

***MANDATED CHILD ABUSE REPORTING WHEN WORKING WITH MINORS***  
**LEGAL ANALYSIS AND BEST PRACTICES**

**GOAL:**

**Provide PCADV programs with information and best practices for providing minors with information and/or supportive services that take into account the role of domestic violence program staff as mandated reporters of suspected child abuse under the Child Protective Services law while protecting a minor's confidentiality where possible.**

**PURPOSE:**

**The purpose of developing best practices on the issue of mandated reporting and working with minors is to assist domestic violence programs to understand their legal duty to report child abuse in balance with the programs' duty of confidentiality to those it serves including minors.**

**ISSUES:**

**Under what circumstances a domestic violence counselor or advocate providing prevention education or supportive services to a minor is a mandated reporter of suspected child abuse under the Child Protective Services law.**

**Under what circumstances a domestic violence counselor or advocate can provide prevention education or supportive services to minors and be compliant with the mandatory child abuse reporting requirements of the Child Protective Services law.**

**LEGAL ANALYSIS:**

**I. STATUTORY BACKGROUND**

In an effort to assure that all suspected child abuse is reported and properly addressed, Act 179 became law in May 2007. The new requirements for mandatory child abuse reporting are found at 23 Pa. C.S.A. §6301 et seq.

Act 179 includes three major changes to the Child Protective Services (CPS) law: 1) a new definition of contact with a child; 2) a new definition of perpetrator and 3) statutory sexual assault is no longer defined as child abuse.

- 1) **Contact with child:** Any person who, in the course of employment, occupation, or practice comes into contact with children, is mandated to report when the person has reasonable cause to suspect on the basis of medical, professional or other training or experience, that a child *under the care, supervision, guidance, or training of that person or of an agency, institution, organization or other entity with which that person is affiliated* is a victim of child abuse. See, 23 Pa. C.S.A. § 6311(a). Prior to

these amendments, suspected child abuse had to be reported only when the child came before the reporter in his or her official capacity.

- 2) **Definition of perpetrator:** Before Act 179 amended the CPS law, a duty to report was triggered only when there was suspicion of abuse by a person who was a “perpetrator” as defined by the CPS law.

The statutory definition of “perpetrator” includes a person who has committed child abuse and is:

- A parent of a child;
- A person responsible for the welfare of a child;
- A person residing in the same home as a child; or
- A “paramour” of a child’s parent.

Act 179, however, amended the CPS law to now require mandated reporters to report abuse when they have reasonable cause to suspect that *any individual has abused a minor*. The law requires mandatory reporters to make reports even when an individual who does not meet the CPS law’s definition of “perpetrator” commits the abuse. See, 23 Pa. C.S.A. §6311(a).

- 3) **Statutory sexual assault:** The definition of sexual abuse or exploitation *does not* include statutory sexual assault in its list of offenses that are considered child abuse if committed against a minor. Statutory sexual assault is defined as sexual intercourse between two unmarried people when one is under the age of 16 and the other is four or more years older. Although statutory sexual assault is still considered criminal conduct, it no longer triggers a mandatory report of child abuse.

## II. ELEMENTS NEEDED TO MAKE A REPORT

It is vital to remember that, in order to make a report, the following is necessary:

- 1) **A minor—under the age of 18 years.** Child abuse can encompass acts or a failure to act. Specific time frames for reporting certain kinds of suspected abuse are specified in the statute.
- For suspected serious physical injury or imminent risk, the act must be recent, meaning it occurred within the past 2 years from the date of the report.
  - For sexual abuse or exploitation, serious mental injury or serious physical neglect, if the act or failure to act occurred anytime when the person was a minor, it must be reported, if the person is still a minor.
  - Sexual abuse or exploitation **can** be reported up to the age of 20 years for sexual abuse that occurred when the person was a minor, or reported up to the age of 23 if the sexual abuse occurred when the person was 17 years of age.

