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DCYF

RI Mandatory Reporting Laws

Presented by:

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Mandatory Reporting prior to July 2016

Prior to July 2016,
We had
Chapter 352, 353

Rhode Island General Law (R.I.G.L.) §40-11-3 defines that
“[a]ny person who has reasonable cause to know or suspect that any child has been abused or neglected as defined in R.I.G.L. §40-11-2 or has been a victim of sexual abuse by another child shall, within 24 hours, transfer that information to the Department of Children, Youth & Families or its agent who shall cause the report to be investigated immediately.”

This law created the MANDATORY REPORTING REQUIREMENT
in effect SINCE 1976

R.I.G.L. §40-11-2

What does this law have to do with mandatory reporting?

This section of the law – is referred to in R.I.G.L. §40-11-3 because defines pertinent terms referred to in the mandatory reporting statutes.

For example,

§ 40-11-2 defines an **abused and/or neglected child** as “a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare...”

But, who is “other person responsible?”

The interpretation of “person responsible for his or her welfare” came into question in July of 2016 and sparked the need for a supplemental law.

2016 - Senate Bill 2947 & House Bill 8335

- Prior to 2016, the Attorney General did not require supplemental law because mandatory reporting laws had been in place for over 40 years, were clearly defined, and were understood to apply to educational institutions.
- Still, some advocates, DCYF, and legislators feared confusion under the then existing law because duty to report did not specifically list the words "school or educational institution."
- Both the Rhode Island Senate and House presented bills in their chambers to mitigate these fears. Both bills were passed.
- **However, these 2016 laws are not "new."** There were no laws passed in 2016 that substituted past law.
- Instead, these laws are an **extension** of law that has existed since 1976.

The result - R.I.G.L. §40-11-3.3

Signed into law
July 6, 2016

The Governor signed R.I.G.L. §40-11-3.3 in 2016. This law is directly attributed to the St. George's sex abuse allegations (Middletown, RI).

Closes any
"loophole"

This law is intended to prevent any confusion and makes clear educational institutions are specifically required to report sexual abuse.

What is the
difference?

The only difference between §40-11-3 and §40-11-3.3 is the latter has SCHOOLS in its verbiage clearly defining their inclusion in duty to report to DCYF.

R.I.G.L. §40-11-3.3 and “reasonable cause”

The law states: “[a]ny person who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program as defined in § 40-11-2 shall, within twenty-four (24) hours, transfer that information to the department of children, youth and families, or its agent,.....”

“Reasonable cause” is not intended to be an abstract principle; it involves a practical analysis from a reasonable and prudent person.

It does NOT require certainty that abuse has occurred.

What does “sexual abuse” mean?

Guidance can be found at least two places within the RI General Laws:

R.I.G.L. §11-37-1 –CHILD MOLESTATION LAWS defines the following terms:

“Sexual contact” as the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.

“Intimate parts” means the genital or anal areas, groin, inner thigh, or buttock of any person or the breast of a female.

What does “sexual abuse” mean? (Part Two)

R.I.G.L. § 42-66-4.1 – ELDER ABUSE LAWS defines the following terms:

“Sexual abuse” means the infliction of non-consensual sexual contact of any kind upon an elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the intent and the capacity to carry out the threatened abuse.

It should be noted R.I.G.L. 42-66 has its own duty to report law requiring: “any person who has reasonable cause to believe that any person sixty (60) years of age or older has a been abused, neglected, or exploited [...] shall make an immediate report to the director of the Department of Elderly Affairs, or his or her designee, or appropriate law enforcement personnel.”

Rhode Island is not alone

All states and US territories have mandatory reporting laws & use a reasonable cause standard. For example:

Connecticut - Gen. Stat. § 17a-101b(d); 17a-101e(a) -Whenever a mandated reporter has reasonable cause to suspect or believe any child has been abused or neglected by a member of the staff of a public or private institution or facility that provides care for such child or a public or private school, the mandated reporter shall report as required by law.

