

# Board Policy

Code No. 402.2E1

## CHILD ABUSE REPORTING

### DEPARTMENT OF EDUCATION

#### Information to Assist Mandatory Reporters in Reporting Suspected Abuse

**Q: What is the definition of a "child" for the purposes of reporting child abuse?**

A: The law defines "child" in this chapter to be "any person under the age of eighteen years. Therefore, an 18 year-old student cannot be abused under the child abuse laws, but may be a "dependent adult" for purposes of chapter 235B of the Code of Iowa.

**Q: Who can commit child abuse?**

A: Only a "person responsible for the care of a child" can commit child abuse. The law states that that term includes:

- a. A parent, guardian, or foster parent;
- b. A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence;
- c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

*(NOTE: For expediency, this Model Policy uses interchangeably the term "person responsible for the care of a child" and "caretaker" or "care giver.")*

**Q: What if a mandatory reporter suspects that a child has been abused by someone other than a "person responsible for the care of a child"?**

A: The matter is then one for law enforcement, but there is no legal obligation to report to DHS or law enforcement abuse that occurs by someone other than a caretaker as defined above. There is, however, a special procedure for schools to follow if a complaint is made that a child has allegedly been abused by a school employee. This procedure does not involve the DHS because that department only has jurisdiction of complaints that meet the legal definitions of "child," "abuse" and "person responsible for the care of a child."

**Q: What constitutes abuse?**

- A. There are four different categories of abuse in the law: physical, sexual, neglect, and encouraging (and failing to discourage) acts of prostitution by the child.
- a. Physical abuse is any non-accidental physical injury, or injury which is at variance with the history given of it, suffered by a child as a result of the acts or omissions of a care giver.

*(NOTE: The DHS uses a definition of "injury" that requires that evidence of the injury must still exist 24 hours after the abuse occurs. Thus, a mark that disappears within twenty-four hours would not be an "injury." Presumably this accounts for the twenty-four hour period allotted by law before an abuse report is made.)*

- b. Sexual abuse includes any sexual offense "with or to a child as a result of the acts or omissions of" a caretaker.
- c. Neglect is "the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so."
- d. Encouraging or failing to discourage prostitution by the child means that the caretaker actively encourages or fails to act to deter the child from selling or offering for sale the child's services as a partner in a sex act, or purchasing or offering to purchase such services.

**Q: Is mental abuse or verbal abuse covered by the child abuse definition?**

A: No. However, "mental injury" to a child by a person responsible for the care of a child is one ground or basis for filing a petition in juvenile court alleging that a child is in need of assistance ("CHINA"). Iowa Code Section 232.2(6)(c)(1)(1989).

**Q: What about a parent or other person responsible for the care of a child who fails to supervise or obtain supervision for a child, or leaves a young child unattended for considerable periods of time?**

A: This should be reported under the "neglect" portion of the child abuse laws, but may also be the basis of a CHINA petition alleging "the failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child."

A concerned employee may wish to contact the local county attorney's office for a complete discussion of CHINA petitions, but recognize that there is no mandatory filing of a CHINA petition by a mandatory child abuse reporter.

**Q: What constitutes an "omission" under the child abuse laws?**

A: If a person responsible for the care of a child fails to take action to protect the child from foreseeable harm when a reasonable person would do so under the same circumstances, that failure to act constitutes an "omission."

**Q: Will the mandatory reporter find out the results of the investigation?**

A: Yes. The law says that the DHS "may" report back to the mandatory reporter, but the DHS' own rules require it to be done. If a mandatory reporter does not receive a follow-up report, he or she should call the local DHS office and request it under DHS chapter 175.

**Q: What are some "danger signs" to look for if one suspects child abuse?**

- A: The training required of all mandatory reporters is designed to provide guidance and instruction in identifying child abuse, but some general indicia of abuse include the following:
- a. A child tells several conflicting stories as to the cause of the same injury.
  - b. A child seems to be injured frequently.
  - c. A child expresses reluctance to tell how the injury occurred.
  - d. A child is afraid to go home.
  - e. A child tells the teacher or a playmate that someone responsible for the child inflicted the injury.

f. A child relates a story about the injury that seems inconsistent with the injury.

