

ASSOCIATION OF SCHOOL PSYCHOLOGISTS OF PENNSYLVANIA
PROMOTING BEST PRACTICES IN SCHOOL PSYCHOLOGY

Child Abuse Prevention Toolkit

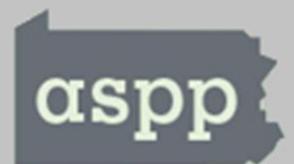


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Introduction

Dear ASPP Membership:

As psychologists we have legal, ethical and moral obligations to our community. As members of our community we have ethical and moral obligations to our community. Some resources regarding child sexual abuse follow. These types of resources, alone, often will not be enough to insure you do the “right thing” (that is, legally, ethically, morally,). **Always** turn to another. **Always** consult with a peer. Secrets **never** serve a family. Secrets **never** serve a community.

Important to remember: **anyone may report abuse**. One can use Childline (1-800-932-0313) to help determine if something should be reported. Simply call them and describe what you know (without sharing your or anybody’s name) with the person taking your call to take advantage of their experience in this area.

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I. Pennsylvania Statutes

Sexual Abuse of Children (18 Pa. C.S. § 6312)

- a) Definition – As used in this section, "prohibited sexual act" means sexual intercourse as defined in 18 Pa. C.S. § 3101, masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.
- b) Photographing, videotaping, depicting on computer or filming sexual acts – Any person who causes or knowingly permits a child under the age of 18 years of age to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know, or intends that such act may be photographed, videotaped, depicted on computer, or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.
- c) Dissemination of photographs, videotapes, computer depictions, and films – Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays, or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.
- d) Possession of Child Pornography – Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

Unlawful Contact with a Minor (18 Pa. C.S. § 6318)

- a) Offense defined – A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

Any of the offenses enumerated in 18 Pa. C.S. § 3101 et seq. (relating to sexual offenses);

- Open lewdness as defined in 18 Pa. C.S. § 5901 (relating to open lewdness);
- Prostitution as defined in 18 Pa. C.S. § 5902 (relating to prostitution and related offenses);

- Obscene and other sexual materials and performances as defined in 18 Pa. C.S. § 5903 (relating to obscene and other sexual materials and performances);
- Sexual abuse of children as defined in 18 Pa. C.S. § 6312 (relating to sexual abuse of children); or
- Sexual exploitation of children as defined in 18 Pa. C.S. § 6320 (relating to sexual exploitation of children).

Sexual Exploitation of Children (18 Pa. C.S. § 6320)

- a) Offense defined – A person commits the offense of sexual exploitation of children if he or she procures for another person a child under 18 years of age for the purpose of sexual exploitation.
- c) Definitions
- "Procure" – To obtain or make available for sexual exploitation.
 - "Sexual exploitation" – Actual or simulated sexual activity or nudity arranged for the purpose of sexual stimulation or gratification of any person.

Rape (18 Pa. C.S. § 3121)

- a) Offense defined – A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
- By forcible compulsion;
 - By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
 - Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants, or other means for the purpose of preventing resistance; or
 - Who suffers from a mental disability which renders the complainant incapable of consent.

(c) Rape of a Child – A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

Involuntary Deviate Sexual Intercourse (18 Pa. C.S. § 3123)

- (a) Offense defined – A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:
- By forcible compulsion;
 - By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - Who is unconscious or where the person knows that the complainant is

- unaware that the sexual intercourse is occurring;
- Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants, or other means for the purpose of preventing resistance;
- Who suffers from a mental disability which renders him or her incapable of consent;
- Who is less than 13 years of age; or
- Who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

Suspected child abuse—mandated reporting requirements (23 Pa.C.S. § 6311)

- a) General rule – Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensees who, in the course of the employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.
- b) Staff members of public or private agencies, institutions and facilities – Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensee, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).
- c) Reporting procedure – Reports of suspected child abuse shall be made by telephone and by written report.
 - 1) *Oral reports* – Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.
 - 2) *Written reports* – Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.
- d) *Written reports* – Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be

included in the written reports, if available:

