



## When Sexual Intercourse\* with a Minor Must Be Reported as Child Abuse: California Law

In California, health care practitioners are mandated to report any reasonable suspicion of child abuse. Sexual intercourse with a minor is reportable as child abuse *when*:

### 1. WHEN COERCED OR IN ANY OTHER WAY NOT VOLUNTARY

Mandated reporters must report any intercourse that was coerced or in any other way not voluntary, irrespective of the ages of the partners and even if both partners are the same age. Sexual activity is not voluntary, for example, when accomplished against the victim's will by means of force or duress, or when the victim is unconscious or so intoxicated that he or she cannot resist. *See* Penal Code § 261 for more examples. Irrespective of what your patient tells you, treating professionals should use clinical judgment and "evaluate facts known to them in light of their training and experience to determine whether they have an objectively reasonable suspicion of child abuse." 249 Cal. Rptr. 762.

### 2. BASED ON AGE DIFFERENCE BETWEEN PARTNER AND PATIENT IN A FEW SITUATIONS

Mandated reporters also must report based on the age difference between the patient and his or her partner in a few circumstances, according to the following chart:

**KEY: M = Mandated.** A report is mandated based solely on age difference between partner and patient.

**CJ = Clinical Judgment.** A report is not mandated based solely on age; however, a reporter must use clinical judgment and must report if he or she has a reasonable suspicion that act was coerced, as described above.

Age of Partner ⇒	12	13	14	15	16	17	18	19	20	21	22 and older
Age of Patient ↓											
11	CJ	CJ	M	M	M	M	M	M	M	M	M ⇒
12	CJ	CJ	M	M	M	M	M	M	M	M	M ⇒
13	CJ	CJ	M	M	M	M	M	M	M	M	M ⇒
14	M	M	CJ	CJ	CJ	CJ	CJ	CJ	CJ	M	M ⇒
15	M	M	CJ	CJ	CJ	CJ	CJ	CJ	CJ	M	M ⇒
16	M	M	CJ	CJ	CJ	CJ	CJ	CJ	CJ	CJ	CJ
17	M	M	CJ	CJ	CJ	CJ	CJ	CJ	CJ	CJ	CJ
18	M	M	CJ	CJ	CJ	CJ	Chart design by David Knopf, LCSW, UCSF. (The legal sources for this chart are as follows: Penal Code §§ 11165.1; 261.5; 261; 259 Cal. Rptr. 762, 769 (3 <sup>rd</sup> Dist. Ct. App. 1989); 226 Cal. Rptr. 361, 381 (1 <sup>st</sup> Dist. Ct. App. 1986); 73 Cal. Rptr. 2d 331, 333 (1 <sup>st</sup> Dist. Ct. App. 1998).				
19	M	M	CJ	CJ	CJ	CJ					
20	M	M	CJ	CJ	CJ	CJ					
21 and older	M	M	M	M	CJ	CJ					

### Do I have a duty to ascertain the age of a minor's sexual partner for the purpose of child abuse reporting?

No statute or case obligates health care practitioners to ask their minor patients about the age of the minors' sexual partners for the purpose of reporting abuse. Rather, case law states that providers should ask questions as in the ordinary course of providing care according to standards prevailing in the medical profession. Thus, a provider's professional judgment determines his practice. 249 Cal. Rptr. 762, 769 (3<sup>rd</sup> Dist. Ct. App. 1988).

### What do I do if I am not sure whether I should report something?

When you aren't sure whether a report is required or warranted, you may consult with Child Protective Services and ask about the appropriateness of a referral.

\*This worksheet addresses reporting of consensual vaginal intercourse between **non-family members**. It is not a complete review of all California sexual abuse reporting requirements and should not be relied upon as such. For more information on other reporting rules and how to report in California and other states, check [www.teenhealthrights.org](http://www.teenhealthrights.org)