**Q: How far can a mandatory reporter go in checking a child for abuse?**

A: The law is not specific as to what actions a reporter can take to determine a child's injury except to state that a mandatory reporter may "take or cause to be taken, at public expense, photographs or x-rays of the areas of trauma visible on a child." There are limitations in the law as to what extent DHS investigators can go in viewing the child's body to document abuse, but those limitations do not appear to be applicable to mandatory reporters. Clearly, a mandatory reporter should exercise good, sound judgment in viewing a child's body, and should not insist, over the child's objections, on viewing covered or clothed areas. One can have a "reasonable belief" that abuse occurred without asking the child to expose him or herself.

**Q: How rigid is the confidentiality provision? Is an employee/mandatory reporter prohibited from discussing the child's condition with other school employee?**

A: The confidentiality provision attaches at the time the oral report is made, and the law provides that the reporter is, from that time forward, prohibited from discussing the fact of abuse or the report made with anyone except DHS personnel. Therefore, if an employee/mandatory reporter wishes to discuss the child's condition, any conversation with others should take place prior to the oral reporting but within the twenty-four hour period. No person should dissuade or discourage a mandatory reporter from filing a report of suspected abuse. When that other person reasonably believes that the situation does not constitute child abuse, or believes the mandatory reporter is overreacting or is unreasonable in his/her beliefs that the situation is one of child abuse, those thoughts should not be conveyed in such a way as to lead the mandatory reporter to the conclusion that he or she is prohibited from filing the report under threat of consequences. The one exception to the confidentiality law is when the mandatory reporter believes that photographs or x-rays "need to be taken" of the child's trauma (Iowa Code Section 232.77). In that case, the mandatory reporter is permitted to tell the person's supervisor (building principal or superintendent) of the need to take pictures or to have x-rays taken. (There is no statutory explanation of when "need" arises, but the law allows photographs or x-rays to be taken at public expense. In most cases, the decision to take photographs or x-rays should probably be made by DHS).

**Q: What is the penalty for failure to report suspected child abuse or the penalty for filing a false report?**

A: The law states as follows:

1. Any person, official, agency, or institution, required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.
2. Any person, official, agency or institution, required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure.
3. A person who reports or causes to be reported to the department of human services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

*(NOTE: A simple misdemeanor is a criminal designation and carries with it the potential of a 30-day jail sentence or a fine of up to \$100,000.)*

**Q: Is a person who "reasonably believes" a child has suffered from abuse subject to suit by anyone if it turns out the child was not abused after all?**

A: The legislature has given criminal and civil immunity to any person who participate in good faith in the making of a report. This means that if a person is sued for making a report, he or she must prove that the report was made in good faith, and then no damages or punishment can be assessed against the person reporting or assisting in the investigation. The opposite of "good faith" is willfully filing a false report with the knowledge that the information is untrue.

Thus, a person can still be sued, but if the court or jury determines that the report or other assistance was made "in good faith," the reporter is not going to be held civilly or criminally liable. Public school employees are guaranteed legal representation by statute if they are sued "in the course of" their employment. The local board is required to "defend, indemnify and hold harmless" any employee sued for an action taken during the course of employment. So even if the employee is sued, he or she should not have to pay anything or hire a lawyer, so long as (1) the report was made in good faith, and (2) the report was made because the employee was fulfilling his or her obligation to report suspected abuse learned of or seen at school. The same would not be true if the employee reported abuse of, for example, a next-door neighbor's child upon hearing the child's cries or witnessing an incident of abuse outside the school setting. The mandatory reporting duty arises for certificated/ licensed school employees who suspect abuse during the course of "counseling, attending, examining, or treating" children, or, in other words, as part of their job duties at school.

**Q: Since school guidance counselors, school psychologists, and school social workers have a statutory privilege of communication, what happens if one of those people learns from a student-counselee that the student has been abused? Must that professional break the confidence? Can he or she?**

A: While it is true that school counselors, psychologists, and social workers are required to maintain confidential communications with their clients, one of the child abuse laws (section 232.74) specifically exempts "mental health professionals" and specified others from the privilege for the purpose of reporting child abuse.

This means the privilege does not apply, and the professional is required to report the suspected abuse, in situations where he or she has a reasonable belief that the child is the victim or perpetrator of abuse.

Although the terms "school guidance counselor," "school social worker" and "school psychologist" are not mentioned specifically but rather the term "mental health profession" is used, it is the belief of the Department of Education that the intent of the law is to cover those three professions. The intent of the law requiring child abuse reporting would certainly be thwarted if the counselor, psychologist, or social worker is required to report abuse, but prohibited from reporting if the information came from the child's own mouth directly. The Department is, at this writing, seeking an amendment to the statute to clarify those professionals' responsibility.

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