



Confidentiality and Information Sharing

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Agenda

- Welcome and Introductions
- Information Sharing – Why, When & How
- Victim Safety Considerations
- Overview of Confidential Laws and Privileges
- Consent and Waivers
- Strategies for Handling Requests for Information
- Strategies to keep confidential information confidential
- Questions and Answers
- Alliance Updates

How do we all share information - legally?



Lists reasons why we should share information?

- It helps us deliver services in a more collaborative and integrated way.
- It can increase safety
- It increases access to services for the clients we serve, faster.
- It improves continuity of care and support.

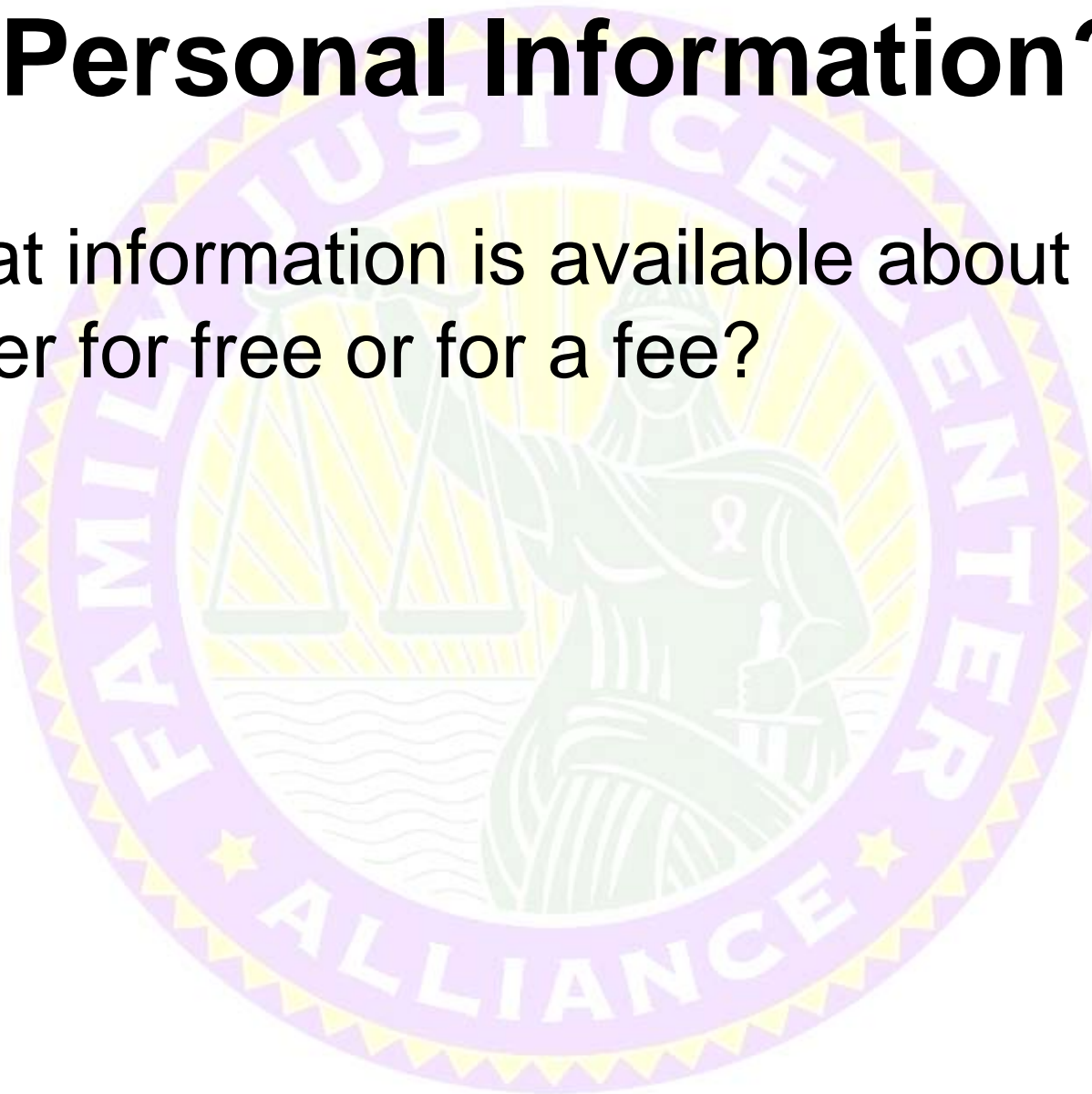
List reasons why we shouldn't share information?

