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OPINION	:	No. 82-302
	:	
of	:	<u>JUNE 1, 1982</u>
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THE HONORABLE JOHN H. LARSON, COUNTY COUNSEL, LOS ANGELES COUNTY, has requested an opinion on the following question:

Does the duty to report child abuse under provisions of the Child Abuse Reporting Law (Pen. Code, §§ 11165-11174) supersede the confidentiality provisions of the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5328)?

CONCLUSION

The duty to report child abuse under the Child Abuse Reporting Law (Pen. Code, §§ 11165-11174) supersedes the confidentiality provisions of the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5328).

ANALYSIS

At the outset we will summarize the pertinent provisions of the Child Abuse Reporting Law. (Pen. Code, §§ 11165-11174.) This law creates a system whereby specific acts of suspected misconduct toward children under the age of 18 years are reportable to responsible public agencies. Child abuse includes "[a] physical injury which is inflicted by other than accidental means." (Pen. Code, §§ 11165(a) and 11165(g).) The abuse may take the forms of sexual assault (Pen. Code, § 11165(b)), of neglect (Pen. Code, § 11165(c)), of willful cruelty or unjustifiable punishment (Pen. Code, § 11165(d)), of corporal punishment or injury (Pen. Code, § 11165(e)), or of abuse in out-of-home care (Pen. Code, § 11165(f)).

The law identifies persons who are required to report known or suspected child abuse. These are persons who, within their professional capacities or employments, have knowledge of or observe a child who they know or reasonably suspect has been a victim of child abuse. (Pen. Code, § 11166(a).) Such persons must report this information to a child protective agency (i.e., a police or sheriff's department, a county probation department or a county welfare department) "immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." (Pen. Code, § 11166(a).)

The persons who are under this mandatory duty to report child abuse are child care custodians, medical practitioners, nonmedical practitioners and employees of child protective agencies. (Pen. Code, § 11166(a).) These employment categories are defined in Penal Code section 11165 as follows:

"(h) 'Child care custodian' means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

"(i) 'Medical practitioner' means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"(j) 'Nonmedical practitioner' means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

"(k) 'Child protective agency' means a police or sheriff's department, a county probation department, or a county welfare department."

In addition, persons within the above definitions who have knowledge of or who reasonably suspect that mental suffering has been inflicted on a child, or a child's emotional well-being is endangered in any other way, "may report such known or suspected instance of child abuse to a child protective agency." (Pen. Code, § 11166(b).) Finally, "any other person" who has knowledge of or observes a child who he or she knows or reasonably suspects has been a victim of child abuse "may report the known or suspected instance of child abuse to a child protective agency." (Pen. Code, § 11166(c).) Persons in this latter category are not required to include their names when reporting. (Pen. Code, § 11167(d).) In any event, the identities of all persons making reports "shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to a district attorney in a criminal prosecution or in an action initiated under section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to section 318 of the Welfare and Institutions Code, or to the county counsel or the district attorney in an action initiated under section 232 of the Civil Code or section 300 of the Welfare and Institutions Code, or when those persons waive confidentiality, or by court order."¹ (Pen. Code, § 11167(c).)

The Child Abuse Reporting Law is designed to supply child protective agencies promptly with information of suspected misconduct against children so that those agencies may take timely action if necessary to protect the children.

¹ Welfare and Institutions Code section 602 concerns juvenile court jurisdiction over minors violating criminal laws. Welfare and Institutions Code section 318 concerns juvenile court detention proceedings.

Civil Code section 232 covers children who are abandoned, cruelly treated or neglected by parents; children whose parents are disabled by alcohol or drugs or are morally depraved; children whose parents are convicted of felonies, are developmentally disabled, are mentally ill or are incapable of supporting or controlling them due to mental deficiency or illness; children who are in foster homes, or in a residential or health facilities, for two consecutive years.

Welfare and Institutions Code section 300 cover children who are in need of proper and effective parental care or control, who are destitute, who are physically dangerous to the public, or who are from unfit homes.