Massachusetts - Gen. Laws Ch. 119, § 51A - "...[w]ho has reasonable cause to believe a child is suffering from or has died as a result of abuse or neglect may file a report.

California - Cal. Penal Code § 11166 - Personal assessment of the allegations is irrelevant. In People v. Davis, the Court found "if the circumstances give rise to objective basis for suspecting that the abuse occurred, reporting is mandatory."

Arizona - Stat. § 13-3620 - A report is required when a person reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense, or neglect

Guam - Ann. Code Tit. 19, § 13202 - Any person may make a report if that person has reasonable cause to suspect that a child is an abused or neglected child.

Rhode Island is not alone in criminal penalties for failure to report

For example:

Connecticut - Gen. Stat. § 17a-101a – any mandated reporter who fails to report as required by law shall be guilty of a class A misdemeanor. That person, however, shall be guilty of a class E Felony if: the failure to report is a subsequent violation, was willful, intentional, OR due to gross negligence.

Massachusetts Gen. Laws Ch. 119, § 51A – any mandatory reporter who fails to report shall be punished by a fine of not more than \$1000. Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report the abuse or neglect shall be punished by a fine of up to \$5000 or imprisonment for no more than 2 ½ years.

California - Cal. Penal Code § 11166 – any mandated reporter who willfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect, where the abuse or neglect results in death or great bodily injury, shall be punished by not more than 1 year in a county jail or by a fine of not more than \$5000, or both.

Rhode Island is not alone in criminal penalties for failure to report

For example (continued):

Arizona - Stat. § 13-3620 (O), (P) – a person who violates this section requiring the reporting of child abuse or neglect is guilty of a Class 1 misdemeanor, except if the failure to report involves a reportable offense, in which case the person is guilty of a Class 6 felony. Reportable offense includes: prostitution, digital image dissemination, etc.

Guam - Ann. Code Tit. 19, § 13202 – any person required to report who fails to report an instance of child abuse that he/she knows to exist or reasonably should know to exist is guilty of a misdemeanor that is punishable by imprisonment for a term not exceed 6 months or a fine of no more than \$1000 or both. Subsequent violations are felonies.

In fact...