- It can decrease safety
- Potential breach of trust
- Legal Consequences



Personal Information?

- What information is available about you either for free or for a fee?





Pre-Test

Five Simple Questions

Please answer the question using the toolbar on the
gotowebinar window

Police Report?

- Is the victim/client entitled to a free copy of the police report?
 - A. Yes
 - B. No
 - C. Maybe so

Police Report?

- Who else has access to police reports?
 - A. Prosecutors and Defense Attorneys
 - B. Judges
 - C. Probation Officers
 - D. Treatment providers and Victim Compensation Board
 - E. All of the above.

How does the victim's civil attorney get a copy of the police report?

- A. From the police upon request
- B. From the police, with victim's consent.
- C. Victim just gives it to her attorney
- D. Filing an SDT?

What is an SDT?

- A. Sexually disease transmitted
- B. Subpoena Duces Tecum
- C. Stop Domestic Violence Today

The Basic Rule

- Most domestic violence programs adhere to this basic rule:
 - True or False?

A client's information is not shared outside the agency unless the client gives the agency permission to do so.

Reasons Behind the Basic Rule

Reflects three important goals of DV advocacy:

1. Preserve the victim's **safety** to avoid an abusive partner from retaliating against the victim and her children.
2. Provide **privacy** necessary for victims to talk freely with advocates and share details essential to planning for safety.
3. Victim **autonomy and self-determination**. Place control of information in the victim's hands and demonstrate advocates' commitment to autonomy and self-determination.

A Little History to Understand the Strong Feelings

- Child Abuse Movement
- Civil Rights' Movement
- Women's Movement
- Sexual Assault Movement
- Battered Women's Movement
- Family Justice Center Movement

Analysis

- Who's record is it anyway?
- What privilege or law applies?
- What information is sought?
- Is it discoverable?
- Is it protected?
- Who litigates?
- What are the remedies?



Partners

Partners

- Police
- Prosecutors
- Investigators
- Government Advocates
- DV or Sexual Assault Advocate/Counselor
- Medical
- Therapists
- Chaplains
- Paramedics
- Civil Attorney
- Military
- Probation
- FJC Staff
- Volunteers



Privileges

“Privilege”: A Legal Concept

- “Privileged communications:” statements and conversations made under circumstances of assured confidentiality which must not be disclosed.
- Based upon public policy: one should be able to speak freely to certain persons without fear of repercussions.



Overview of Privileged Communications

“Don’t Panic”

Attorney Client Privilege

- 952. As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Physician-Patient

- 992. As used in this article, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes a diagnosis made and the advice given by the physician in the course of that relationship.

Psychotherapist-Client Privilege

- EVIDENCE CODE
SECTION 1010-1027
- 1010. As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be: (a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry. (b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code. (c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature. (d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state. (e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code. (f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code. (g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code. (h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist. (i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist. (j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or

Clergy Penitent Privilege

- EVIDENCE CODE
SECTION 1030-1034
- 1030. As used in this article, a "member of the clergy" means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.
- 1031. As used in this article, "penitent" means a person who has made a penitential communication to a member of the clergy.
- 1032. As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.
- 1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.
- 1034. Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

Spousal Privilege

- 970. Except as otherwise provided by statute, a married person has a privilege not to testify against his spouse in any proceeding.