We now must examine the Lanterman-Petris-Short Act, a comprehensive state law directed at the evaluation, supervision, protection, care and treatment of persons who are mentally disordered, developmentally disabled or impaired by chronic alcoholism. (Welf. & Inst. Code, § 5001.) As part of this act, the Legislature imposed confidentiality strictures upon information and records obtained in the course of providing services for the mentally ill. Welfare and Institutions Code section 5328 provides in part as follows:

"All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases"

The section continues by listing numerous exceptions which allow disclosure of confidential information and records in specific situations. Only one exception, (l), refers to child abuse matters:

"(l) Between persons who are trained and qualified to serve on 'multidisciplinary personnel' teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9."²

Multidisciplinary personnel teams are groups of persons who are trained in the prevention, identification and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. (Welf. & Inst. Code, § 18951(d).) This exchange of information under Welfare and Institutions Code section 5328(l) is designed to assist the Office of Child Abuse Prevention, a unit of the State Department of

² A contention might be advanced that since the Legislature has placed this narrowly drawn exception within section 5328 it did not intend to allow disclosure of confidential child abuse information in any other circumstances. Such an argument, however, would ignore the fact that section 5328 does not contain an exclusive list of exceptions to the confidentiality rule. (See Welf. & Inst. Code, §§ 5328.01, 5328.02, 5328.1, 5328.4, 5328.8, 5328.9 and 5328.15.) Since the reporting obligation is not restricted to persons performing Lanterman-Petris-Short Act services, no conclusion can be drawn from its non-inclusion within that act.

Social Services, and to implement the pilot projects administered by that unit. (Welf. & Inst. Code, §§ 18950-18960.)

The question we are asked requires us to assume that persons have acquired information in the course of rendering services under the Lanterman-Petris-Short Act, that this information is confidential under Welfare and Institutions Code section 5328, and that none of the exceptions in section 5328 is applicable. If this information concerns child abuse, within the meaning of Penal Code section 11165, are the persons with this information required or permitted to report it to child protective agencies? We conclude that they are required or permitted to report instances of child abuse since the reporting provisions of the Child Abuse Reporting Law supersede the confidentiality provisions of the Lanterman-Petris-Short Act. This determination previously was made by us in 58 Ops.Cal.Atty.Gen. 824 (1975) and we find no reasons to revise our views even though there have been intervening statutory changes.

In 58 Ops.Cal.Atty.Gen. 824 (1975) we were asked whether or not former Penal Code section 11161.5,³ requiring psychotherapists and others to report evidence of

³ This section (Stats. 1974, ch. 348, pp. 679-680) provided in part:

"(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurses when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department; or, in the alternative, either to the county welfare department, or to the county health department. The

child abuse gained by observation of the victim, prevailed over Welfare and Institutions Code section 5328. The factual situation underlying the opinion concerned direct observation of victim and our analysis was based, in part, on the determination that whatever adverse emotional effects might confront the victim by having the matter reported, there was also a duty owed to the victim to protect him or her from further abuse. We stated, at page 827:

"The apparent conflict [of Welf. & Inst. Code § 5328] with the mandate of Penal Code section 11161.5 is merely superficial, however, since the *purposes* of the two statutes not only are reconcilable, but are essentially parallel. The aim of the confidentiality statute [Welf. & Inst. Code, § 5328] is to protect the patient and to promote open and candid communication between patient and psychotherapist, thus aiding the psychiatric treatment. Like the reporting statute, the overriding concern is the patient's well-being, his mental and/or emotional stability."

However, we did not rest our opinion on this single ground. We observed, at page 826, the paramount purpose behind the reporting law:

"Through several amendments, section 11161.5 has evolved into a comprehensive reporting statute aimed at increasing the number and types of child abuse cases reported. In seeking this objective, the Legislature has greatly increased and diversified the groups of persons upon whom a duty rests to report such cases. It has also added to the types of harm which should be reported, provided alternatives to reporting to police, and immunized the reporting person from civil or criminal liability resulting from his making the report."

We further noted, at page 828:

report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

"Whenever it is brought to the attention of a director of a county welfare department or health department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that a minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon a minor, he shall file a report without delay with the local police authority having jurisdiction and to the juvenile probation department as provided in this section.

"No person shall incur any civil or criminal liability as a result of making any report authorized by this section."

"As it has developed in recent years, the entire legislative scheme in the area of child protection is aimed at discovering more cases and preventing serious harm by taking prompt remedial action."

