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**LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS  
IN CALIFORNIA:  
REPORTING CHILD ABUSE**

**By the Staff of the Child Care Law Center**

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## LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS IN CALIFORNIA: REPORTING CHILD ABUSE

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## **INTRODUCTION**

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This article describes the rights and responsibilities of licensed family child care providers as a *mandated child abuse* reporter in California.<sup>1</sup> Family child care providers are licensed caregivers for up to eight (8) or fourteen (14) children in the providers' own homes.

An increasing number of parents are working, meaning that more children are cared for outside of their own homes now more than ever before. As a result, many children spend as many waking hours with a child care provider as with their families. The intimate relationship that a caregiver develops with a family may enable the provider to pick up early warning signals that a family is in trouble, or that a child is at risk for child abuse or neglect. A caregiver may be the first to know or to reasonably suspect that a child is being abused. Early intervention could save a child from harm and could help families get the services they need. Child care is your business, and intervention is your responsibility. Make it part of your job to get to know parents and to build a trusting sharing relationship with them.

## **WHAT IS THE PURPOSE OF THE CHILD ABUSE REPORTING LAW?**

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Because children often cannot protect themselves, the law provides them with greater protection than adults may have. In order to protect children, the law requires certain persons who may have frequent contact with children and their families, and who are in a position to identify child abuse and neglect, to report it. Once abuse or neglect is reported, the state might intervene in a family when there is a danger to a child's health, welfare, and safety. This intervention to keep a child safe may also provide help to the parents and bring resources and change to the family.

## **WHO IS A MANDATED CHILD ABUSE REPORTER?**

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A mandated reporter is someone who is required by law to report known or suspected instances of child abuse or neglect.<sup>2</sup>

Most people who work directly with children are mandated to report known or suspected child abuse or neglect. This includes all licensed family child care providers, as well as administrators, teachers, teachers' aides, and other employees of child day care facilities.<sup>3</sup> *Child care facilities* include public and private child care centers and preschools, as well as licensed family child care homes.

A mandated reporter is only required to report child abuse or neglect observed in "his or her professional capacity or within the scope of his or her employment".<sup>4</sup> In addition to child care providers, other mandated reporters include:

- teachers, administrative officers, and supervisors of child welfare or attendants of any public or private school;
- administrators of a public or private day camp;
- Head Start teachers;
- licensing workers or evaluators;
- public assistance workers;
- foster parents;
- group home personnel;
- personnel of residential care facilities; and
- any administrator or employee of public or private organizations whose duties require direct contact and supervision of children.<sup>5</sup>

All mandated reporters, including all child care providers, hired on or after January 1, 1985 must sign a statement, provided by their employer, that they are aware of the mandated reporting requirements, and will comply with the provisions of the child abuse reporting law.<sup>6</sup> The employer usually must keep these signed statements.<sup>7</sup> Since January 1, 1986, the Community Care Licensing division of the California Department of Social Services has been responsible for informing prospective child care providers of their responsibilities as mandated reporters when they apply for their licenses, or when the license is granted. Community Care Licensing is also required to inform providers that failure to comply with mandated reporting requirements is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars, or by both.<sup>8</sup>

## HOW DOES THE MANDATED REPORTING LAW DEFINE CHILD ABUSE?

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Under California law, mandated reporters such as child care providers *must report* any of the following acts if they are inflicted on a child, or someone under 18 years old:<sup>9</sup>

- **Physical abuse** is physical injury to a child by other than accidental means.<sup>10</sup> An accidental injury is usually not reportable unless you believe the adult in charge failed to provide reasonable or appropriate supervision. You must also report if you know or reasonably suspect that someone is:

- willfully or intentionally causing or permitting a child to suffer,
- inflicting unjustifiable pain or injury on a child, or
- endangering a child's health or person or allowing someone else to do so when having care or custody of the child.<sup>11</sup>

- **Unlawful corporal punishment or injury** is cruel or inhuman physical punishment or injury which results in a traumatic condition.<sup>12</sup>

