

**ORANGE COUNTY SOCIAL SERVICES AGENCY  
CFS OPERATIONS MANUAL**

**Effective Date: November 18, 2011**

**Number: A-0205**

**Sexual Abuse Allegations—Child Abuse Registry (CAR)**

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**Purpose** To provide guidelines for screening reports of alleged sexual abuse.

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**Approved** This policy was approved by Gary Taylor, Director of CFS, on November 18, 2011. *Signature on file.*

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**Background** The Child Abuse Registry (CAR) is the initial point of contact for receiving allegations of child abuse and neglect, including allegations of sexual abuse. The decision whether to create a referral regarding alleged sexual abuse requires consideration of the complexities of human sexual behavior and the legal guidelines defining sexual abuse.

The legal guidelines for defining sexual abuse have evolved since California first enacted legislation defining acts of child abuse and the mandated reporting of child abuse in 1963. The initial legislation defined sexual abuse as, without exception, including acts of voluntary sexual activity (e.g., unlawful sexual intercourse or statutory rape as defined in Penal Code Section [§] 261.5). In 1981, this legislation was amended to remove voluntary sexual activity from the definition of sexual abuse.

The Child Abuse and Neglect Reporting Act (CANRA), California’s child abuse legislation enacted in 1988, also did not include voluntary sexual activity as sexual abuse. CANRA was revised in 1997 to include the following as acts of sexual abuse:

- Sexual intercourse between an adult who is 21 years or older and a child under 16 years of age (pursuant to Penal Code § 261.5)
- Lewd and lascivious acts with a child age 14 or 15 by a partner 10 or more years of age (pursuant to Penal Code § 288[c][1])

The current definitions of sexual abuse pursuant to CANRA are included in Penal Code §§ 11165.1-11174.3, which are summarized in the “Legal Mandates” section below.

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**Most Recent Revision** This revision of the Policy and Procedure (P&P) includes:

- Revised definitions of "Developmentally Appropriate" and "Developmentally Inappropriate" sexual behavior in children
- Revised Policy section headings
- New Policy section regarding General Neglect allegations related to:

- Sexual assault by out-of-home perpetrator
  - Voluntary sexual activity
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**Legal Mandates** Penal Code § 11165.1 defines “sexual abuse” as “sexual assault” or sexual exploitation” as defined below.

Penal Code § 11165.1(a) defines "sexual assault" as conduct in violation of one or more of the following Penal Code sections:

- 261, Rape (unwilling or unable to consent)
- 261.5(d), Statutory Rape (unlawful sexual intercourse with a minor under 16 years of age, partner 21 years of age or older)
- 264.1, Rape in Concert (aiding and abetting rape)
- 285, Incest (legal relationship)
- 286, Sodomy, under age 18
- 288(a), (b), (c)(1), Lewd or lascivious acts upon a child under 14 years, and 14-15 years of age when the partner is 10 or more years older
- 288(a), Oral copulation, under 18 years of age
- 289, Forces sexual penetration by an unknown or foreign object (however slight, with or without an object), under 18 years of age
- 647.6, Annoying or molesting a child

Penal Code § 11165.1(b) states that, “Conduct described as ‘sexual assault’ includes, but is not limited to all of the following:

- Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen
- Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person
- Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose
- The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs and buttocks) or the clothing covering them, of a child or of the perpetrator by a child, for the purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caregiver responsibilities, interactions with, or demonstrations of affections for the child, or acts performed for a valid medical purpose
- Intentional masturbation of a perpetrator's genitals in presence of a child"

Penal Code § 11165.1(c) defines “sexual exploitation” of a child as:

- Conduct involving matter depicting a minor engaged in obscene acts in violation of PC § 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of PC § 311.4 (employment of a minor to perform obscene acts)
- Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative slide, drawing, painting or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means:

- Parent
- Guardian
- Foster parent
- Licensed administrator or employee of a public or private residential home, residential school, or other residential institution

- Any person who depicts a child in, or knowingly develops, duplicates, prints, or exchanges any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of PC § 311.3

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## Definitions

**Developmentally Appropriate:** Developmentally appropriate exploration usually occurs in children who are similar age, size, and developmental status. This activity is usually mutual between children in a friendship type relationship. The activity is limited in type and frequency and the child does not exhibit fear, shame, or guilt in their sexual play. Activities may include, *but are not limited to*, touching and looking at each other's bodies, playing doctor, self stimulation, kissing, simulating intercourse, and, in some instances, engaging in sexual intercourse.

There is no single standard for assessing such behavior. Each instance must be assessed based on the characteristics of the child, the nature of the sexual behavior, and the context in which it occurred.