- 1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.
 - 2) Where the suspected abuse occurred.
 - 3) The age and sex of the subjects of the report.
 - 4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.
 - 5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.
 - 6) Family composition.
 - 7) The source of the report.
 - 8) The person making the report and where that person can be reached.
 - 9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
 - 10) Other information which the Department of Public Welfare may require by regulation.
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II. Mandated Reporting of Child Sexual Abuse in Pennsylvania

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On November 29, 2006, Governor Rendell signed a bill amending a number of statutes relating to the abuse of children. This bill became effective on May 28, 2007. As outlined in a number of past articles (Knapp & Tepper, 2007; Knapp, 2007), this bill, in part, contains amendments to the Child Protective Services Law, the Pennsylvania statute that governs the mandatory reporting of suspected child abuse (23 Pa. C.S.A. §6301). Under the newly amended statute, it now is necessary to report suspected abuse committed by any person, not only suspected abuse committed by persons falling within the statutory definition of “perpetrator.” In addition, when a report is made regarding a non-statutory perpetrator, the child welfare agency immediately must transmit this information to law enforcement officials, thereby raising the possibility of a subsequent criminal investigation.

This expansion of the reporting of suspected abuse raises a number of issues associated with the treatment of sexually active patients under the age of 18. That is, if a less-than-18-year-old patient reports forced sexual contact with any individual, a report of suspected abuse is indicated. If a less-than-18-year-old patient reports consensual sexual contact, however, a review of the ages of the parties, and the nature of the sexual contact, is necessary prior to reporting any suspected sexual abuse.

Under the newly amended statute, sexual abuse includes any of the following offenses committed against a child:

- I. rape
- II. sexual assault
- III. involuntary deviate sexual intercourse
- IV. aggravated indecent assault
- V. molestation
- VI. incest
- VII. indecent exposure
- VIII. prostitution
- IX. sexual abuse
- X. sexual exploitation.

Given these enumerated offenses, it is necessary for the psychologist to have a

working knowledge of the criminal definitions of these sexual activities. For this reason, a number of these offenses will be explored in greater detail in the following paragraphs.

In the offense of rape, a distinction is made between a child who is less than 13 years of age and a child who is 13 years of age or older. If a person, under any circumstances, engages in sexual intercourse with a child who is less than 13 years of age, a rape has occurred. Under these circumstances, no force is required. If a person engages in sexual intercourse with a child 13 years of age or older, the sexual intercourse must be accompanied by forcible compulsion or the threat of forcible compulsion to be classified as rape.

Sexual assault is defined as engaging in sexual intercourse or deviate sexual intercourse (sexual intercourse by mouth or anus; or penetration, however slight, of the genitals or anus of another person with a foreign object) without the child's consent. Proof of physical force is not necessary. Rather, it merely is required that the child has not consented to the sexual contact. This statute applies to all persons above and below the age of 18.

In involuntary deviate sexual intercourse, a distinction is made between a child who is less than 13 years of age and a child who is 13 years of age or older. If a person engages in deviate sexual intercourse with a child who is less than 13 years of age, involuntary deviate sexual intercourse has occurred. Under these circumstances, no force is required. If a child 13 to 15 years of age engages in deviate sexual intercourse with a person four or more years older than the child, involuntary deviate sexual intercourse has occurred. Under these circumstances, no force is required. Deviate sexual intercourse with a child 16 years or older without force does not constitute involuntary deviate sexual intercourse.

In aggravated indecent assault, a person who engages in penetration, however slight, of the genitals or anus of a child with a part of the person's body commits aggravated indecent assault. If a person engages in such contact with a child who is less than 13 years of age, and aggravated indecent assault has occurred. If the child is 13 to 15 years of age, and the person is four or more years older than the child, an aggravated indecent assault has occurred. If this activity occurs with consent and without force with a child 16 years or older, there is no aggravated indecent assault.

