journal of Family Social Work*, 13:56–73, 2010; National LGBTQ DV Capacity Building Learning Center (2015) *The Impact of Mandatory Reporting on the Help-Seeking and Wellbeing of Domestic Violence Survivors*.

⁸ National LGBTQ DV Capacity Building Learning Center (2015), *supra*.