- **Sexual abuse** is the sexual assault or sexual exploitation of a child. Sexual assault includes rape, incest, sodomy, lewd and lascivious acts upon a child, oral copulation, penetration of a genital or anal opening by any foreign object, child molestation, or intentional masturbation in the presence of a child.<sup>13</sup> Behavior that

constitutes sexual assault includes the intentional touching of a child's genitals or intimate parts for purposes other than normal caretaker responsibilities such as cleaning the child or assisting with toileting. Sexual exploitation refers to all conduct which allows, assists, promotes, encourages or coerces a child to engage in pornography or prostitution.<sup>14</sup>

• **Neglect** is negligent treatment or maltreatment by a person responsible for a child that threatens the child's health or welfare. Neglect includes action and failure to act. It can be either *general neglect*, or *severe neglect*.

- *General neglect* includes the failure of the person responsible for the child to provide adequate food, clothing, shelter, medical care, or supervision, where no physical injury to the child has occurred.
- *Severe neglect* means the negligent failure of the person responsible for the child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. It also includes *intentional* failure by a child's caregiver to provide adequate food, clothing, shelter or medical care, and causing or permitting danger to the child's health or person.<sup>15</sup>

While it is essential to protect children, remember that people raise their children in different ways, and that you are only required to report neglect when you reasonably suspect a child is in threat of harm. It is also important to realize that people who are impoverished or leading chaotic lives may not be able to care for their children as well as they would like or as others think they should, but their actions may not rise to the level of neglect that must be reported. If you are unclear about when to report, call your local child protection agency, and you can anonymously discuss the matter with them. You can always offer parents referrals, information and support if you think they are not caring for a child properly, whether or not there is reportable neglect.

• **Willful cruelty or unjustifiable punishment** is a situation where a person causes or permits a child to suffer, or inflicts on a child unjustifiable physical pain or mental suffering, or causes or permits the person or health of a child to be endangered.<sup>16</sup>

• **Abuse in out-of-home care** is any of the above types of abuse or neglect occurring in out-of-home care, such as a school, child care facility, foster home, etc.<sup>17</sup>

• **Emotional abuse** is defined as the infliction of mental suffering or the endangerment of the emotional well-being of a child, and must be reported *only if it is willful and knowingly cruel*.<sup>18</sup> However, any other emotional abuse *may* be reported.<sup>19</sup>

Like any individual, you may report other known or suspected incidents of child abuse that don't come within the above categories, or that you know about from incidents outside of the realm of your job as a child care provider.<sup>20</sup>

## HOW DO I DECIDE WHETHER OR NOT TO MAKE A CHILD ABUSE REPORT?

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As a mandated reporter, you *must* make a report if, as part of your job, you have knowledge of or observe a child who you *know* or you *reasonably suspect* is or has been the victim of child abuse or neglect.<sup>21</sup>

*Reasonable suspicion* of child abuse means that, after examining all the facts in the situation, most people with comparable professional training and experience in a similar position, would also suspect abuse.<sup>22</sup> In other words, when you have any information that would lead a reasonable person to suspect abuse, you are required by law to make a report. This does not mean that you have to have conclusive proof of child abuse; just that you have a reason to believe it might be happening.

To determine whether your suspicion is reasonable, consider the following:

- If you observe physical injuries or behavior that raises suspicion of possible abuse or neglect, ask for an explanation from the child and/or from the child's caretaker.
- Review everything you know and have observed about the child and the family. This includes confidential information given to you by the family. If this information causes you to have reasonable suspicion of child abuse, you are required to report it.
- Call your local child protective agency, which has an anonymous service that allows mandated reporters such as yourself to talk to someone about whether or not what you know or suspect rises to the level of abuse that must be reported. Child protective services are usually listed in the telephone books in the County Government section. They are often listed under the Department of Social Services or Human Services. If you are unsure about where to report, ask your local child care Resource & Referral agency, or you can call the police department and ask them to refer you to the appropriate agency in your county for reporting child abuse.
- Seek advice from an experienced professional or another person who knows the child. Staff members at your local child abuse council or child care R&R agency can help you assess a situation, but the family's names must be kept confidential when discussing the matter with anyone other than child protective agency personnel.
- Observe the child and parent carefully to pick up distress signals.