In the criminal code, incest is defined as sexual intercourse with an ancestor or descendent, a brother or sister of whole or half blood, or an uncle, aunt, nephew, or niece of whole blood. In incest, there are no age restrictions associated with the sexual activity. Thus, consensual sexual intercourse by a whole or half blood sibling with a sibling under the age of 18 constitutes incest.

Overall, the discussion of sexual activity with patients less than 18 years of age requires careful clinical consideration. If the minor patient reports forced sexual contact, a report of suspected child abuse is indicated. In cases of consensual sexual contact, a more careful analysis is required. In such situations, the psychologist must gather

information pertaining to the facts of the case, the ages of the participants, the type of sexual activity, and the relevant criminal statutes. The psychologist then must apply this information to the requirements of the child abuse reporting statute. When confronted with such treatment situations, therefore, outside consultation or legal advice may be necessary to explore the clinical, ethical, and legal issues related to the reporting of suspected child sexual abuse.

References

Knapp, S. (2007, April). Changes in the Child Protective Services Law will go into effect on May 28, 2007. *Pennsylvania Psychologist*, 3.

Knapp, S., & Tepper, A.M. (2007, January). Pennsylvania's mandatory child abuse reporting statute amended. *Pennsylvania Psychologist*, 1.

III. Changes in Child Protective Services Law Effective in 2007

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As reported in the January *Pennsylvania Psychologist*, Pennsylvania's Child Protective Services Law was amended last year. Two of the major changes in the law are that mandated reporters are required to report whenever a child is under their care, or the care or supervision of their agency, institution, or organization. Since most psychologists work for agencies where everyone is already a mandated reporter, this is likely to alter the actual reporting duties of psychologists very little. The second change is that psychologists and other mandated reporters will be required to report whenever a child has been the victim of a serious crime involving sexual abuse or exploitation or serious physical assaults, even if such actions were not done by a caregiver of the child.

The mandate to report serious crimes against children will impact on how psychologists respond to self-reports of sexual activities for some children under the age of 16. For example, psychologists must report when children are the victims of involuntary deviate sexual intercourse which includes, among other things, otherwise consensual sex when a person "is less than 13 years of age; or . . . less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other" (18 Pa. C.S. §3123 (a)). Therefore, according to Pennsylvania law, any adult may legally have a consensual sexual relationship with any minor who is 16 years old or older. Also, it is legal for minors ages 13, 14, or 15 to have consensual sexual relationships with anyone who is up to four years older than him or her. For example, a 15-year-old child may legally have consensual sexual relationships with a person who is 18 years old (or even 19 if there is less than four years' difference in their ages). In contrast, a 16 year-old may legally have consensual sexual relationships with anyone regardless of age.

However, most other aspects of the law remain the same. A child is still defined as an individual who is under the age of 18. There still must be a professional relationship with the child (e.g., the child must be under the care, supervision or direction of the mandated reporter or the agency of the mandated reporter). Child abuse is still defined as involving physical abuse (non-accidental injury within the last two years), sexual abuse or exploitation, neglect, or emotional abuse. As with the previous law, a report of child abuse is also mandated when a child is in imminent danger of being abused. The duty to report abuse remains at the level of "reason to suspect." Furthermore, the *Emerich* decision still applies in Pennsylvania, meaning that any time a patient makes a threat of imminent danger against an identifiable third party (even if that party is a child), a psychologist is obligated to take affirmative actions to protect that third party.

Here are some common situations that psychologists may encounter when treating children. Indicate whether or not the psychologists would be a mandated reporter under the new provisions that go into effect on May 28, 2007. The answers can

be found below.

Vignettes

1. A psychologist is on vacation and sees an adult (apparently the child's mother) pummeling a small child with her fists and appearing to inflict serious damage on the child.

2. A psychologist who is treating both a parent and child talks to the parent, who reports that, four or five years ago, he lost control, grabbed his son, and twisted his arm so hard that it broke.

3. A psychologist who is treating both a parent and child talks to the parent, who reports that, 18 months ago, he lost control, grabbed his son, and twisted his arm so hard that it broke.

4. While conducting an evaluation in the schools, a psychologist talks to a teenage girl who reports that her mother's live-in boyfriend has engaged in sexual contact with her.

