

144253

BASIC COURSE INSTRUCTOR UNIT GUIDE

9

CRIMES AGAINST CHILDREN

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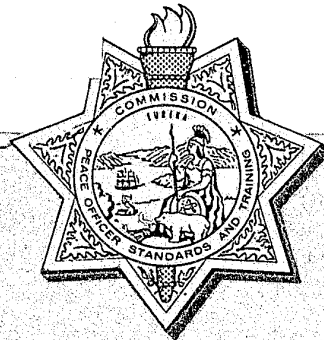
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

This unit of instruction is designed as a *guideline* for performance objective-based law enforcement basic training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives which are required as minimum content of the Basic Course.

UNIT GUIDE 9

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CHILD ENDANGERMENT (CRUELTY TOWARD A CHILD)

Given a word picture depicting possible child endangerment (also known as willful cruelty toward a child), the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 273a)

Performance Objective 3.21.2

CURRICULUM

A. Child Endangerment (Willful Abuse or Injury to Person or Health of a Child) Penal Code Section 273a:

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be placed in such situation that its person or health is endangered.

B. Elements of the offense

1. Penal Code Section 273a(1) - Felony/Misdemeanor:

NOTE: It may be beneficial to contrast Penal Code Section 272 & Penal Code Section 278 with the above sections.

- a. Any person
- b. Under circumstances or conditions likely to produce great bodily harm or death,
- c. Willfully causes **or permits** any child to suffer, or
- d. Inflicts thereon unjustifiable physical pain or mental suffering, or
- e. Having the care or custody of any child,
- f. Willfully causes **or permits** such to be placed in such a situation that its health is endangered.

2. Penal Code Section 273a(2) - Misdemeanor

- a. Same as 273a(1) **except**
- b. The circumstances or conditions **other than** those likely to produce great bodily harm or death.

C. Crime Classification

1. Penal Code Section 273a(1) - Felony/Misdemeanor
2. Penal Code Section 273a(2) - Misdemeanor

D. Statute of limitations

1. Penal Code Section 273a(1) - Felony
 - a. Three (3) years
2. Penal Code Section 273a(2) - Misdemeanor
 - a. One (1) year

E. Other related statutes:

1. Desertion of a minor - Penal Code Section 271
 - a. Every parent of any child under the age of fourteen years and every person to whom any such child has been confided for nurture, or education, who deserts such child in any place whatever with intent to abandon it.

NOTE: This section is most commonly used by district attorneys and city attorneys, coupled with other charges. (Penal Code Section 271a)

- b. Elements of Penal Code Section 271
 - (1) Every parent of any child under the age of 14 years and
 - (2) Every person to whom any child has been confided for nurture (care), or education,
 - (3) Who deserts such child in any place whatever.
 - (4) With intent to abandon it (them) means "with no intent to return"
2. Abandonment or failure to maintain (Penal Code Section 271a)
3. Habitual drunkenness or immoral practices in front of children (Penal Code Section 273g)

PHYSICAL ABUSE OF A CHILD

Given a word picture depicting the possible physical abuse of a child, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 273d)

Performance Objective 3.21.3

CURRICULUM

- A. Penal Code Section 273d - Physical abuse of a child (Corporal Injury Upon Child)

"Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4, or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand (\$6,000) or by both.

In any case in which a person is convicted of violating this section and probation is granted, the court shall require supervised counseling as a condition of probation unless, considering all of the facts and circumstances, the court finds counseling inappropriate for the defendant."

- B. Elements of the offense

1. Any person who
2. Willfully inflicts upon any child
3. Any cruel or inhuman punishment or injury
4. Resulting in a traumatic condition,

(a) The term "traumatic condition" is not defined in 273d. Traumatic condition is defined in Penal Code Section 273.5, however, as: "a wound, external or internal injury, whether of a minor or serious nature caused by physical force".

(b) Several cases, People v Ballard, Cal App 3d 311 and People v. Burns (48) 88 CA 2nd 867 support that the definition contained in Penal Code Section 273.5 also applies to Penal Code Section 273d.