Spousal Privilege - Exceptions

- 972. A married person does not have a privilege under this article in: (a) A proceeding brought by or on behalf of one spouse against the other spouse. (b) A proceeding to commit or otherwise place his or her spouse or his or her spouse's property, or both, under the control of another because of the spouse's alleged mental or physical condition. (c) A proceeding brought by or on behalf of a spouse to establish his or her competence. (d) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. (e) A criminal proceeding in which one spouse is charged with: (1) A crime against the person or property of the other spouse or of a child, parent, relative, or cohabitant of either, whether committed before or during marriage. (2) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse, whether committed before or during marriage. (3) Bigamy. (4) A crime defined by Section 270 or 270a of the Penal Code. (f) A proceeding resulting from a criminal act which occurred prior to legal marriage of the spouses to each other regarding knowledge acquired prior to that marriage if prior to the legal marriage the witness spouse was aware that his or her spouse had been arrested for or had been formally charged with the crime or crimes about which the spouse is called to testify. (g) A proceeding brought against the spouse by a former spouse so long as the property and debts of the marriage have not been adjudicated, or in order to establish, modify, or enforce a child, family or spousal support obligation arising from the marriage to the former spouse; in a proceeding brought against a spouse by the other parent in order to establish, modify, or enforce a child support obligation for a child of a nonmarital relationship of the spouse; or in a proceeding brought against a spouse by the guardian of a child of that spouse in order to establish, modify, or enforce a child support obligation of the spouse. The married person does not have a privilege under this subdivision to refuse to provide information relating to the issues of income, expenses, assets, debts, and employment of either spouse, but may assert the privilege as otherwise provided in this article if other information is requested by the former spouse, guardian, or other parent of the child. Any person demanding the otherwise privileged information made available by this subdivision, who also has an obligation to support the child for whom an order to establish, modify, or enforce child support is sought, waives his or her marital privilege to the same extent as the spouse as provided in this subdivision.

Sexual Assault Victim-Counselor Privilege

- 1035.2. As used in this article, "sexual assault victim counselor" means any of the following: (a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements: (1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling. (2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, medicine, societal attitudes, crisis intervention and counseling techniques, role playing, referral services, and sexuality. (b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements: (1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling. (2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

Domestic Violence Victim-Counselor Privilege

- EVIDENCE CODE
SECTION 1037-1037.8
- 1037. As used in this article, "victim" means any person who suffers domestic violence, as defined in Section 1037.7. 1037.1. As used in this article "domestic violence counselor" means any of the following: (a) A person who is employed by any organization providing the programs specified in Section 18294 of the Welfare and Institutions Code, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets one of the following requirements: (1) Has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims. (2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1); or is a psychotherapist, as defined in Section 1010. The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims. (b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting victims of domestic violence, and who meets one of the following requirements: (1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in counseling victims of domestic violence. (2) Has the minimum training for counseling victims of domestic violence required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

Human Trafficking Victim-Caseworker Privilege

- EVIDENCE CODE
SECTION 1038-1038.2
- 1038. (a) A trafficking victim, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons: (1) The holder of the privilege. (2) A person who is authorized to claim the privilege by the holder of the privilege. (3) The person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure. The human trafficking caseworker who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under this section. (b) A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally. 1038.1. (a) The court may compel disclosure of information received by a human trafficking caseworker that constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim and that is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator.

Official Information

- **§1040 Privilege for official information**
- (a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.
- (b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and:
 - (1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or
 - (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.
- (c) Notwithstanding any other provision of law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with the provisions of subdivision (k) of Section 1095 and subdivision (b) of Section 2714 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony.
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Exceptions to Privileged Communication

- Waiver by client
- Court order (waive or invoke)
- Child abuse Mandated Reporting (PC11164-11174.4)
- Elder Abuse Mandated Reporting (WI 15630-15632; 15610-15610.65; 15633-15637)
- Domestic Violence Medical Mandated Reporting (PC11166)
- Suicidal – Danger to self (EC1024)
- Tarasoff Warning – Danger to others (CC43.92a)



