

Education Law Alert

New DCF Reporting Guidelines

The Connecticut Department of Children and Families (“DCF”) has adopted new Guidelines for Mandated Reporters (“Guidelines”) that describe the kinds of sexual activity involving minors that require a report of suspected abuse to the DCF Hotline. These Guidelines recognize that a report is not automatically required when there is voluntary sexual activity between a child 13 to 15 years old and a person more than two years older.

This has been an area of great concern over the past year, and we hope that this alert and the attached Guidelines will be of interest and help to you.

Background

Connecticut’s child abuse reporting statutes, §§17a-101 et. seq. of the General Statutes, currently provide that any mandated reporter (including a school teacher, school principal, school guidance counselor, school paraprofessional, and a school coach) who in the ordinary course of the individual’s employment or profession has reasonable cause to suspect or believe that any child under the age of 18 years has been abused or neglected, has had non-accidental physical injury inflicted upon the child, or is placed at imminent risk of serious harm, must report or cause a report to be made to DCF.

Whether known or suspected sexual activity between a 13-16 year old minor and an individual more than 2 years older must be reported to DCF has been an area of intense interest for school personnel and other mandated reporters. The difficulty and sensitivity of this issue relates in part to Connecticut penal code provisions on sexual offenses, in particular §53a-71(a) of the General Statutes, which provides that a person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with

another person and that other person is 13 years of age or older but under 16 years of age and the actor is more than two years older than such person. Sexual assault in the second degree is a Class B Felony for which nine months of the sentence imposed may not be suspended or reduced.

On September 30, 2002, the Connecticut Attorney General issued a formal legal opinion to DCF concerning mandated reports of sexual activities of minors. The Attorney General advised DCF that it could reasonably interpret the relevant statutes, as amended effective October 1, 2002, so that a report of voluntary sexual activity of a minor between the ages of 13 and 16 and another individual more than two years older than the younger participant (but under 21) was not mandatory but a matter in which the mandated reporter could exercise some discretion. The Attorney General clearly accepted that DCF may determine that an activity is not reportable to DCF even though it constitutes, as to the older participant, a crime.

New DCF Guidelines

Consistent with the Attorney General’s opinion, DCF has now prepared and adopted new Guidelines for Mandated Reporters that contain criteria for reporting to the DCF Hotline when sexual activity involving minors has occurred or is suspected. These Guidelines, which are attached to this memo, contain criteria designed to serve as examples of situations that should be reported but are not an exhaustive list. The Guidelines provide that DCF believes a report is required when children of any age are engaging in sexual activity and “the relationship is non-consensual, hostile, contains the use of force or threatening, and one individual is being exploited, degraded or humiliated”. The Guidelines also expressly provide

that a report should be made when children of any age are engaging in sexual activity and the child is under the age of 16 years and the partner is 21 years of age or older. Under these Guidelines, sexual activity between a child under the age of 16 years and a partner under 21 years of age is not automatically reportable solely by virtue of the partner's age; the activity would only be reportable if some other condition or fact were present (e.g., the activity was non-consensual or an assault). The Guidelines present a number of examples and should be carefully reviewed.

According to Ken Mysogland, Director of the DCF Hotline, the Guidelines were adopted by DCF at the beginning of December, 2002, and are now being promulgated into formal DCF policy. DCF is distributing the Guidelines to the Commissioner of Education and other education officials throughout Connecticut.

Conclusion

The DCF Guidelines offer some comfort and guidance on when child abuse reports to DCF are mandated for sexual activity involving minors. The legal analysis of any issue involving sexual activity will, of course, be highly fact dependent and may require consideration of Connecticut's criminal statutes and health care statutes (if the mandated reporter who has the information is a health care provider). Consequently, we recommend that you consult with your Wiggin & Dana lawyer if you are confronted with a particu-

lar fact situation and need to determine what your legal obligations may be.

If you have any questions about this Alert or the Guidelines, please call Melinda A. Agsten at 203-498-4326 or send her an e-mail at magsten@wiggin.com.

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GUIDELINES FOR MANDATED REPORTERS

Mandated reporters must report the following to the DCF Hotline:

Any reasonable cause to suspect or believe that a child:

- is being abused or neglected, according to the standard child abuse and neglect definitions as found in Connecticut General Statutes § 46b-120, or
- is placed at imminent risk of serious harm.

Connecticut General Statutes § 46b-120 defines “neglected” and “abused” as follows:

1) Neglected:

- a) Has been abandoned,
- b) Is being denied proper care and attention physically, educationally, emotionally or morally,
- c) Is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth, or
- d) Has been abused.

2) Abused:

- a) Has been inflicted with physical injury or injuries other than by accidental means,
- b) Has injuries which are at variance with the history given of them, or
- c) Is in a condition that is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment.

Reporting Sexual Activity Involving Minors

Based on the above definitions, the Department of Children and Families has set some criteria for reporting to the DCF Hotline when sexual activity involving minors has occurred or is suspected. It should be noted that these criteria were designed to serve as examples of situations that should be reported and are not meant to serve as an exhaustive list. The relative ages of the child and the sexual partner should always be considered when determining whether or not a report is warranted. All determinations made by mandated reporters regarding when to report must be based on whether or not they reasonably believe that a child is at imminent risk of serious harm or has been abused or neglected as defined in Connecticut General Statutes § 46b-120.

The suggested criteria for reporting sexual activity involving all minors, regardless of gender, is as follows:

- 1) Children under 13 years of age who are engaging in sexual intercourse, have a sexually transmitted disease, are pregnant or who are engaging in sexual activity that is developmentally inappropriate,
- 2) Children of any age who are engaging in sexual activity with a member of their family regardless of the age of the individuals,
- 3) Children of any age that are in a condition that is the result of sexual molestation or exploitation, and/or
- 4) Children of any age who are engaging in sexual activity and:
 - a) the relationship is non-consensual, hostile, contains the use of force or threatening, and one individual is being exploited, degraded or humiliated,
 - b) the child has emotional, psychological, or intellectual disabilities that may preclude him/her from consenting or understanding the consequences of consenting regardless of the child’s age, and/or
 - c) the child is under the age of 16 years and the partner is 21 years of age or older.