- C. Crime classification

1. Felony/Misdemeanor

- D. Statute of limitations

1. Three (3) years

ENTRY WITHOUT WARRANT: ENDANGERED CHILD

Given a word picture depicting possible physical abuse, sexual abuse, neglect, or the endangerment of a minor in a private dwelling, the student will identify if an officer can legally enter without a warrant based on case law (**In re Dawn O.**, 58 Cal App 3d 160, 1976; **People v. Payne**, 65 Cal App 3d 679, 1977; **People v. Brown**, 12 Cal App 3d 600, 1970; **People v. Sutton**, 65 Cal App 3d 341, 1976)

Performance Objective 3.21.4

CURRICULUM

A. Entering home without a warrant

1. Peace officers have the right to make a warrantless entry into a home to check on the welfare of a juvenile inside the home whenever the officer has reasonable cause to believe a juvenile is being physically abused, neglected or sexually exploited.

a. Supporting cases:

- (1) In re Dawn O. (58 Cal App 3d 160 (1976))

The police officer took a five-year-old child back home at 10:30 p.m. He got the impression that there may be an unattended child inside the apartment. The officer knocked on the door with no response, not for the purpose of securing the residence, but for determining whether there was another child alone inside the apartment. The court ruled that, under these circumstances, it was reasonable to determine if a child had been left alone in a dangerous circumstance.

- (2) People vs. Payne (65 Cal App 3d 679 (1977))

The court ruled that police officers, in forcing open a door in defendant's bedroom, did not act unreasonably or in violation of defendant's right to privacy or domestic security. Following reports from a reliable informant that defendant molested children in a bedroom in his garage, police set up surveillance in which he was seen to pick up a male juvenile and drive him to the garage.

The defendant failed to respond to one of the investigating officers who repeatedly knocked on the bedroom door and announced that he was conducting a child molestation investigation. The officers were led to believe, despite the absence of any call for help by a juvenile, that an emergency situation had arisen in which a particularly heinous crime was being committed.

(3) People vs. Brown (12 Cal App 3d 600 (1970))

The law enforcement officer must consider the type of information relied on to reach his conclusion that there is an emergency circumstance.

This case refers directly to that type of information. The court found that in a situation where a brother of the victim reported hearsay information to the police that his father was having sexual intercourse with the cerebral palsied and retarded daughter of the family and, where the officer had heard other information from a probation officer who was working with the family about prior acts of sexuality in the house, the officer's entry into the house pursuant to the emergency doctrine was valid even though the critical information was based on hearsay evidence. In so ruling, the court noted: "The right of privacy and domestic security extends no impenetrable protective cloak against the prevention of a felonious assault upon a helpless victim. The victim's right to physical and mental integrity outweighs the right of the aggressor to remain secure in his domestic sanctuary."

(4) People vs. Sutton (65 Cal App 3d 341 (1976))

Officer received a radio call that two children were alone, unattended in an apartment. He knocked on the door and received no answer. He went back to his car to get additional information from dispatch. Meanwhile, the mother returned to the apartment. She was intoxicated. The officer entered the apartment behind her, observed unfit conditions for the children, and took custody of two children. The court based its decision on *In re Dawn O.* (58 Cal App 3d 160) "We do not by this holding imply that any different standard for application of the rule of necessity exists in cases involving child endangering. Entry for the purpose of the protection of infant children must be justified on the same grounds as any other entry; there must be "an imminent and substantial threat to life, health, or property." We conclude, however, as did the court in *re Dawn O.*, that the facts reasonably indicating that an infant child may be unattended, constitute such a substantial threat is not dissipated by the return of a custodial parent in a state of obvious intoxication."

LEWD ACTS UPON A CHILD

Given a word picture depicting possible lewd acts upon a child, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 288(a)(b)(c))

Performance Objective 3.21.5

CURRICULUM

A. Penal Code Section 288: Lewd acts upon a child

Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part One of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the child, shall be guilty of a felony.

B. Elements of the offense

1. Penal Code Section 288(a) - Felony

- a. Commits a lewd or lascivious act upon the body of a child
- b. The child is under the age of fourteen (14)
- c. The act was committed with the specific intent to arouse, appeal to or gratify the lust, passions, or sexual desires of such person or of the child

2. Penal Code Section 288(b) - Felony

- a. Same as Penal Code Section 288(a) **and**
- b. Such act was committed by use of force, violence, duress, menace, or fear of immediate and unlawful injury on the child or another person

3. Penal Code Section 288(c) - Felony/Misdemeanor

- a. Same elements as Penal Code Section 288(a) except:
- b. Victim is 14 or 15 years of age, **and**
- c. Perpetrator is at least 10 years older than the victim

C. Lewd and lascivious act

1. Definition of terms:

a. Lewd:

Disregarding socially accepted constraints

b. Lascivious:

Wanton and Lustful

c. Lewd and lascivious act:

An act which has a tendency to excite lust, committed with a disregard for sexual constraints.