Mandated Reporting

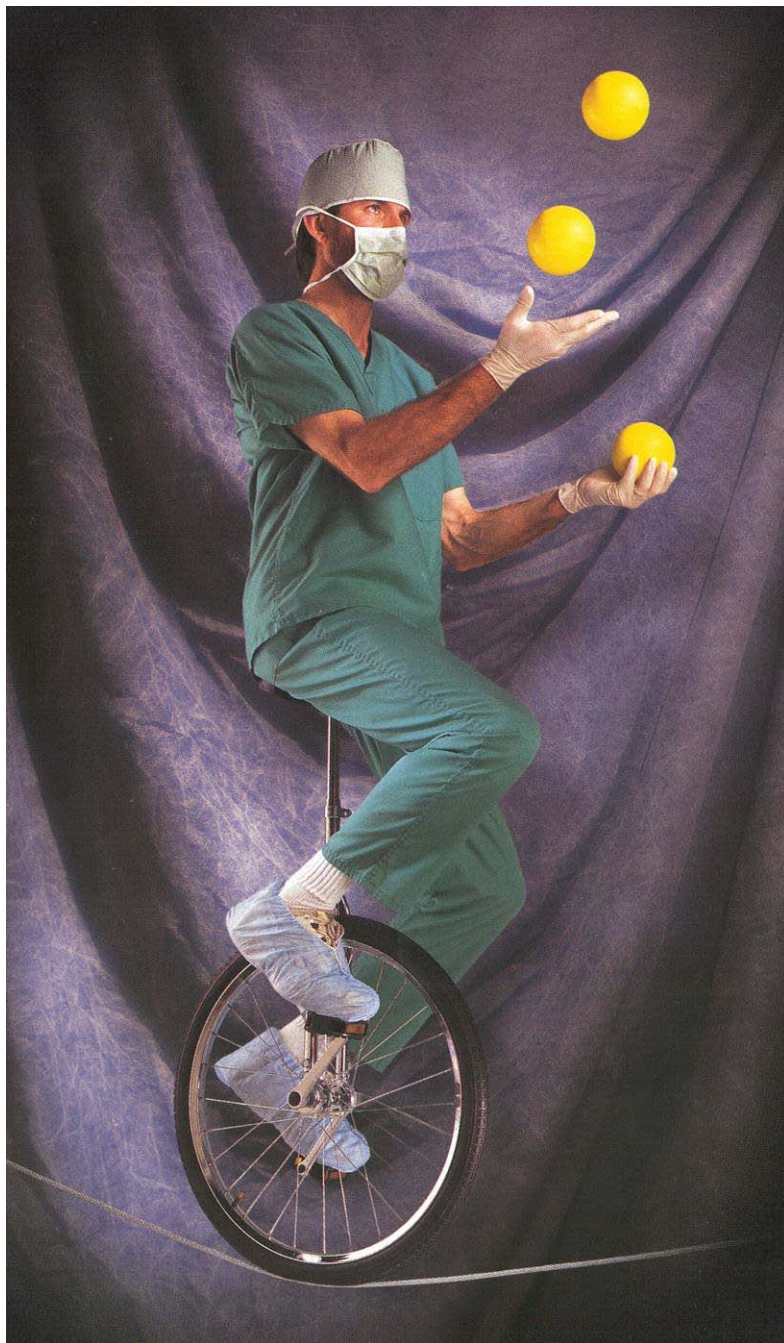
Child Abuse, Domestic Violence
and Elder Abuse

Volunteers & Mandated Reporting

- (b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations **whose duties require direct contact with and supervision of children are not mandated reporters** but are encouraged to **obtain training** in the identification and reporting of child abuse and neglect and are further **encouraged to report** known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.
- (c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.



Medical Mandated Reporting is Controversial



It's a Juggle

- Confidentiality
- Trust
- Ethics
- Legal
- Victim Safety



Opponents Argue Reporting can:

- Put the victim more at risk.
- Prevent the victim from reporting.
- Offend the patient.
- Breach patient-physician confidentiality
- It's not my job.
- I don't have time.
- I'm not comfortable asking about DV.

Proponents Argue Reporting can:

- Save lives.
- Prevent further violence to the victim.
- Break the cycle of violence.
- Lift the burden of reporting off the victim and establish accountability for the offender.
- Prevent child abuse or child endangerment.
- Save time and money.
- Better treatment to patients.
- Avoid civil and criminal liability.



Studies

- 1999, Mandatory reporting laws do not deter patients from seeking medical care.
 - Based on a study of 577 patients.
 - 55% were aware of the law
 - 27% would be more likely to seek medical care because of the law
 - 12% would be less likely to seek medical care for a DV-related injury
 - Houry, Feldhaus, Thorson & Abbott, Ann Emerg Med September 1999;34:336-341

Whether you agree or disagree with mandated reporting, it's the law in California.

- Failure to report is a crime & you can be held civilly & criminally liable.