If you have a *reasonable suspicion of child abuse or neglect*, you must report. But be aware that filing a report has serious implications for a family; so determining whether you have a reasonable suspicion of child abuse is an important decision.

## **CAN A MANDATED REPORTER OR SOMEONE ELSE REPORT POSSIBLE ABUSE BY A CHILD CARE PROVIDER?**

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It is important for family child care providers to understand their responsibilities as mandated child abuse reporters. It is also important for them to understand that Community Care Licensing, parents, or others could report any child abuse that they believe has been perpetrated by a family child care provider, an employee of the provider, a family member, or someone residing in the provider's home. In fact, like family child care providers, Licensing staff (except for clerical staff) are mandated reporters of child abuse who, as "child custodians," are legally required to report any known or suspected instances of physical or sexual abuse of any child to a Child Protective Agency, including law enforcement. So if Licensing staff knows or believes that a child has suffered child abuse in a family child care home, a child abuse report will be made.<sup>23</sup> Please see the Child Care Law Center's article on Licensing for more information about what might happen if a family child care provider is accused of abuse or neglect.

## **HOW DO I DISTINGUISH BETWEEN ACCEPTABLE DISCIPLINE AND CHILD ABUSE?**

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It may be difficult at times to distinguish between acceptable discipline and child abuse. Although the law permits parents and guardians to use some corporal punishment, they may not cross the line between permitted discipline and abuse.<sup>24</sup> Some physical abuse is the result of physical discipline that got out of control. But it is important to be aware that standards vary greatly in different cultures and communities. Your best guides are the legal definitions of "physical abuse" and "unlawful corporal punishment or injury" described above. These definitions could include as abuse spanking with a foreign object, such as a belt, or spankings which results in an injury. Again, if you have questions about when to report, the best way to gain information is to call your local child protection agency, and you can anonymously discuss the matter with them.

It is important to be aware that, although parents may use corporal punishment, child care providers are prohibited from using corporal punishment to discipline children in their care, even if the parents have given consent or authorization to the provider.<sup>25</sup>

## **WHAT IF A CHILD COMES TO MY PROGRAM WITH AN UNTREATED INJURY?**

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As a mandated reporter, if you suspect that an injury is the result of physical abuse you must report it. You also may want to take photographs to document the child's injury. Photographs may be taken for this purpose without parental consent, as long as they are not used for any other purpose.<sup>26</sup> They may be used as evidence in court.

If you become aware of an unexplained injury to a particular child that does not rise to the level of suspected abuse, keep a confidential written record of your observations. Over time, such a record might indicate a pattern of abuse, which should then be reported.

## **SHOULD I TELL PARENTS THAT I'M A MANDATED REPORTER?**

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It is a good idea to inform all parents during the admission process that you are a mandated child abuse reporter. Explain that this means you are required to report child abuse under the law and are subject to serious penalties if you do not. If you have told parents in advance about the requirements that the law places on child care providers, it may make it easier to discuss issues around abuse or neglect with a parent if you find that you have reasonable suspicions that must be reported.

## **SHOULD I TELL PARENTS ABOUT THE CHILD ABUSE REPORT, AND IF SO, HOW?**

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Deciding whether or not to tell a parent that you plan to report or already have reported child abuse is a very difficult decision and it is a decision which only you can make. Great care should be used in making a decision to tell a parent. The law does not provide any guidance to child care providers about this decision; rather, this is an area in which your training and experience as a provider, as well as the advice of other professionals, will need to guide you. You need to be very mindful of family dynamics and how they may affect the child. Here are some practical considerations:

The safety of the child is your most important consideration. If a child is in immediate danger, and you believe the parent might disappear with the child, call the police immediately and do not tell the parent. If there is a possibility that the person who has abused the child may inflict further abuse if told about a report, then you should protect the child's safety by *not* telling the parent. If you suspect sexual abuse, including incest, it may be best not to tell the parent.