In this regard we pointed to, as illustrative of legislative intent, Welfare and Institutions Code section 16506 which provided then, as it does now, that nothing in the state law provisions for services for the care of children (Welf. & Inst. Code, div. 9, pt. 4) shall "in any way relieve persons administering or working in child protective services programs from the obligation resting on all citizens to report crimes to duly authorized law enforcement agencies." We also pointed to Evidence Code section 1027 which states that there is no psychotherapist privilege when the patient is a child under age of 16 and the psychotherapist has reasonable cause to believe "that the patient has been the victim of a crime and that disclosure of the communication is in the best interest of the child."

Accordingly, we concluded that the Legislature intended the confidentiality provision, Welfare and Institutions Code section 5328, "to yield when evidence of a crime against a person comes to light. . . ." (58 Ops.Cal.Atty.Gen. 824, 827.) Our ultimate conclusion, at page 830, was even more broadly stated:

"It follows then, and it is our opinion, that Welfare and Institutions Code section 5328 should yield to Penal Code section 11161.5 and require the psychotherapist to report instances of child abuse in any form which come to his attention through observation of the victim."

Since announcement of our opinion in 58 Ops.Cal. Atty.Gen. 824 (1975), Penal Code section 11161.5 has been repealed (Stats. 1980, ch. 1071, § 1, p. 3420) and replaced by Penal Code sections 11165-11166 (Stats. 1981, ch. 435). The Legislature has again increased the number and type of cases which are to be reported and increased the number of groups of persons who have a mandatory duty to report. Indeed, all persons are encouraged to make reports. Now, not only must direct observations of child abuse be reported but "knowledge of" such abuse is also reportable. (Pen. Code, § 11166.) Consequently, knowledge of child abuse obtained directly from the child and from sources other than the child must be reported under section 11166(a) by those in special employment groups and may be reported by other persons under section 11166(c).

The legislative policy which favors the reporting of child abuse information remains intact. In Welfare and Institutions Code section 18950, the Legislature in creating the Office of Child Abuse Prevention stated:

"The Legislature finds and declares that child abuse is a growing concern in this state, and that current methods of coping with child abuse

problems are resulting in family breakups that are both expensive and nonproductive to the state. It is the intent of the Legislature to provide for the establishment of pilot projects or technical assistance (directly or through grant or contract) to public and private agencies and organizations to assist them in planning, improving, developing, and carrying out programs and activities relating to the prevention, identification and treatment of child abuse and neglect."

Pilot programs with the following services have been suggested by the Legislature: (a) coordination of the identification and reporting of child abuse instances; (b) counseling for families of abused children; (c) temporary family aide services; (d) establishment of 24-hour "hotline" telephone services; (e) voluntary placements of children outside the home for "cooling off" periods; (f) multidisciplinary family crisis teams; (g) information clearinghouses; and (h) professional child mental health services including education and training for parents and prospective parents. (Welf. & Inst. Code, § 18960.) Such programs would be of limited value without an effective system for the reporting of child abuse cases to responsible agencies.

In a separate legislative scheme providing for protective services for children under part 4 of division 9 of the Welfare and Institutions Code, which we discussed in 58 Ops.Cal.Atty.Gen. 824, 828 (1975), the Legislature has, in section 16506, provided:

"Nor shall this part in any way relieve persons administering and working in child protective services programs from the obligation resting on all citizens to report crimes to duly authorized law enforcement agencies."

Another finding and declaration of legislative purpose is found in Welfare and Institutions Code section 18275 providing for the establishment of child sexual abuse prevention demonstration centers:

"The Legislature finds that there is a need to develop programs to provide the kinds of innovative strategies and services which will ameliorate, reduce, and ultimately eliminate the trauma of child sexual abuse.

"The Legislature also finds that for the purposes of developing and providing such programs and services, and for training of and providing information to city and county personnel throughout the state, a child sexual abuse prevention demonstration center should be established." (See Welf. & Inst. Code, §§ 18276-18281.)

Furthermore, legislative findings and declarations have been made relating to domestic violence, including abuse of children (Welf. & Inst. Code, § 18290):

"The Legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. There are hundreds of thousands of persons in this state who are regularly beaten. In many such cases, the acts of domestic violence lead to the death of one of the involved parties. Victims of domestic violence come from all socio-economic classes and ethnic groups, though it is the poor who suffer most from marital violence since they have no immediate access to private counseling and shelter for themselves and their children. Children, even when they are not physically assaulted, very often suffer deep and lasting emotional effects, and it is most often the children of those parents who commit domestic violence that continue the cycle and abuse their spouses.