**Developmentally Inappropriate:** Sexual behaviors that are developmentally inappropriate may include, but are not limited to, sexual conduct that exhibits one or more of the following characteristics:

- Sexual knowledge that is advanced for the child's age
- Anger
- Preoccupation with sexual topics or activities
- Coercion
- Violence
- Manipulation
- Secrecy
- Evidence of distress or fear

The behavior may persist over time despite consequences and to the exclusion of normal childhood activities. Additionally, these behaviors may be carried out with another child who is of dissimilar chronological or developmental age, or where there is a power differential within the relationship. Examples include, but are not limited to:

- A five-year-old sexually penetrating another five-year-old with an object
- A kindergartner repeatedly and obsessively masturbating in the classroom, even after being redirected several times for the behavior

**Dissimilar Age:** For purposes of this P&P, an age difference of four or more years. Consider developmental as well as chronological age.

**Similar Age:** Age difference of less than four years. Consider developmental as well as chronological age.

**Voluntary or Mutual:** Behavior that is not forced, coercive, or unwelcome.

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## POLICY

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### **Response Determination**

The CAR Senior Social Worker (SSW) will assess all Child Abuse Reports, including those regarding alleged sexual abuse, and determine whether to:

- Create a referral and assign to Emergency Response (ER) for investigation
- Create a referral and evaluate out to another agency (e.g. law enforcement)
- Document referral as “Information Only” with no further action (when report is from a mandated reporter and allegation does not rise to statutory level of sexual abuse)
- Not document the call

The CAR SSW will consult with a CAR SSSS as necessary when assessing whether to take a referral regarding an allegation of sexual abuse.

### **Referral—ER Investigation**

#### **A. Sexual Abuse Allegation:**

The CAR SSW will create a referral with an allegation of sexual abuse and process for ER investigation regardless of the age of the child or partner or alleged voluntary nature of the sexual contact when any of the following are alleged:

- Incest
- Sexual contact or sexual exploitation by adult caregiver, including
  - Parent or guardian
  - Relative
  - Non-related extended family members
  - Foster parents
  - Group Home staff
  - Any person responsible for daily supervision of child
- Sexual exploitation (as defined in the “Legal Mandates” section above)

#### **B. General Neglect Allegation:**

The CAR SSW will create a referral with an allegation of general neglect by the parent(s)/legal guardian(s) or adult caregiver and process for ER investigation when any of the following are alleged:

- Sexual assault by out-of-home perpetrator. (**Note:** Pursuant to Policy section “Referral-Evaluate Out to Law Enforcement” below, the sexual abuse allegation by the alleged out-of-home perpetrator will be evaluated out to law enforcement)

**-Or-**

- Voluntary sexual activity

**-And-**

- Parent/Legal Guardians/Adult Caregiver knew or reasonably should have known about the sexual activity and is unwilling and/or unable to protect.

**Note:** An allegation of General Neglect by the parent(s), legal guardian(s), or adult caregiver(s) will not be generated when it is reported that the parent(s)/legal guardian(s)/adult caregiver(s) were not aware of the sexual activity or there is insufficient information to determine this.

The CAR SSW will encourage the Reporting Party (RP) to share the information about the alleged sexual abuse or voluntary sexual activity with the parent(s)/legal guardian(s)/adult caregiver(s) and, if the RP indicates the intent to do so, document this in the Screener Narrative.

If the RP is unable or unwilling to discuss this information, the CAR SSW will:

- Refer for a Path 1 “Neighbor-to-Neighbor” response with an agency that is willing to inform the parent(s)/legal guardian(s)/adult caregiver(s) of the alleged sexual abuse or voluntary sexual activity and, as necessary, support the family with appropriate services

**-Or-**

- Cross report to the Sex Crimes Detective in the jurisdiction where the alleged incident occurred and request that they inform the parent(s)/legal guardian(s)/adult caregiver(s) of the alleged sexual abuse or voluntary sexual activity

**Referral—Evaluate Out to Law Enforcement**

The CAR SSW will create a referral alleging sexual abuse and evaluate out to law enforcement when:

- The alleged perpetrator is the child’s school personnel

**-Or-**

- The alleged perpetrator does not reside with the child

**-And-**

- There is sufficient information to determine that the parents are aware of the sexual activity

**-And-**

- The parents are able and willing to protect

**No Referral/ Information Only Referral**

The CAR SSW will evaluate every call to CAR to determine whether the information provided warrants taking a referral. The CAR SSW will not take a referral or will only take an “Information Only” referral from a mandated reporter when the information provided from the person reporting child abuse does not warrant it.