Key Terms of PC11160

- Health Practitioner
- Medical Services
- Physical Condition or Injury
- Reasonably Suspect Assault or Abuse
- Reporting Requirements
- Confidentiality
- Penalties for Not Reporting

Health Practitioner

- Very broadly defined:
- Physician, Psychiatrist, Dentist
- Chiropractor, Podiatrist
- Optometrist, Marriage Counselor
- EMT, Paramedic, Firefighter, Lifeguard
- Dietitian, Physical Therapist
- Religious Practitioners

Providing Medical Services

- Not defined.
- No case law.
- May include any medical assessment.
 - visual examination.
- May include any form of treatment.

Abusive or Assaultive

- PC11160 lists 23 types of crimes:
- Simple battery or Sexual battery
- Spousal Abuse or Elder Abuse (PC368)
- Assault with a deadly weapon (PC245)
- Rape or Spousal Rape (PC261 or 262)
- Murder or Manslaughter (PC187 or 192)
- Child Abuse (PC273a or 273d) or Child Molestation (PC288)

Physical Condition or Injury

- May include any physical condition.
- Includes any self inflicted injury by firearm or assault.
- Includes any injury inflicted by another by firearm or assault.
- Does not include any psychological or physical condition brought about solely through the voluntary use of drugs.
- Does not require a visible injury.

Know or Reasonably Suspect Assault or Abuse

- “... it is objectively reasonable for a person to entertain 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.”
- Good faith.
- Play ER Video.



Child Abuse

See Handout

Are the Elements met?

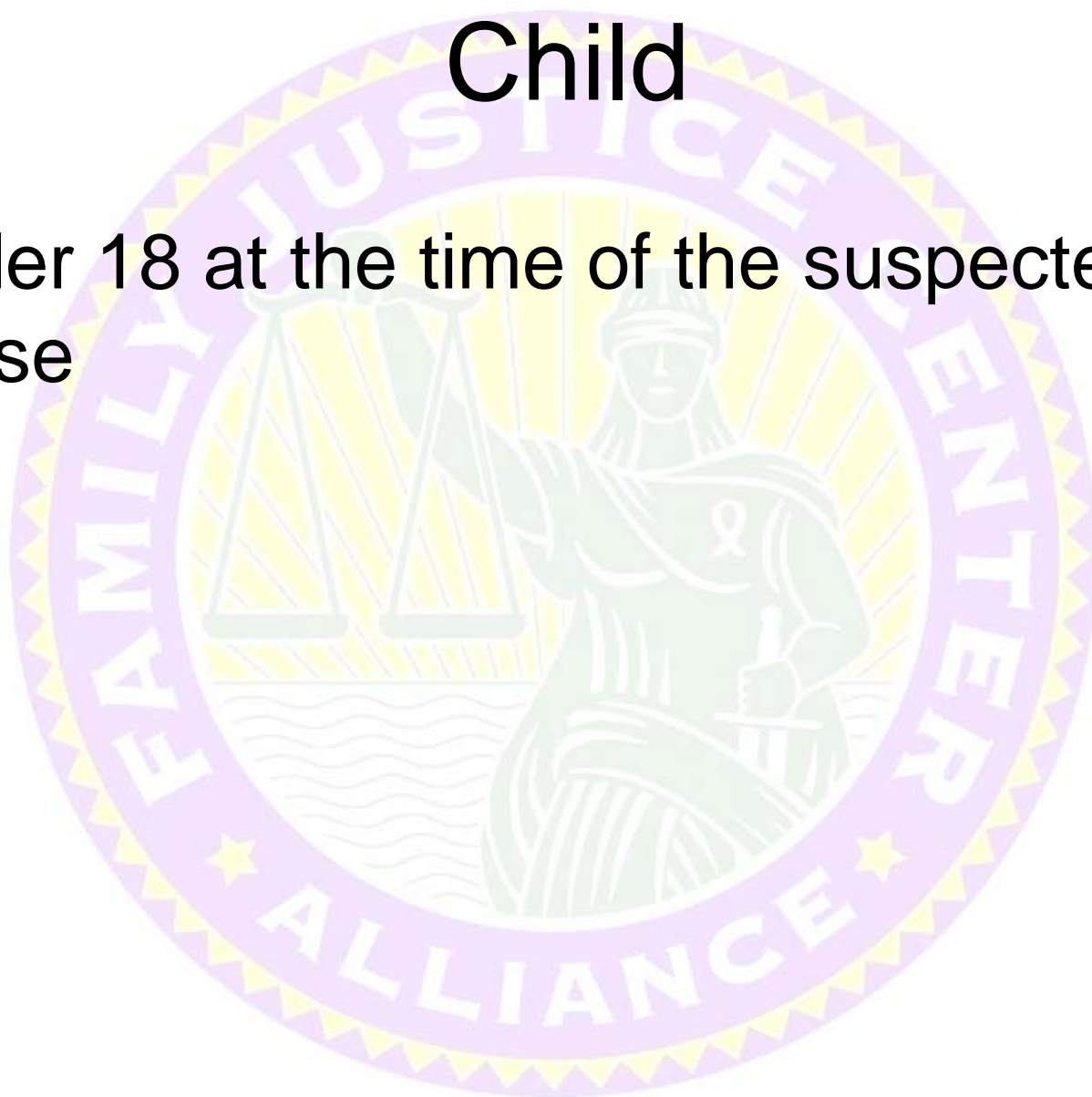
- Are you a mandated reporter?
- Is there a child?
- Is there reasonable suspicion
- of child abuse?
- Are you working within your professional capacity?
- And within the scope of your employment?