2. Character of the act

a. It is not necessary that a sexual part be touched, but the act must be sexual in nature (there is intent for either party to become sexually aroused)

(1) It may be a mere touching of the body or clothing, but it must be done with specific intent to arouse either party.

(2) It is not necessary that the naked body be touched.

D. Crime classification

1. Penal Code Sections 288(a) and 288(b)

a. Felony

2. Penal Code Section 288(c)

a. Felony/Misdemeanor

E. Statute of limitations

1. Penal Code Section 288(a) and 288(b)

a. Six (6) years

2. Penal Code Section 288(c)

a. Three (3) years

F. Associated sections

1. Penal Code Section 288(d)

In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

ANNOYING OR MOLESTING CHILDREN

Given a word picture depicting a child being annoyed or molested, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 647.6)

Performance Objective 3.21.6

CURRICULUM

A. Penal Code Section 647.6: Annoying or molesting children

"Every person who annoys or molests any child under the age is 18 is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not exceeding one year or by both the fine and imprisonment. Every person who violates this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in section 635 of the Vehicle Code, or the inhabited portion of any other building, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year. Every person who violates this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison. Every person who violates this section after a previous felony conviction under Section 288, or felony conviction under Section 311.4 involving a minor under the age of 14 years is punishable by imprisonment in the state prison for two, four, or six years. In any case in which a person is convicted of violating this section and probation is granted, the court shall require counseling as a condition of probation, unless the court makes a written statement in the court record, that counseling would be inappropriate or ineffective."

B. Elements of the offense

1. Penal Code Section 647.6 - Misdemeanor
 - a. Victim is under the age of eighteen (18), and
 - b. Victim is annoyed or molested (touching is **not** an element of the offense), or
 - c. Any normal person would be annoyed by the conduct (i.e. the victim does not have to be disturbed), and
 - d. The perpetrator must be motivated by an abnormal or unnatural sexual interest in children (this element established by case law, not statutory law)
2. Penal Code Section 647.6 - Felony/Misdemeanor
 - a. Same as Penal Code Section 647.6 - Misdemeanor **and**

b. Violation occurs after perpetrator enters, without permission, an inhabited portion of any other building or trailer coach (as defined in Vehicle Code Section 635), or

c. Upon a second or subsequent conviction of this section.

C. Definition of terms

1. Annoy: To disturb or to irritate, especially by repeated or continued acts.

2. Molest: This term is synonymous with the term "annoy"

NOTE: "Touching" is not a required element of the offense

D. Crime classification

1. Misdemeanor unless additional conduct as cited above

2. Felony/Misdemeanor if a building is entered or with a prior conviction for this offense.

3. Felony is prior conviction for Penal Code Section 288 or Section 311.4 involving minor(s) under fourteen (14).

E. Statute of limitations

1. Misdemeanor

a. One year, except

b. Two years if the victim is under fourteen (14) years of age

2. Felony and felony/misdemeanor

a. Three (3) years

POSSESSION OF CHILD PORNOGRAPHY

Given a word picture depicting the possible possession or control of child pornography, the student will identify if the crime is complete and, if it is complete, identify it by its common name and crime classification. (Penal Code Section 311.11)

Performance Objective 3.21.9

CURRICULUM

- A. Possession or control of matter depicting a person under the age of 14 years engaging in or simulating sexual conduct (Child Pornography Possession) Penal Code Section 311.11

1. Penal Code Section 311.11(a):

"Every person who knowing possesses or controls any matter, the production of which involves the use of a person under the age of 14 years, knowing that the matter depicts a person under the age of 14 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both such fine and imprisonment."

2. Penal Code Section 311.11(b):

"If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment to two, four, or six years."

3. Penal Code Section 311.11(c):

"It is not necessary to prove that the matter is obscene in order to establish a violation of this section."

4. Penal Code Section 311.11(d):

For the purposes of this section, matter as defined in subdivision (b) of Section 311, also includes developed or undeveloped film, negatives, photocopies, filmstrips, slides, and videotapes, the production of which involves the use of a child under the age of 14 years. This section shall not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor shall it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction."