Sometimes, however, the situation will involve a parent you know and care for, and the child will not be in immediate danger. It may be a situation in which someone other than the parent is suspected of the abuse. There are pros and cons to take into consideration in deciding whether to tell a parent. You may feel that you shouldn't intrude into a family's personal life, or "betray" the trust you have established with them. Telling parents will frequently bring out hostile and angry feelings. Parents may remove their child from your care. On the other hand, if you fail to inform parents, they may feel deceived.

If you do decide to tell a parent that you have made or will make a child abuse report, you might start by explaining that since you are a mandated reporter the law does not give you a choice – the law requires you to make a report whenever you have a reasonable suspicion of child abuse or neglect. You might also let the parent know that you care about her/him as well as the child. Explain that the reporting process does not always go smoothly but that you will do everything you can to see that they receive appropriate help. Most importantly, let the parent know that you want the child to remain in your care, that you want to continue your relationship with the family, and that you believe this is a problem that can be solved. If you can continue working with them, the likelihood of further abuse may be diminished, and the family may receive the help they need to address their problems.

## **TO WHOM DO I REPORT?**

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You must report to your local *child protective agency*. The particular agency involved will vary from county to county, but usually it will be the County Department of Social Services or Human Services (for instance, Children's Protective Services or Child Welfare Services), the police or sheriff's department, or the probation department.<sup>27</sup> As noted above, child protective services are usually listed in the telephone books in the County Government section. If you are unsure about where to report, ask your local child care Resource & Referral agency, or you can call the police department and ask them to refer you to the appropriate agency in your county for reporting child abuse.

***As a general rule, call the local child welfare or protective agency (for example, Children's Protective Services). If a child is in immediate physical danger, call your local law enforcement agency.***

**Reporting the information to an employer, supervisor, coworker or other person is not a substitute for making a mandated report to the child protective agency.**<sup>28</sup>

The initial telephone report of suspected child abuse or neglect must be made as soon as possible, and must be followed up within 36 hours by a written report.<sup>29</sup> Forms for submitting your written report may be obtained from the local child protective agency.

## **WHAT INFORMATION SHOULD A REPORT CONTAIN?**

A report must contain the following information:<sup>30</sup>

- The name and contact information of the individual filing the report. The identity of the reporter is kept confidential, and may only be revealed to specified persons and agencies. Mandated reporters may not make anonymous reports, although other reporters may.<sup>31</sup>
- The name and address of the child;
- The child's present location;
- The names and contact information of the child's parents or guardians, and other persons who may have abused or neglected the child;
- The information that gave rise to a reasonable suspicion of child abuse or neglect;
- The nature and extent of the injury or incident; and,
- Any other relevant information, which led the reporter to suspect abuse.

The more detailed your report, the more likely that the agency will respond appropriately. If you believe the child is in immediate danger, make this very clear to the police or sheriff, and explain why.

## **CAN I BE SUED BY THE PARENTS FOR MAKING A REPORT, OR FOR COOPERATING WITH THE CHILD PROTECTIVE AGENCY THAT CONDUCTS THE INVESTIGATION?**

All mandated reporters are *immune* from civil or criminal liability for complying with the mandated reporting law. This means that mandated reporters who make a report are protected, even if the investigator does not substantiate the report.<sup>32</sup> Even if someone sues you for reporting your suspicions, the court will dismiss the case when you prove that you are a mandated reporter. However, mandated reporters have a moral and ethical duty to report only in good faith, and only where knowledge or reasonable suspicion of child abuse exists.