"The Legislature further finds and declares that there is a high incidence of deaths and injuries sustained by law enforcement officers in the handling of domestic disturbances. Police arrests for domestic violence are low, and victims are reluctant to press charges or make citizens arrests.

"Furthermore, instances of domestic violence are considered to be the single most unreported crime in the state.

"It is the intention of the Legislature to begin to explore and determine ways of achieving reductions in serious and fatal injuries to the victims of domestic violence and begin to clarify the problems, causes, and cures of domestic violence. In order to achieve these results, it is the intention of the Legislature that the state shall support projects in several areas throughout the state for the purpose of aiding victims of domestic violence by providing them a place to escape the destructive environment."

One of the stated goals of the California Social Services Planning Act is "[p]reventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families." (Welf. & Inst. Code, § 10102(c).)

To advise the Office of Child Abuse Prevention, the Legislature has created the State Advisory Committee on Child Abuse, made up of representatives of parents, medical and health practitioners, law enforcement personnel, social workers and other professionals interested in children's services. (Health & Saf. Code, § 320.7.) Recently

reconstituted with expanded duties is the State Maternal, Child, and Adolescent Health Board. (Health & Saf. Code, § 320.2.) This board, together with community boards, advises on and reviews programs and services relating to children and others. (Health & Saf. Code, §§ 320.5 and 321.7.)

In addition, since September 1979, an applicant for a physician's and surgeon's certificate must show the successful completion of a medical curriculum which includes "[c]hild abuse detection and treatment." (Bus. & Prof. Code, §§ 2089 and 2091.) Since January 1981, qualifications for a school nurse's certificate include "training in child abuse and neglect detection." (Ed. Code, § 44877.) The same qualification is required of all public health nurses. (Health & Saf. Code, § 605.) Moreover, the Office of Child Abuse Prevention is directed to develop and disseminate information to all school districts and their personnel regarding the detection of child abuse." (Ed. Code, § 44691.) The Department of Education is required to provide child abuse detection instruction to school personnel. (Ed. Code, § 44691.)

The Commission on Peace Officer Standards and Training, within the California Department of Justice, is directed by state law to prepare guidelines establishing standard procedures which may be followed by police agencies in cases involving "the sexual exploitation or sexual abuse of children." (Pen. Code, § 13516.) Moreover, Penal Code section 13517(a) mandates as follows:

"The commission shall prepare guidelines establishing standard procedures which may be followed by police agencies in the detection, investigation, and response to cases in which a minor is a victim of an act of abuse or neglect prohibited by this code. The guidelines shall include procedures for determining whether or not a child should be taken into protective custody."

Penal Code section 11174, a part of the Child Abuse Reporting Law, requires the Department of Justice, in cooperation with the State Department of Social Services, to prescribe regulations and guidelines for the investigation of child abuse in group homes or institutions.

For the victim of child abuse or threatened child, comprehensive provisions of the juvenile court law provide protection. (See Welf. & Inst. Code, §§ 300, 318, 701, 702 and 727; Civ. Code, § 232.)

The continuing concern for the safety of children is manifest in the above statutes. Yet each legislative scheme would be seriously curtailed if the persons who observe or who have knowledge of child abuse cases remain silent. Particularly, the

Legislature has mandated that child care custodians, medical practitioners, nonmedical practitioners and employees of child protective agencies report such occurrences to a police or sheriff's department, a county probation department or a county welfare department. (Pen. Code, §§ 11166(a) and 11165(k).) Such persons who report a known or suspected instance of child abuse are granted immunity from civil or criminal liability. (Pen. Code, § 11172(a).) Their identities are protected. (Pen. Code, § 11167(c).) If they fail to report, when required to do so, they face prosecution for a misdemeanor. (Pen. Code, § 11172(b).)