Further, the CAR SSW will not create a referral or will take a referral and evaluate out as “Information Only” (if the report is received from a mandated reporter) when:

- A minor mother, aged 16 or 17, is pregnant or has a child with another minor with whom she is residing under adult supervision (e.g., the parents and/or adult family members of the other minor with whom she’s residing)

**-Or-**

- Two minors are living together under adult supervision (e.g., the parents and/or adult family members of one of the minors) with consent of their parents and they do not have a child

**-And-**

- The minors' parents have made provisions for their support
- There is no domestic violence alleged in the minors' relationship

**Note:** The CAR SSW will generate a referral alleging general neglect, but not sexual abuse, when there is no provision for the minors' support and/or there is domestic violence in their relationship.

**Voluntary Sexual Activity** The CAR SSW will refer to the following grid when assessing whether to create a referral for a Child Abuse Report regarding voluntary sexual activity.

Age of Child	Age of Partner	Type of Activity	Generate Sexual Abuse Referral
<b>Under 14 years</b>	Similar age	Developmentally appropriate	No
		Developmentally inappropriate	Yes (Sexual Abuse by unknown perpetrator)
	Dissimilar age	Any sexual activity	Yes
<b>14 years-16 years</b>	Similar age	Any sexual activity	No
	Dissimilar age	Any sexual activity	Yes
<b>16 years-18 years</b>	Similar age	Any consensual sexual activity	No
	Dissimilar age (over 20 years of age)	Any consensual sexual activity	Yes (Not appropriate for an in-person response) and Evaluate Out sexual abuse allegation to law enforcement

**Assessing Parental Willingness/ Ability to Protect**

The CAR SSW will consider the following when assessing the caregiver's willingness and ability to protect:

A. **Caregiver Factors:**

- Caregiver knew or reasonably should have known of sexual abuse
- Caregiver's relationship with alleged perpetrator involves current or prior:
  - Romantic involvement
  - Financial dependence
  - Blood or legal relationship
  - Abuse by alleged perpetrator to caregiver

- Prior documented history of suspected or substantiated failure to protect
- Substance abuse
- Domestic violence
- Separated from child/physically unavailable
- Mental or physical illness
- Denial of possibility of abuse
- Protective of alleged perpetrator
- Custody dispute
- Caregiver unable to control child (consider child's age and circumstances)

**B. Alleged Perpetrator Factors:**

- Location of alleged perpetrator
  - In or out of home
  - Incarcerated/Duration of incarceration
- Relationship of alleged perpetrator
  - Family member
  - Romantic involvement with either child or caregiver
- History of violent behavior (consider both familial and non-familial violence)
- History of antisocial and/or criminal activity

**Child as Alleged Perpetrator**

The CAR SSW will list a child of any age as an alleged perpetrator of sexual abuse when there is credible information that the child has willfully and knowingly forced sexual activity on another child.

A Child Abuse Report regarding sexual behavior between children that is not age appropriate may be taken as "sexual abuse by an unknown perpetrator" when there is no allegation that one child willfully and knowingly forced sexual activity on another child.

**At-Risk, Sibling Abused Allegation**

The CAR SSW will assess whether to include an allegation of At Risk, Sibling Abused for the sibling of a child for whom there is an allegation of sexual abuse pursuant to CFS E-Dispatch Use of At Risk, Sibling Abused Allegation (A-0206-D).

**Companion-to-Case (C-to-C) Referrals**

The CAR SSW will create a referral with an allegation of sexual abuse for a child with a different mother than the primary alleged victim of sexual abuse when:

- The alleged perpetrator has had access to that child
- And-
- There is a reasonable suspicion that the alleged perpetrator may have sexually abused that child
- And-
- Allegations regarding the primary victim are:
  - Not yet investigated
  - Inconclusive or substantiated

**Structured Decision Making**

The CAR SSW will complete Structured Decision Making (SDM) for allegations of sexual abuse pursuant to CFS P&P Structured Decision Making (D-0311).

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## REFERENCES

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### Attachments and CWS/CMS Data Entry Standards

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

None.

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### Hyperlinks

Users accessing this document by computer may create a direct connection to the following references by clicking on them.

- CFS E-Dispatch Use of At Risk, Sibling Abused Allegation (A-0206-D)
  - CFS P&P Structured Decision Making (D-0311)
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### Other Sources

Other printed references include the following:

None.

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## REQUIRED FORMS

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### Online Forms

Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
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None.

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### Hard Copy Forms

Forms listed below must be completed in hard copy (including multi-copy NCR forms). **For reference purposes only**, links are provided to view these hard copy forms, where available.

Form Name	Form Number
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None.

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### CWS/CMS Forms

The following required forms may **only** be obtained in CWS/CMS. **For reference purposes only**, links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
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None.

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### Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name	Brochure Number
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None.