Prior to the
July 6, 2016
supplemental law

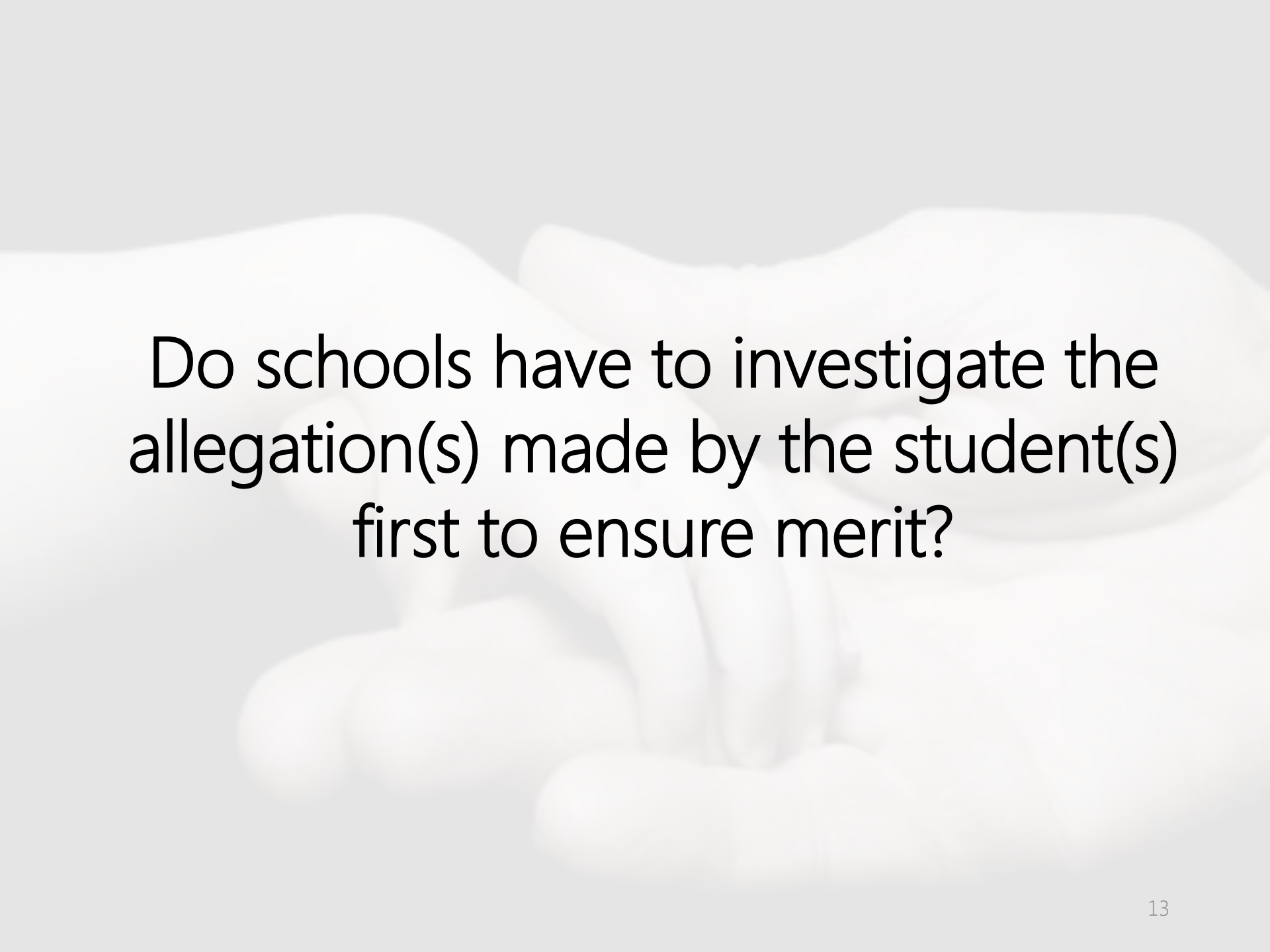
There was a criminal penalty for failure to report already in existence.

R.I.G.L.
§ 40-11-6.1

Any person failing to report is subject to a fine of not more than \$500, imprisonment for not more than one year, or both.

R.I.G.L.
§ 40-11-3.3

The same penalty applies to this 2016 law.



Do schools have to investigate the allegation(s) made by the student(s) first to ensure merit?

The answer is “NO!”

School administrators, teachers, and counselors already have a lot of responsibility.

School personnel are not required to enforce the law.

RIGL

§ 40-11-3.3 specifically requires school personnel to report within 24 hours.

The 24 hour mandate was added to ensure that educators pass the responsibility of any investigation required including weighing the credibility/veracity of said claims onto professionals equipped & trained to handle abuse allegations – i.e. DCYF investigators, police, and prosecutors (Attorney General’s office).



Call 1 (800) RI-CHILD

What if a child reports sexual abuse to a school official?

TAKE MINIMAL FACTS

Do not interrogate the child. Get enough information to make yourself aware of the situation but this is NOT the time to interview the child extensively.

TAKE NOTICE

If a child makes a disclosure that includes being touched “inappropriately” by anyone on their intimate body parts (chest/breasts, buttocks, inner thigh, anus, vagina, penis, etc.) that is enough to alert you that sexual abuse is being alleged.

APPLY COMMON SENSE

A child may not specifically state the words “breasts, buttocks, etc.” due to age, immaturity, fear, or nervousness. But, if you have a suspicion, CALL!

Call DCYF immediately - either solely or collectively with any other staff member or colleague that was made aware of the situation.

Why should I take only minimal facts?