**Note:** “Can” be reported is **not** mandated reporting; program staff should not report it because the report would be a breach of confidentiality;

and

- 2) **Reasonable cause to suspect that the minor is a victim of child abuse.** It is a suspicion that is based on the reporter’s medical, professional or other training and experience;

and

- 3) The alleged abuse must rise to the level of **child abuse as defined** under the CPS law. Knowledge of the definitions of child abuse is the foundation for reasonable cause to suspect.
- 4) To make a report, additional specific information, if available, is necessary. The required information is detailed on **page one of the CY47 form**. Minimally, the CY47 form requires the name of the alleged victim, contact information, relationship to the perpetrator, and the nature of the suspected child abuse. Domestic violence program staff **should not complete any portion of the back of the CY47 form** other than to provide a signature. If staff do not have all of the required information then a report cannot be made. DV Program staff do not have an obligation to investigate information they do not have. See additional information below regarding investigation.

## **BEST PRACTICES**

### **I. PREVENTION EDUCATION**

**Analysis:** If Domestic violence program staff provide services to school children, whether that is by conducting dating violence prevention or healthy relationships presentations or other services in the school setting, the students are under the training of that person/agency. If a student speaks to program staff in the school setting, inside or outside the classroom presentation, the student may be seeking guidance. In both cases, this meets the definition of the CPS law that makes the staff a mandatory reporter.

Any minor who discloses any act or failure to act that would meet the definition of child abuse by any person— such disclosure would trigger a mandated report.

ChildLine takes all reports and forwards them to the county child welfare agency in the county in which the alleged abuse occurred. The child welfare agency then separates those cases with perpetrators as defined by the CPS law and those perpetrators that are referred to as “not a perpetrator” in the CPS law (meaning anyone else who does not fit within the four-part definition

of perpetrator, see page 2). The latter will be turned over to the district attorney's office or to law enforcement.

**Best Practices:**

- Students need to know prior to a presentation that the domestic violence program staff are mandated reporters and what that means.
- At the start of a presentation on dating violence or healthy relationships, staff should explain what a mandated reporter is. The following is a sample explanation:

“The law requires me to make a report to children and youth services or child welfare of any suspected child abuse. If you tell me that someone is hurting you, I may need to report it to people in authority who can stop that person from hurting you again. If you are being hurt by anyone, and you tell me about it, I may have to report that. The law says I must do this to protect you from further harm. I am going to give you information today about some places that you can get help without necessarily having child welfare services involved.

If child welfare becomes involved, they may come to your home or school to speak with you and your parents and to the person who is hurting you. So think about this as I talk today, and if you need to talk with me, you can decide if and how much information you wish to share with me. Any questions?”

- It is unlikely that a student will disclose sufficient information during a classroom presentation that would warrant a mandated report to be made. Be ready to refer the student to other resources such as hotlines or other places they can contact. Staff must have skill in “interrupting” personal stories during a presentation. Focus on providing information and discussion of the presentation and not personal information. While this kind of disclosure may be unlikely, it can (and does) still happen. We expect that the report, if warranted, will be made.
- At the conclusion of the presentation, allow a few minutes to talk about the program's hotline as well as give the number for the National Teen Dating Abuse Helpline – 1-866-331-9474 (331-8453 TTY) or [www.loveisrespect.org](http://www.loveisrespect.org).

”Name of program has a 24 hour hotline. The number is \_\_\_\_\_. When you call, a trained staff member can listen, offer emotional support, help with safety planning, answer questions, and help you to identify an adult to help you. You do not need to give your full name or your age in order to talk about what is happening. You can decide how much information you want to share. Although hotline staff are also mandated reporters of suspected child abuse if you feel uncomfortable you can talk about the situation as ‘what if...’ or ‘a friend of mine’.”

- If a student comes up to talk to domestic violence program staff after class, remind the student again of what was said at the beginning of class. The role of the staff should be to ask what the young person needs and how they are feeling about the situation. Staff can refer the student to the program hotline and teen dating abuse helpline, and talk to them about a trusted adult who could help them; a relative, a friend or a parent. Staff can also discuss safety planning. Staff can offer support and information but should be mindful that the student should make the choice about whether or not they want to disclose information that would lead to a mandated report of child abuse. Staff can assist the student without hearing all of the details of the situation.