As a further protection to mandated reporters, if you are sued for making a report the State Board of Control will pay for up to \$50,000 for reasonable attorney's fees, so that you can hire a lawyer to help defend you.<sup>33</sup>

It is also important to know that you cannot be found liable for allowing a child protective agency access to a child upon such an agency's request.<sup>34</sup>

If a person who is not a mandated reporter files a report of child abuse, that person cannot be held liable unless he or she knowingly, or with reckless disregard for truth or falsity, filed a false report.<sup>35</sup>

## **WHAT IF I HAVE A REASONABLE SUSPICION OF CHILD ABUSE, BUT I DON'T MAKE A REPORT?**

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Failure to report known or suspected instances of child abuse is a misdemeanor punishable by up to six months in jail, a fine of up to \$1,000, or both.<sup>36</sup> Failure to report also might result in civil liability (e.g. from a lawsuit by someone on behalf of the child) if a child is harmed after the mandated reporter becomes aware of the abuse and fails to report.

## **WHAT IF I DISAGREE WITH MY PARTNER, ASSISTANT OR SUPERVISOR ABOUT REPORTING?**

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The duty to report is an individual duty. If you and a coworker disagree about whether to report, the party who knows or reasonably suspects child abuse is required to report, even when the other party disagrees. This is true even if you, as the supervisor, disagree with your assistant's reasonable suspicion or knowledge. You cannot inhibit or impede your assistant from making a report, nor discipline or fire your assistant for reporting.<sup>37</sup>

## **CAN MY COWORKER AND I REPORT AS A TEAM?**

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When two or more persons jointly have knowledge of child abuse, you only need to make one report.<sup>38</sup> Child care programs may adopt their own procedures to facilitate the process and avoid confusion, so long as the designated person makes the report.<sup>39</sup> However, employees should be reminded that simply reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor or coworker is not a substitute for making a mandated report to the designated agency.<sup>40</sup>

## **DO I HAVE A RIGHT TO KNOW WHAT HAPPENS AFTER I REPORT?**

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A mandated reporter has the right to be informed of the results of the investigation, and any further steps that were taken with regard to the child or family.<sup>41</sup> If the investigative agency fails to notify you, you can and should contact them. If you believe

the child is still in danger, tell the investigator. A follow-up to your initial report is not mandatory, but is a good idea, as sometimes less serious cases are not acted upon promptly. A call may aid in making sure a family is receiving needed support services.

## **THE REPORTING LAW SOUNDS CLEAR, BUT IT'S NOT ALWAYS EASY TO PUT IT INTO ACTION. AM I THE ONLY ONE WHO HAS DOUBTS AND DILEMMAS?**

No, you're not alone. It helps to be aware of some of the common barriers to reporting, and hopefully to move beyond them. You may have some of the following thoughts:

### **“I'm afraid that the child's situation will get worse.”**

- Fear that the parent will retaliate against the child;
- Fear that the child will be taken from the parents;
- Fear that the child will be removed from your care and “disappear”;
- Doubts about a family's ability to change (“What good will it do?”);
- Concern about how the parent will respond.

### **“It won't help anyway.”**

- Fear of the unknown, and unfamiliarity with how the child protection system works;
- Fear that the child or parents will receive inadequate or inappropriate “help;”
- Distress about not receiving information on what happens to a family after a report is made.

### **“I'll bring problems on myself.”**

- Fear of retaliation by the parent, including physical attacks;
- Pressure in tight-knit communities against reporting a neighbor or friend;
- Possible disbelief on the part of officials or ostracism by the community;
- Fear that the report cannot remain confidential, because it will be apparent from the nature of the report who made it;

- Concern about having an investigation take place at your child care program, possibly leading outsiders to believe mistakenly that the abuse took place there.

Recognizing these barriers is a first step. Have any of them affected your past decisions about reporting? Could they affect your future decisions? Remember, you do not have to make the decision alone. You can enlist the help of other professionals in clarifying your thinking and drawing conclusions about a situation. The bottom line is the protection of the child, and under the mandated reporter law you are required to take necessary action to protect the child by reporting suspected abuse or neglect.