We believe this duty to report child abuse prevails over the stricture of Welfare and Institutions Code section 5328 that information and records of certain mental health services be maintained on a generally confidential basis. We have previously examined section 5328 and its exceptions. In 62 Ops.Cal.Atty.Gen. 57 (1979) we analyzed the question of whether or not a "patient's advocate," i.e., a person assigned by the county mental health director to ensure the protection of a mental patient's rights under Welfare and Institutions Code section 5325, had access to the patient's treatment records. We concluded that he did even though he did not fit into one of the exceptions enumerated within section 5328. We determined that the county mental health director had access to treatment records under other statutes, namely, Welfare and Institutions Code sections 5607 and 5326.1, and could obtain such records independently of section 5828 by reason of his administrative responsibilities. We then determined that the local director, under the delegation of powers provisions of Government Code section 11182, could grant to the patient's advocate access to the county's records of the patient.

The key to this opinion was that Welfare and Institution Code sections 5607 and 5326.1 were also express exceptions to the confidentiality restriction of section 5328. (62 Ops.Cal.Atty.Gen. 57, 60 (1979).) By the same reasoning, we believe the Child Abuse Reporting Law is an express exception to section 5328.

At this point, it may be helpful to contrast the Child Abuse Reporting Law with Welfare and Institutions Code section 5328. As we have seen, the purpose of the reporting law is to collect information from citizens of actual or suspected child abuse so as to allow child protection agencies to take remedial action. On the other hand, the function of section 5328 was explained in *In re S.W.* (1978) 79 Cal.App.3d 719, 721:

"This portion of the Lanterman-Petris-Short Act [Welf. & Inst. Code, § 5328] is a general prohibition against disclosure of information, subject to defined exceptions. The confidentiality imposed by this act goes beyond matter which is protected by any of the privileges established in the Evidence Code. For example, a record showing only that a person had entered a facility for treatment or evaluation under the act would probably not contain privileged matter, but its disclosure could bring embarrassment or more

serious consequences to the individual involved. One of the purposes of section 5328 is to avoid that kind of undesired publicity. (See *County of Riverside v. Superior Court* (1974) 42 Cal.App.3d 478, 481 [116 Cal.Rptr. 886].)"

Section 5328, then, is designed to prevent public disclosure of the fact that the patient is undergoing treatment for a mental disorder. (See also *Aden v. Younger* (1976) 57 Cal.App.3d 662, 680.) Nevertheless, where disclosure is necessary the Legislature has listed a series of exceptions within the statute⁴ and, as we discussed in 62 Ops.Cal. Atty.Gen. 57, 60 (1979), outside the statute.⁵ The Child Abuse Reporting Law is such an outside exception generated by the necessity that citizens inform child protective agencies of their observations and knowledge of child abuse instances.

By further contrast, the reporting law does not authorize child protective agencies to pry randomly into case histories searching for information of abusive misconduct against children. Rather, the law imposes a duty upon individuals to take some action on behalf of a child when they reasonably suspect there has been particular types of abuse.

Our opinion that Welfare and Institutions Code section 5328 yields to the Child Abuse Reporting Law is supported by judicial authority. Starting with more recent authority, in *Mavroudis v. Superior Court* (1980) 102 Cal.App.3d 594, the Court of Appeal was confronted with the question of whether plaintiffs in a damage action against a hospital for alleged injuries caused to them by a psychiatric patient were, as part of pretrial discovery, entitled to examine the patient's records. The hospital argued that the records

⁴ These exceptions include release of information or records: "(f) to the courts, as necessary to the administration of justice" and "(g) to governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families." By this latter exception, we do not discern a legislative intent to protect only a single class of persons. Rather, the Legislature was providing special access to information and records where the safety of high level public officials is threatened directly or indirectly. Similarly, by the Child Abuse Reporting Law, a law enforcement agency (as a child protection agency) may become informed, through other persons, of behavior which threatens children generally.

⁵ Other exceptions found outside the framework of section 5328 include: Welf. & Inst. Code, §§ 5328.01 (records of mentally disordered sex offenders and persons adjudicated insane under Penal Code, §§ 1026 or 1368), 5328.02 (records requested by Youth Authority and Adult Correctional Agency), 5328.1 (information requested by family members), 5328.4 (reports of certain crimes within hospital), 5328.8 (records required by coroner), 5328.9 (information requested by employers) and 5328.15 (records requested by State Department of Health Services or boards which license or certify professionals in the fields of mental health or developmental disabilities).