5. While conducting an evaluation in the schools, a psychologist talks to a teenage girl who reports that her mother lost control and slapped her very hard.

6. While conducting an evaluation in the schools, a psychologist talks to a pre-adolescent boy who gives a highly credible report that his father has threatened to break his arm unless he starts behaving better in school.

7. While conducting an evaluation in the schools, a psychologist talks to a teenage girl who reports that her mother's live-in-boyfriend has engaged in sexual contact with her younger sister.

8. While conducting an evaluation in the schools, a psychologist talks to a 14 year-old girl who reports that her 26 year-old next-door neighbor has engaged in sexual contact with her.

9. A 16-year-old student in high school reports to her psychologist that she has been involved sexually with a 26 year-old man.

10. A 12 year-old tells her psychologist that she has been involved sexually with an 18 year-old boy.

11. A psychologist working in an agency learns that his patient, the mother, has been abusing her child. The child is currently being seen by another therapist in the agency.

Answers to Child Protective Services Vignettes

1. No. The child was not seen in the professional capacity of the psychologist.
2. No. The limit on non-accidental physical injury is two years.
3. Yes. The limit on non-accidental physical injury is two years.
4. Yes. The child is under 18 and the perpetrator qualifies under the CPSL.
5. No, unless the slap caused serious permanent disfigurement or protracted loss or impairment of any bodily member or organ.
6. Yes. The imminent threat of non-accidental injury qualifies as abuse.
7. If the younger sister is a student in the same school district as is employing the psychologist, the school psychologist would be mandated to report.
8. Yes, under the new law. Under the old law, a psychologist would not be obligated to report this.
9. No. Anyone who is 16 or older can legally consent to sexual relationships with anyone else, regardless of age.
10. Yes. No one who is under the age of 13 can legally consent to sexual intercourse.
11. Yes. Since the child is being seen in the agency, institution, or organization where the psychologist works, the psychologist treating the mother would be a mandated reporter, which means either making the report himself or herself, or causing a report to be made.

Modified from an article in *The Pennsylvania Psychologist*, April 2007.

IV. Sexual Crimes Against Children That Trigger Abuse Reports

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In 2007 the Pennsylvania General Assembly recently revised Pennsylvania's Child Protective Services Law in a way that impacts the mandated reporting requirements of psychologists. One substantive change is that all mandated reporters are now required to report sexual abuse or serious physical abuse committed by non-caregivers of children to law enforcement authorities. Previously, the Child Protective Services Law required a report only when the abuse was committed by a "perpetrator," which was defined as a person who has committed child abuse and is a parent of a child, the paramour of the child's parent, a person responsible for the welfare of the child, or an individual over the age of 14 living in the same home as the child. Now the report has to be made regardless of whether the person who committed the abuse was or was not a caregiver. Mandated reporters of suspected child abuse by non-caregivers will still make the report to Childline (1-800-932-0313). However, the report will not be investigated by Children and Youth, but will be passed on to law enforcement officials.

The definition of "physical abuse" remained the same as in the current law. Physical abuse or "non-accidental injury" is defined as any action within the last two years that causes severe pain, disfigurement, protracted loss of a bodily member or organ, or significantly impairs a child's functioning, either temporarily or permanently.

However, "sexual abuse" was redefined in the Child Protective Services Law and now includes rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, sexual abuse, and sexual exploitation. Psychologists need to be especially certain that they understand the definition of involuntary deviate sexual intercourse now that there is a requirement to report sexual abuse from non-caregivers.

PPA has encountered numerous questions from psychologists about how to interpret the Child Protective Services Law, especially in light of the 2007 amendments. Several of our letters to the Office of Children and Youth asking for clarification have gone unanswered, other than to acknowledge that the letters were received and a response will be formulated later. In situations where we are uncertain of the response, we have urged psychologists to call ChildLine to discern their opinion of the mandatory reporting obligations. Nonetheless, many standards within the amended law are clear.