## **ADDITIONAL RESOURCES FOR PROVIDERS**

The following references are good general resources for family child care providers in California regarding child abuse reporting:

- Legislative Analyst's Office online summary, *Child Abuse and Neglect in California* (1996) at [http://www.lao.ca.gov/1996/010596\\_child\\_abuse/cw11096toc.html](http://www.lao.ca.gov/1996/010596_child_abuse/cw11096toc.html)
- California laws can be accessed online at <http://www.leginfo.ca.gov/calaw.html>, including the Penal Code which contains the Child Abuse and Neglect Reporting Act
- Nolo Online Publications, *Nolo's Guide to California Law*, has a chapter on child abuse, available for sale at <http://www.nolo.com/product.cfm/ObjectID/22DA1761-DF7F-487F-8FE97A9CCA583F11/104/284/>
- Child Abuse Prevention Council of Sacramento's website, <http://www.capcsac.org/>, has a wide variety of information. It includes information about how to make a report of child abuse or neglect: <http://www.capcsac.org/childabuse/reporting.html>, and the telephone numbers for the Child Protective Service Agencies in each county in California, <http://www.capcsac.org/crisisnumbers/cps.html>. Contact information for the Child Abuse Prevention Council in each county in California can be found at <http://www.capcsac.org/crisisnumbers/councils.html>. The website has an overview section about child abuse, <http://www.capcsac.org/childabuse/about.html> and a section on cultural customs that may be mistaken for child abuse, <http://www.capcsac.org/childabuse/customs.html>,
- Child Abuse Council of Santa Clara County has a number of informative publications available in several languages, <http://www.cacsc.org/index.html>

## Legal Issues for Family Child Care providers in California: Reporting Child Abuse

- The California Courts Online Self-Help Center has a section on “Abuse and Neglect: Information for Parents,” at <http://www.courtinfo.ca.gov/selfhelp/family/juv/abuseneg.htm>
- The California Office of the Attorney General has helpful information regarding child abuse reporting in the form of “frequently asked questions,” <http://caag.state.ca.us/childabuse/faq.htm>
- Prevent Child Abuse California, <http://www.pca-ca.org/>

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1 The law is found in the Child Abuse and Neglect Reporting Act, California Penal Code § 11165-11174.3. Unless otherwise specified, all citations in this document are to the California Penal Code. For a general description of the law, see the Legislative Analyst’s Office online summary, Child Abuse and Neglect in California (1996) at [http://www.lao.ca.gov/1996/010596\\_child\\_abuse/cw11096toc.html](http://www.lao.ca.gov/1996/010596_child_abuse/cw11096toc.html)

2 Cal. Penal Code § 11166(a)

3 Id. § 11165.7(10).

4 Id. § 11166(a).

5 Id. § 11165.7.

6 Id. § 11166.5(a).

7 Id. (In some cases a court may keep these documents.)

8 Id. § 11166.5(b)-(c).

9 Id. § 11165.6

10 Id. § 11165.6.

11 Id. § 11165.3.

12 Id. § 11165.4.

13 Id. § 11165.1(a),(b).

14 Id. § 11165.1(c).

15 Id. § 11165.2(a).

16 Id. §11165.3

17 Id. § 11165.5.

18 Id. §11165.3

19 Id. §11166.05.

20 Id. § 11166(e)

21 Id. § 11166(a).

22 Id. § 11166(a)(1).

23 California Penal Code § 11165-11174.3. See also DSS Evaluator Manual sec. 4-0010, mandatory Reporting of Child Abuse, and 4-1100, Child Abuse Reporting Requirements for Child Care Facilities.

24 Id. § 11165.4.

25 22 California Code of Regulations § 102423(a)(4).

26 Id. § 11172(a).

27 Id. § 11165.9.

28 Id. § 11166(h)(3).

29 Id. § 11166(a).

30 Id. § 11167.

31 Id. §§ 11167(a), (d)-(e); 11167.5.

32 Id. § 11172(a).

33 Id. § 11172(c).

34 Id. § 11172(b).

35 Id. § 11172(a).

36 Id. § 11166(b).

37 Id. § 11166(h).

38 Id. § 11166(g).

39 Id. § 11166(h)(1).

40 Id. § 11166(h)(3).

41 Id. § 11170(b)(2).