were confidential under section 5328 and privileged under Evidence Code section 1014, the psychotherapist-patient privilege. The court, in reaching a decision, observed that the "clear language of Welfare and Institutions Code section 5328, subdivision (f) [see fn. 4, *supra*] authorizes the disclosure of the evidence here requested unless such evidence is otherwise nondisclosable." (102 Cal.App.3d at 602.) However, the court ruled that the exception to section 5328 "does not override the privilege created by Evidence Code section 1014." (102 Cal.App.3d at 602.) The court was applying the rule that the special statute, Evidence Code section 1014, will be considered as an exception to the general statute. (See *In re Williamson* (1954) 43 Cal.2d 651, 654; Code Civ. Proc., § 1859.) Accordingly, a special statute, like the reporting law, overrides the general statute, section 5328. However, as we indicated earlier, it would override only to the extent that the reporting law will allow persons, who in the course of performing services under the Lanterman-Petris-Short Act obtain knowledge of or observe an abused child, to report to certain agencies what they know or have observed. It does not give these agencies direct access to the mental health information and records. The case of *County of Riverside v. Superior Court* (1974) 42 Cal.App.3d 478 highlights this distinction.

In *County of Riverside* the Board of Chiropractic Examiners sought records from an alcoholism treatment center relating to a chiropractor who had been a patient there. The board did not contend that it had an independent right of access to these records but argued that under 5328(f) the records could be submitted to a court for a court determination whether the records should be disclosed to the board for use in a pending administrative proceeding against the chiropractor. The Court of Appeal rejected this construction of section 5328(f), noting that "[h]ad the Legislature intended to permit disclosure to administrative agencies such as State Board it would doubtless have included a specific authorization for such disclosure." (42 Cal.App.3d at 481.) On the subject before us, the Legislature has in the reporting law enacted a specific authorization for disclosure, not limited to the Lanterman-Petris-Short Act records, applicable to persons generally and to particular categories of persons likely to obtain knowledge or to observe evidence of child abuse as defined in Penal Code section 11165.

The case of *Landeros v. Flood* (1976) 17 Cal.3d 399 must also be examined. The plaintiff-child complained that a physician failed to diagnose battered child syndrome and to report his observations, under the child abuse reporting statutes, to the appropriate authorities. As a result, the child suffered further beatings and injuries at the hands of her mother and her mother's friend. The California Supreme Court, in overturning the sustaining of a demurrer, found that a cause of action was stated by the complaint. The court (17 Cal.3d at 410, fn. 8) alluded to the duty to report such observations:

"Whether the physician would have followed the procedure of reporting plaintiff's injuries to the authorities, however, is not solely a

question of good medical practice. The above-cited reporting statutes (Pen. Code, §§ 11160-11161.5) were in force in 1971. They evidence a determination by the Legislature that in the event a physician does diagnose a battered child syndrome, due care includes a duty to report that fact to the authorities. In other words, since the enactment of these statutes a physician who diagnoses a battered child syndrome will not be heard to say that other members of his profession would not have made such a report. The same is true of each of the persons and entities covered by this legislation. Accordingly, although expert testimony on the issue of a duty to report is admissible, it is not mandatory."

This duty was a decisive consideration in *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, decided soon after *Landeros*. The court found that psycho-therapists at a state hospital had a common law duty to warn the victim, or persons likely to apprise the victim of danger, that a patient had confided to them his intention to kill the victim. The victim was in fact killed by this patient. The duty was summarized as follows (17 Cal.3d at 431):

"When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances."

Since the therapeutic services to the patient were not shown to have been rendered under the Lanterman-Petris-Short Act, the court did not consider the effect of Welfare and Institutions Code section 5328. (17 Cal.3d at 443.) However, the court determined that the duty to protect third parties from "dangers emanating from the patient's illness" transcends even the trust created by confidential communications. (17 Cal.3d at 436-440.) The court stated (17 Cal.3d at 440):

"We recognize the public interest in supporting effective treatment of mental illness and in protecting the rights of patients to privacy (see *In re Lifschutz, supra*, 2 Cal.3d at p. 432), and the consequent public importance of safeguarding the confidential character of psychotherapeutic communication. Against this interest, however, we must weigh the public interest in safety from violent assault."

After weighing the competing interests, the court found a duty to report the patient's threat to kill the victim. The Child Abuse Reporting Act creates a similar duty in specified persons to report child abuse.