Mandated Child Abuse Reporter

- For the FJC
 - Day care and camp administrators
 - Day care employees
 - Family and child counselors, including interns
 - Marriage counselors
 - Psychiatrists
 - Psychologist and other therapists and trainees
 - Social workers

Child

- Under 18 at the time of the suspected abuse



Reasonable Suspicion

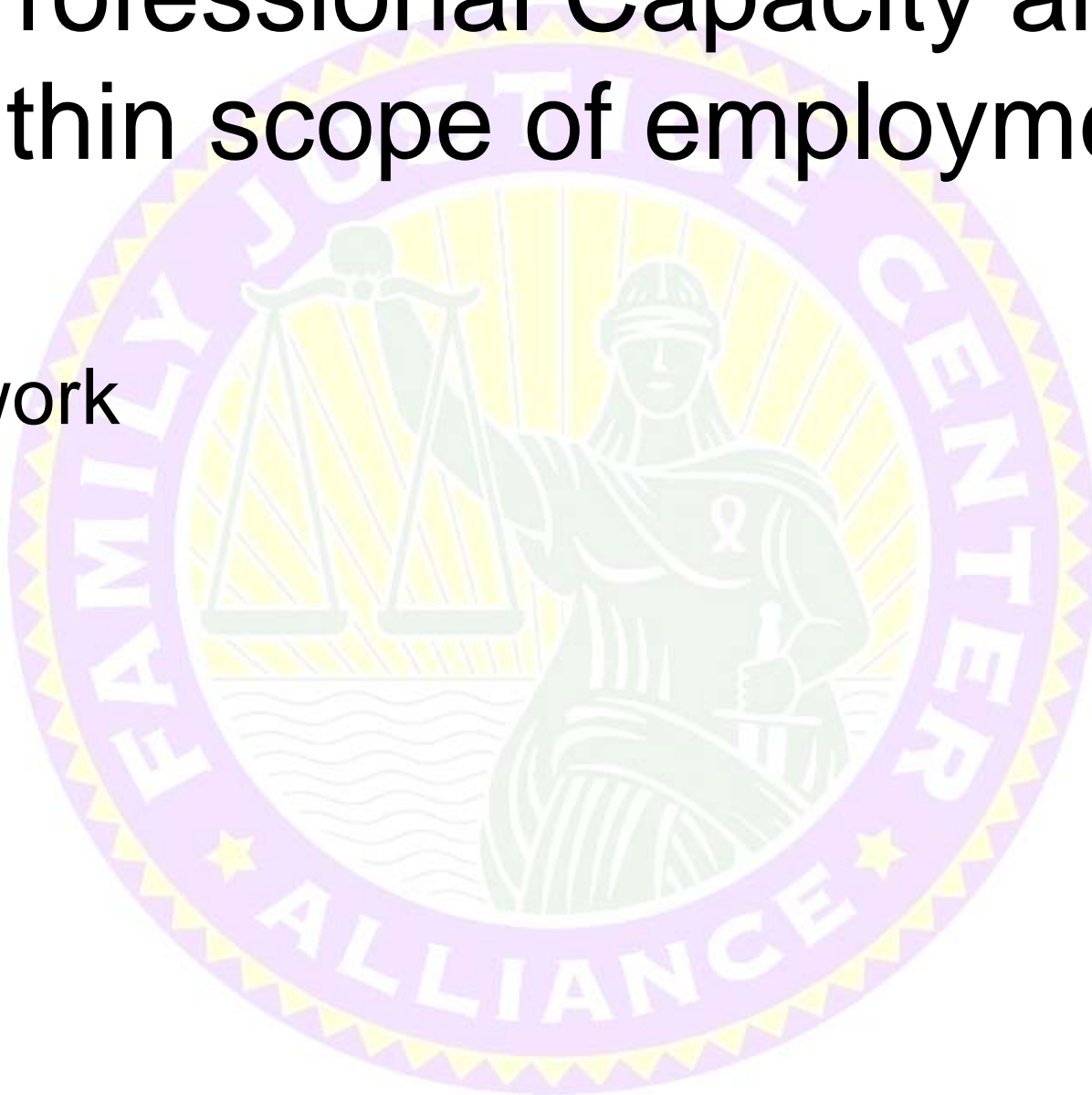
- Objectively reasonable for a person with training and experience to suspect child abuse based on the information in a particular case