There are important checks and balances in place within the criminal system to ensure that only valid, credible, and/or prosecutable cases go forward.

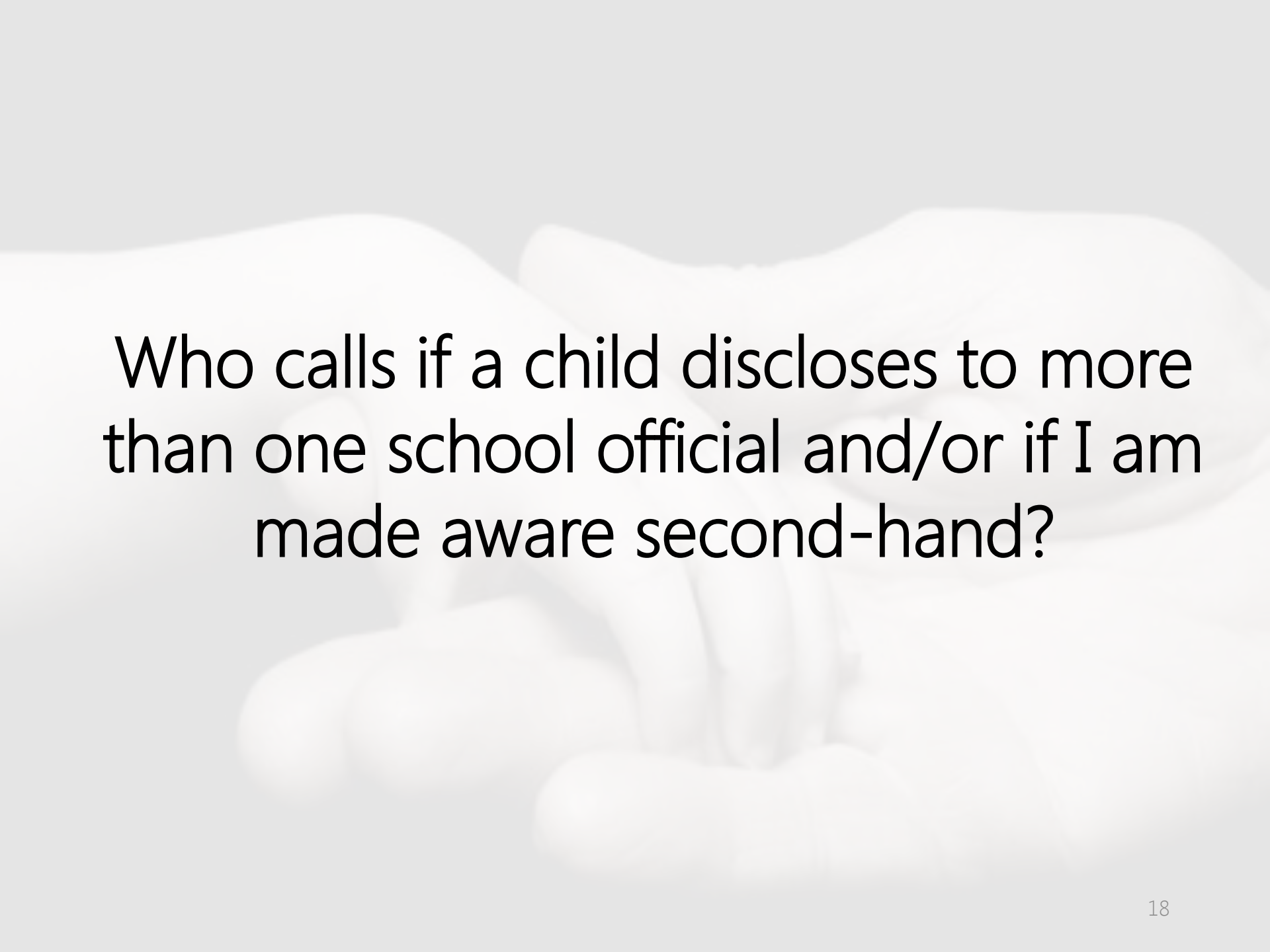
Once a child discloses and the matter is referred to DCYF, it will also be reported to the applicable police department.