There may be a situation in which a minor wants staff to report the abuse. As long as the minor understands staff's obligation to report the situation to child welfare and what may happen after the report, then the minor has the right to continue to provide information knowing a mandated report may be made.

- Although domestic violence program staff are mandated reporters, they are not mandated to investigate alleged abuse. It is not the role of the program staff to gather sufficient information to make a report.
  - The responsibility of the staff is to inform minors of staff's role as mandated reporters of suspected child abuse, and not to investigate reports. It is the minor's decision how much information to share after they understand what may happen upon disclosure.
  - The investigation and child welfare process can be very disruptive to any victim or family. If the investigation does not reveal child abuse, it still may reveal problems in the home that could keep child welfare involved through the county General Protective Services (GPS).
  - If the report concerns dating violence, but the abuser does not meet the statutory definition of child abuse perpetrator under CPS law, law enforcement may follow up with the families of the victim and perpetrator. It is possible that an investigation could lead to the filing of criminal charges. Most victims simply want to be safe, to have the violence stopped and to have options—not necessarily to involve law enforcement.
- It is important to remember that the domestic violence program presenter and the teachers and other school personnel are all mandated reporters. In the event that the DV Program staff have reasonable cause to suspect child abuse and the teacher has been present for the disclosure, both are mandated to report. Program staff are not relieved of their legal responsibility to report even if the teacher or other school personnel informs staff that they are making a report.
- In the event that the domestic violence program staff have reasonable cause to suspect child abuse and a teacher is not present in the room, the program staff are under no

obligation to inform the teacher or other school personnel that the program staff made or will make a mandated report. This is especially true if the program staff provide one-on-one counseling with a student. In that instance, the student has absolute confidentiality; therefore, program staff are prohibited from making any disclosure other than the actual mandated report without the prior, informed and reasonably time-limited written consent of the victim. A report to the school would constitute a breach of the minor's confidentiality.

## II. HOTLINE / SUPPORTIVE SERVICES

### **Analysis:**

A minor who contacts the domestic violence program through the hotline is calling the program for assistance or guidance. If information is disclosed that causes the hotline staff to have reasonable cause to suspect child abuse AND sufficient identifying or contact information is provided, a mandated report must be made.

### **Best Practices:**

- It is not necessary to ask hotline callers their full names. A first name is all that is really needed to have a conversation. Hotline staff must be skilled in explaining mandatory child abuse reporting obligations and confidentiality in language that is understandable. While in some instances it is not necessary to ask the caller's age, many programs need an age range to offer appropriate options for the caller. Additionally, many programs are asked to obtain age demographics by their funding sources. The important thing is to give the control to the caller to report details or not, after explaining that the call may result in a mandated report of child abuse.

“Hi, my name is \_\_\_\_\_. Would you tell me just your first name? Are you safe to speak to me right now?” If yes, continue with...“What we talk about is confidential and will not be shared. But, if you are under the age of 18 years and you tell me that someone is hurting you, the law says I might have to report this as child abuse. You can decide what you want to talk about and how much information you want to share with me. OK? So how can I help you?”

If a minor is a shelter resident because their parent is a victim of domestic violence, the minor must be informed that the domestic violence counselor or advocate is a mandated reporter of suspected child abuse. Whether that minor is a child exposed to domestic and/or a victim of dating or domestic violence, the minor must be informed.

“The law requires me to make a report of suspected child abuse. This means that if you tell me about a situation in which anyone is hurting you—any adult

or a someone you are dating (if appropriate), I may have to report this to children and youth services or child welfare—if it meets the definition of what the law says is child abuse. The law says I must do this to protect you from further harm.

Child welfare or the police may contact your parent or guardian and you about this situation. So think about this as you and I talk. You can decide how much information about your situation you want to share with me. What questions do you have?”

### **III. PROVIDING SERVICES TO MINORS**

See “Legal Analysis and Best Practices in Providing Services to Minors and Protecting Confidentiality” Approved 3/4/11, updated 4/18/11.