- B. Elements of the offense

1. Penal Code Section 311.11(a) - Misdemeanor

- a. Knowingly possesses, or
- b. Controls
- c. Any matter
 - (1) Depicting a child under the age of fourteen (14) years
 - (2) Personally engaging in, or simulating sexual conduct per Penal Code Section 311.4(d):
 - (a) Sexual intercourse
 - (b) Oral copulation
 - (c) Anal intercourse
 - (d) Anal oral copulation
 - (e) Masturbation
 - (f) Bestiality
 - (g) Sexual sadism
 - (h) Sexual masochism
 - (i) Penetration of the vagina or rectum by any object in a lewd or lascivious manner.
 - (j) Exhibition of the genitals, pubic or rectal area for the purpose of sexual stimulation of the viewer.
 - (k) Any lewd and lascivious act as defined in Penal Code Section 288.
 - (l) Excretory functions performed in a lewd or lascivious manner.
 - (m) The above list applies whether or not any of the conduct is performed alone or between members of the same or opposite sex, or between humans and animals.
 - (n) An act is simulated when it gives the appearance of being sexual conduct.

2. Penal Code Section 311.11(b) - Felony

- a. Same elements as above **and**
- b. Second and subsequent conviction of Penal Code Section 311.11

C. Definitions

1. "Any matter" includes:

- a. Developed and undeveloped film
- b. Negatives
- c. Photocopies
- d. Filmstrips
- e. Slides
- f. Videotapes

2. "Any matter" DOES NOT include:

- a. Drawings
- b. Figurines
- c. Statues
- d. Any film rated by the Motion Picture Association of America

3. "Any matter" DOES NOT apply to:

- a. Live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

D. Crime classification

- 1. Penal Code Section 311.11(a) - Misdemeanor
- 2. Penal Code Section 311.11(b) - Felony

E. Statute of limitations

- 1. Penal Code Section 311.11(a)
 - a. One (1) year
- 2. Penal Code Section 311.11(b)
 - b. Three (3) years

UNLAWFUL SEXUAL INTERCOURSE

Given a word picture depicting unlawful sexual intercourse, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification.
(Penal Code Section 261.5)

Performance Objective 3.21.10

CURRICULUM

- A. Text of 261.5 Penal Code Section: Unlawful Sexual Intercourse with a female under age 18

"Unlawful sexual intercourse is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years."

- B. Element of the offense

1. A person engages in sexual intercourse
2. With a female person
3. The female is not the perpetrator's wife
4. The female was under the age of eighteen (18)

- C. Crime classification

1. Felony/Misdemeanor

- D. Statute of limitations

1. Three (3) years

REPORTING REQUIREMENTS OF SUSPECTED CHILD ABUSE

Given a word picture depicting the possible abuse of a child (as defined by Penal Code Section 11165.6), the student will identify whether the circumstances would require an officer who has knowledge of the incident to make an immediate telephonic report and written report within 36 hours to one or both of the following agencies: (a) child protective services (usually located in the County welfare department or probation office), or (b) the district attorney. (Penal Code Sections 11166(a), 11166(e), and 11166(g))

The reporting requirements are:

- A. Officers who know or reasonably suspect that a child has been abused must report the known or suspected abuse to child protective services immediately or as soon as practically possible and must also provide a written report within 36 hours. (NOTE: When the abuser is someone responsible for the child's welfare, the investigation is conducted by child protective services. In contrast, when the abuse is a stranger, the investigation is conducted by the local law enforcement agency in the jurisdiction where the offense occurred.)
- B. Officers or their agencies are also required to report every known or suspected instance of child abuse, except general neglect as defined in Penal Code Section 11165.2(b), to the district attorney

Performance Objective 3.21.11

CURRICULUM

- A. Child abuse reporting, peace officer responsibility Penal Code Section 11166(g)
 - 1. A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and the District Attorney's Office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported to the County Welfare Department.
 - 2. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.
 - 3. A law enforcement agency shall also send a written report thereof within 36 hours of receiving information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

B. Reporting requirements:

1. Shall make telephone notification concerning the incident **immediately or as soon as practical.**
2. To the investigating child welfare agency **and** to the District Attorney's Office, or
3. To the County Welfare Department (for acts or omissions coming within the provisions of Penal Code Section 11165.2).
4. Follow the telephone notification with a written report within 36 hours.