Among other things, involuntary deviate sexual intercourse includes otherwise

consensual sex when a person “is less than 13 years of age; or . . . who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other” (P. S. 18, Section 3121 (a)). Therefore, according to Pennsylvania law, any adult may have consensual sexual relationship with any minor who is 16 years old or older without engendering a mandated report. Also, it is legal for a minor ages 13, 14, or 15 to have consensual sexual relationships with anyone who is up to four years older than him or her. For example, a 15-year-old child may legally have consensual sexual relationships with a person who is 18 years old (or even 19 if there is less than four years’ difference in their ages). However, a 16-year-old may legally have consensual sexual relationships with anyone regardless of age without engendering a mandate to report. According to Pennsylvania law, involuntary deviate sexual intercourse refers to "penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than a good faith medical, hygienic or law enforcement procedure." Involuntary deviate sexual intercourse also includes fellatio or cunnilingus.

Incest is defined as sexual intercourse with "an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. The relationships include blood relationships without regard to legitimacy, and relationship of parent and child by adoption." Prostitution also includes promoting prostitution by "encouraging, inducing or otherwise intentionally causing another to become or remain a prostitute."

Finally, sexual abuse of children includes a wide range of sexual activities with children including masturbation, sadism, masochism, bestiality, fellatio, or lewd exhibition of genitals "for the purpose of sexual stimulation or gratification." It also includes "photographing, videotaping, depicting on computer or filming sexual acts. . . dissemination of photographs, videotapes, computer depictions and films. . [and] possession of child pornography."

It is recommended that psychologists who treat children routinely inform the parents and child of the general nature of the mandated reporting requirements under the Child Protective Services Law.

Is This Reportable? ⁱ

1. A 12-year girl reports that she voluntarily engaged in sexual intercourse with a 15 year old boy.
2. A 14-year old girl reports that she engaged in “heavy petting” with her 20-year old boyfriend, which included his touching her breasts.
3. A 14-year old girl reports that she engaged in “heavy petting” with her 20 year old boyfriend which included fellatio.
4. A 15-year old boy reports that he had sexual intercourse with a 19 year old woman.
5. A 17-year old boy reports that he had sexual intercourse with his 19 year old aunt.
6. A parent suggests to a girl that she can make extra money as a prostitute.
7. A 14-year old girl had sexual intercourse with her 17 year old boyfriend.

Answers

1. Reportable. No child under the age of 13 can give legal consent to engage in sexual intercourse.
2. Not Reportable.
3. Reportable since this form of sexual contact falls within the category defined in the statute of “aggravated indecent assault,” the girl is under the age of 16, and there is more than 4 years age difference between her and her partner.
4. It depends on the birthday of the parties involved. This is not reportable if the age turns out to be less than 4 years difference between them.
5. Reportable as incest that is defined to include, among other things, sexual intercourse with aunts or uncles.
6. Reportable as violating the statute against prostitution that includes encouraging or inducing persons to become prostitutes.
7. Not Reportable as there is less than 4 years of age difference between the parties.

¹ For purposes of these questions, we are assuming that the child was seen in the context of a professional relationship with a psychologist.

V. Child Sexual abuse fact sheets/resources

Child Sexual Abuse: What Parents Should Know

<http://www.apa.org/pi/families/resources/child-sexual-abuse.aspx>

Sexual Abuse: What You Can Do

<http://www.apa.org/topics/sexual-abuse/index.aspx>

Protecting Children from Abuse and Neglect

<http://www.apa.org/pi/families/resources/abuse.aspx>

Understanding and Preventing Child Abuse and Neglect

<http://www.apa.org/pi/families/resources/understanding-child-abuse.aspx>

Signs and Symptoms of child abuse

<http://www.childwelfare.gov/pubs/factsheets/signs.cfm>

Child Welfare: Laws and Policies

http://www.childwelfare.gov/systemwide/laws_policies/

National Association to Prevent Sexual Abuse of Children: Resources in Pennsylvania

http://www.napsac.us/index.asp?Type=B_LIST&SEC={88A6B515-4454-4096-912E-4FB131F60433}