Child Abuse

- Sexual abuse
- Child Neglect
- Willful cruelty or unjustified punishment
 - Unjustified physical pain or mental suffering
- Corporal punishment
 - Cruel or inhuman bodily punishment or injury resulting in trauma
- Abuse in out of home care

Professional Capacity and within scope of employment

- At work



Report

- By telephone immediately
- Written report on a child abuse reporting form
- Within 36 hours



Questions?

Question:

- A number of concerns have developed in reference to potentially dealing with subpoenas from defense attorneys or a judge. Currently, we have two Center Navigators out for four with Masters in Social Work. In order for the FSC to be an organization with privileged communication, would there need to be a licensed staff person in a supervisory/director position over the Center Navigators? Could a staff member from a partner agency with some oversight of the Center Navigators provide privileged communication for the Center Navigators?

Analysis

- Who's record is it anyway?
- What privilege or law applies?
- What information is sought?
- Is it discoverable?
- Is it protected?
- Who litigates?
- What are the remedies?

What Do You Do If You Receive a Subpoena?

- Advise your supervisor.
- Advise the prosecutor.
- Advise the FJC director – City Attorney will represent the FJC.
- Also, seek support from Agency's Attorney, Legal Aid Office, or State or National Victims' Rights Organization.
- Have a strategy ready.

Reminders for Enhancing Confidentiality at the FJC

- Do not discuss cases in public (hallways) or in front of others (support persons)
- Do not client information in emails
- Lock your records – purchase your own locked filing cabinets
- Use a separate fax machine
- *Be careful what you record.*
- Keep minimal information in client files.
- Shred notes as soon as they are no longer needed.
- Advise victims in advance about what information is confidential and what is not
 - I am a mandated reporter for

Alliance Updates

3rd Directors' Leadership Summit

September 19-21, 2012

San Diego, CA

Day 1 – Financial Leadership

Day 2 – Preparing to Ask and then Getting Buy-In

Day 3 – Making the Ask and Getting the Money

- The training will have a special emphasis on Funding and Sustainability *all* FJC Directors and/or Operations Managers across the country who are working in fully operational Centers or Centers that are in some stage of planning are invited. The Leadership Summit will give directors the opportunity to network with other directors from across the country and discuss topics such as Collaborative Leadership, Collaboration, and workshops on Funding and Sustainability. The in-depth Funding and Sustainability Training will cover financial leadership, how to develop your financial plan, how to identify the most dynamic board, the fundamentals of fundraising and finding money under any conceivable rock in your community. Directors are encouraged to bring a Board Member, Finance Director, Grant Analyst, or Development Director to this workshop.
- The Leadership Summit is sponsored by the Office on the Violence against Women. If you are an OVW grantee, please contact your grant manager to attend this Leadership Summit. If you are interested in attending, please contact Natalia Aguirre for further information and travel logistics at 619-236-9551 or Natalia@nfjca.org. Please register early as space is limited and we anticipate tremendous interest for this particular Summit.



Thank You

- Family Justice Center Alliance
 - 1-888-511-3522
- This webinar will be recorded & posted on www.familyjusticecenter.org