NOTE: Instruction concerning the reporting obligation should refer students to their agency or regional policy. The lack of 24 hour child protective services in some jurisdictions, for example, may impact what constitutes "immediate" notification.

C. Child protective agency defined in Penal Code Section 11165(k)

1. "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

FAILURE TO REPORT SUSPECTED ABUSE

Given a word picture depicting a situation where an officer may have failed to make a required report of child abuse, the student will identify if the crime is complete, and if it is complete, will identify it by its common crime name and crime classification (Penal Code Section 11172(e))

Performance Objective 3.21.12

CURRICULUM

A. Penal Code 11172(e): Failure to initiate required reports

Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months and by a fine of not more than one thousand dollars (\$1,000) or by both.

B. Criminal sanctions

1. Misdemeanor
2. Punishable by six (6) months in jail and/or,
3. A one thousand dollar (\$1,000) fine.

C. Civil sanctions

1. General liability
2. Punitive liability

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Child Abuse Reporting

Case Law - Entering a Home Without a Warrant on Child Abuse
Cases

Re: Penal Code Section 273

Crimes Against Children - Penal Code Section 288

CHILD ABUSE REPORTING

ARTICLE 2.5.

DEFINITIONS:

Section 11165. Child Defined

As used in this article:

(a) "Child"

Means a person under the age of 18 years.

(b) "Sexual assault"

Means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect"

Means 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.

(1) "Severe neglect"

Means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of a child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect"

Means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child"

Means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury"

Means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care"

Means situations of physical injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent, or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse"

Means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian"

Means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee or any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel or residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner"

Means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner"

Means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines or treats children.

(k) "Child protective agency"

Means a police or sheriff's department, a county probation department, or a county welfare department.

Section 11166. Report; duty; time

- (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, or employee of a child protective agency who has knowledge of or 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 the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that is objectively reasonable for a person to entertain such as 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.
- (b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.
- (c) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.
- (d) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.
- (e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.
- (f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse as defined in Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse report to it, except acts of omissions coming within the provision of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof with 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(Add by Stats. 1980, c. 1071 Section 4. Amended by Stats. 1981, c. 435, Section 2.)

Section 11167. Report; contents

- (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.
- (b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.
- (c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only when needed for court action initiated under Section 232 of the Civil Code, or Section 300 of the Welfare and Institutions Code, or in a criminal court order or between child protective agencies.

(Added by Stats. 1980, c. 1071, Section 4. Amended by Stats. 1981, c. 435, Section 3.)

Section 11168. Written report; forms

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies.

(Added by Stats. 1980, c. 1071, Section 4.)

Section 11169. Preliminary reports to Department of Justice; unfounded reports

A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of known or suspected child abuse which it investigates, other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

(Added by Stats. 1980, c. 1071, Section 4. Amended by Stats. 1981, c. 435, Section 4.)

Section 11170. Notice to child protective agency of information maintained; indexed report

The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the known or suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of known or suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(Added by Stats. 1980, c. 1071, Section 4. Amended by Stats. 1981, c. 435, Section 5.)

Section 11172. Immunity from liability; failure to report; offense

- (a) No child care custodian, medical practitioner or nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of the photographs.
- (b) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, is required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars (\$500) or by both.

(Added by Stats. 1980, c. 1071, Section 4. Amended by Stats. 1981, c. 135, Section 1; Stats. 1981, c. 435, Section 6.)

Section 11174. Guidelines

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (f) of Section 11165, in group homes or institutions and shall ensure that every investigation of alleged child abuse coming within that definition is conducted in accordance with the regulations and guidelines.

(Added by Stats. 1980, c. 1071, Section 4. Amended by Stats. 1981, c. 435, Section 7.)

CASE LAW - ENTERING A HOME WITHOUT A WARRANT ON CHILD ABUSE CASES

Case law People vs. Roberts (47 Cal App 2d 374 (1956))

Officers gained entry into an apartment where they heard moans and reasonably believed that someone inside was in distress and in need of assistance. They entered for the purpose of giving aid. "Necessity often justifies an action which would otherwise constitute a trespass as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose."

Case law People vs. Roman (256 Cal App 2d 656 (1967))

An officer, investigating a complaint of child beating, saw through the open door of an apartment a two-year-old child laying on the floor, apparently unconscious. The officer entered the apartment and examined the child. The child had fresh welts on the back of his neck and blood around his nose. When asked if his dad hit him the child sobbed, "yes."