What happens next?

- Police contact the Attorney General's office. Then, we work together to coordinate a forensic interview at DAY ONE – Child Advocacy Center with trained forensic interviewers.
- Medical examinations (if necessary) are scheduled with the Aubin Center – Child Protection Program at Hasbro Children's Hospital where the child will be not only examined, but interviewed as well.
- The purpose of these protocols is to minimize how many times the child is interviewed and mitigate further trauma.
- Immediately after all the above is done, the Child Abuse Unit and Attorney General's Office screen the case.

Why is it important for schools to report within 24 hours? Why not do their own investigation?

- Lessen the trauma for the children/victims.
- Prevents re-victimization of the children/victims by repeated interviews/questioning by school officials then law enforcement - which will have to occur anyway.
- Link victims and families immediately to support services available.
- Allows for the proper authorities to assess the credibility of said complaints faster.
- IF accusations are not credible or cannot be prosecuted, a determination can be made in a more timely manner and avoid school officials from being wrongly accused and/or kept from his/her employment.
- The Attorney General's office works with the DCYF & local police on a daily basis screening complaints of sexual and physical abuse.
- The Child Abuse Unit (CAU) was created specifically within the Attorney General's Office for these types of cases. We also work with the police on a daily basis and if a case DOES NOT warrant prosecution for credibility reasons or lack of evidence CHARGES ARE NOT FILED.
- The sooner the appropriate authorities (DCYF and police) are notified the sooner the proper PROTOCOLS for abuse investigations can commence.



Who calls if a child discloses to more than one school official and/or if I am made aware second-hand?

There are two options:

1. Each person can choose to call the hotline (1-800-RI-CHILD) individually.

OR

2. Have one person call on behalf all of the individuals who are aware of the disclosure(s).

SUGGESTION – The designated person calling should make the DCYF aware of all the parties that are jointly calling to make their concerns documented.

Give the Hotline all parties' names and titles (if necessary) that were privy to the allegations of abuse within the 24 hours.



Call 1 (800) RI-CHILD

THE BOTTOM LINE

You CANNOT assume if you told your principal/superior/ administrator about any allegations they will call.

BE PROACTIVE and make sure the Hotline has been called within 24 hours.

FOLLOW UP! Especially if you were the one whom the child confided directly.

Take initiative and call the Hotline yourself if you are concerned a call may not be made in a timely fashion – especially if you have first-hand knowledge of the allegations.

“The Take-away Lesson”

Do not leave your common sense at the door.

Even if you are in doubt or the allegation(s) gives you hesitation or pause –
CALL DCYF IMMEDIATELY.

In the era of: Sandusky/Penn State sex abuse scandal, St. George's School sex abuse allegations, Boston Diocese sex abuse scandal, US Gymnastics/Michigan State allegations, etc. we all need to be more aware & more proactive.

The law does not require you to weigh credibility of the allegations nor do an internal investigation.

The Attorney General's Role

If there are concerns with a credibility or lack of evidence, the police and the Attorney General's office are responsible for those decisions.

Many times, charges will not be filed despite a disclosure being made. This happens for various reasons. But, it does not negate your responsibility as a mandated reporter!

As officers of the court, we have ethical duties and standards by which we abide to ensure only charges supported by legitimate evidence are filed.

Questions? Concerns? Please ask!

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The DCYF's Role

DCYF has established and implemented a single, statewide toll-free telephone to operate 7 days a week, 24 hours a day for the receipt of reports concerning abuse and neglect of a child.

DCYF's Child Protective Services Units have the responsibility to investigate the report and to ensure the safety of the child/children.

DCYF does not conduct a criminal investigation but does report all findings of sexual or physical abuse of a child to law enforcement.

Questions? Concerns? Please ask!

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