"A peace officer may arrest without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not the felony has in fact been committed (Penal Code Section 836(3)). Child beating likely to produce great bodily harm or death is a felony. (Penal Code Section 273a (1)).

RE: 273 PENAL CODE

"By applying the 'rule of reason' to the whole (of the) provisions, we construe its meaning as a whole to condemn the intentional placing of a child, or permitting him to be placed, in a situation in which serious physical danger or health hazard to the child is reasonably foreseeable. This is the construction of intent which the context of the statute as a whole justified, and so construed we find it not void for vagueness."

Siblings of abused minors can also be taken into custody under this case law.

County of Los Angeles Department of Public Social Services vs. David Biggs and Serenia Robinson (In re Biggs) 17 CA 3d 337, 94 CR 519 (1971)

Where mother's boyfriend (Paris), who lived with mother and children, was responsible for the child's bruised and battered condition, the mother's failure to protect her son from the consistent cruelty of another adequately supported the Juvenile Court's determination that son was a dependent. Dependency of daughter, who was not physically beaten, was adequately supported, since her witnessing of the beatings would endanger her emotionally.

The Court went on to state, "It is difficult to conceive that Serenia could not be emotionally scarred by witnessing the constant acts of cruelty upon her brother. Appellant's neglect in protecting David physically is thus neglect in not protecting Serenia emotionally."

"Until Appellant...terminated her relationship with Paris, there remained the strong possibility that he would transfer his sadism to any other juvenile available. He had already done so in the Palmer child case (a prior unrelated case). So long as that possibility exists, the Juvenile Court's obligation to the minor requires that Serenia be removed as a possible victim."

Generally, the construction of the Court's intent here has been that when one child in family (or similar such institution) is abused (in any fashion) there is a failure on the part of that family to protect and it is presumed that any and all other children there might be endangered. Therefore it is legally acceptable and proper perhaps, required, at times to remove all other siblings living therein.

Section 11110.Record of reports of suspected infliction of physical injury upon minor and arrests for convictions of violation of Section 273a [and records of other child abuse in Penal Code Sections 11166 and 11172]

The Department of Justice shall maintain records of all reports of suspected infliction of physical injury upon a minor by other than accidental means and reports of arrests for, and convictions of, violation of Section 273a. On receipt from a city police department, sheriff or district attorney of a copy of a report of suspected infliction of physical injury upon a minor by other than accidental means received from a physician and surgeon, dentist, resident, intern, chiropractor, religious practitioner, registered nurse employed by a public health agency, school, or school district, director of a county welfare department, or any superintendent of schools of any public or private school system or any principal of any public or private school, the department shall transmit to the city police department, sheriff or district attorney, information detailing all previous reports of suspected infliction of physical injury upon the same minor or another minor in the same family by other than accidental means and reports of arrests for, and convictions of violation of Section 273a, concerning the same minor or another minor in the same family.

The department may adopt rules governing record keeping and reporting under Section 11161.5.*

CRIMES AGAINST CHILDREN - Penal Code Section 288

PEOPLE v ROBERTS 25 A. 3d 385 (1972)

Defendant instructs five children, ages eight to thirteen, to engage in sexual activities with themselves and one another. The Court held that the defendant himself need not have physical contact with any child in order to be an aider and abettor. Prosecution of the defendant was upheld.

PEOPLE v AUSTIN 111 A. 3d 110 (1980)

Defendant approaches victim while holding a knife in his hand, victim and other children run away. Defendant approaches victim hiding in a bush and asks, "Do you want to make a couple of bucks?" Victim fearfully acquiesces and takes down her panties as told by the defendant. Defendant gives victim one dollar and asks if she would like to make another by letting him touch her. Victim declines and leaves.

Concluding that the child touched herself in removing her panties, and that such was done at the direction of the defendant through coercion of the knife's presence and enticement of a monetary reward, the defendant was responsible for the offense of Penal Code Section 288 occurring and that prosecution was proper.

Generally, the construction of the Courts' intents in these cases is that while the act of touching must exist in order for the offense to be complete, touching need not be done directly by the defendant, but rather need only be done at his instigation. This can occur either by causing an otherwise innocent third party to touch a child or by causing the child to touch him/herself.

ADDITIONAL REFERENCES

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California Reporter, West Publishing Company, St. Paul, Minnesota

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St. Paul, Minnesota.

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