In *People v. Modesto* (1965) 62 Cal.2d 436, officers seeking a missing child did not advise the suspect of his rights before questioning him. The court recognized a more important interest (62 Cal.2d at 446):

"The statements made by defendant before Connie's body was discovered are admissible. They were freely and voluntarily made at a time when the officers were concerned primarily with the possibility of saving Connie's life. The paramount interest in saving her life, if possible, clearly justified the officers in not impeding their rescue efforts by informing defendant of his rights to remain silent and to the assistance of counsel. Since these [defendant's] statements were voluntarily made and lawfully obtained, there is no basis for their exclusion."

In *In re Lynna B.* (1979) 92 Cal.App.3d 682, the Court of Appeal permitted disclosure of information about a child acquired under the aid to families with dependent children laws, which information was confidential under Welfare and Institutions Code section 10850. This disclosure was allowed because the physical and emotional welfare of the child was involved. The court reasoned (92 Cal.App.2d at 705):

"The legislative purpose in providing for confidentiality of public social services records is to protect the right of privacy of the recipient of such benefits. (Cf. Gov. Code, § 6254, 'nothing in this chapter shall be construed to require disclosure of records that are: . . . (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy') The privilege for confidential records under Welfare and Institutions Code section 10850 is a conditional one. The section itself provides for release of records for specified purposes. Certainly when the best interests of a minor child are at stake, the need for disclosure of relevant information 'in the interest of justice' for the minor child outweighs the need for confidentiality."

(See also *In re Jeannie Q.* (1973) 32 Cal.App.3d 288, 305.)

The importance placed by the Legislature upon the reporting law is further demonstrated by Penal Code section 11171(b) which provides that "[n]either the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing."

Some services under the Lanterman-Petris-Short Act may be funded by the United States government and, consequently, records of such services may be subject to federal confidentiality laws. (See 21 U.S.C. § 1175; 42 U.S.C. § 4582.) This subject was dealt with in *Matter of Dwayne G.* (1978) 97 Misc.2d 333, 411 N.Y.S.2d 180. In a child neglect proceeding in a New York family court it was alleged that the child's mother was a chronic alcoholic and to prove this allegation the child's representative requested a hospital to produce the mother's alcoholic treatment records which were confidential under 42 U.S.C. § 4582. In allowing production the state judge found as follows (411 N.Y.S.2d at 182):

"[I]n a neglect proceeding confidentiality must give way before the duty of the court to prevent harm to its ward and to safeguard the best interests of the child, that is, to insure the physical, mental and emotional well-being of the child, and on the further statutory requirement that hospitals and agencies must send to the court, upon subpoena, their records relating to neglect for use in such proceeding. Family Court Act 1011, 1038; *In the Matter of Gigi B.*, 71 Misc.2d 176, 335 N.Y.S.2d 535 (Fam.Ct.Bronx Co. 1972); *In the Matter of Doe Children*, 93 Misc.2d 479, 402 N.Y.S.2d 958 (Fam.Ct.Queens Co. 1978). (In *Doe*, the issues and the federal law were virtually identical to those in this case, except that the Commissioner there sought the same relief from a drug abuse program). Furthermore, the petitioner, in his affidavit has satisfactorily demonstrated that the evidence of the alleged chronic alcoholism of the respondent-mother will be contained in these records, and that such evidence is both necessary and material to meet his burden of proof. Therefore, this court finds that there is 'good cause', as required by the federal statute, to authorize disclosure of the records sought by the petitioner in this case."

As we have previously stated, the Child Abuse Reporting Law concerns access to a person's knowledge or observation that a child has been or is being abused and not access to specific records. The duty to prevent harm outweighs other interests in maintaining confidentiality in federal-state programs. (See *Matter of Baby X* (1980) 97 Mich.App. 111, 293 N.W.2d 736, 741.)

In order for a state to qualify for assistance under the federal Child Abuse Prevention and Treatment Act, a state must "provide for the reporting of known and suspected instances of child abuse and neglect". (42 U.S.C. § 5103(b)(2)(B).) Regulations adopted pursuant to the federal act state in part that this requirement is satisfied "if a state requires specified persons by law, and has a law or administrative procedure which requires, allows, or encourages all other citizens, to report known or suspected instances of child abuse and neglect to one or more properly constituted authorities with the power and

responsibility to perform an investigation and take necessary ameliorative and protective steps" (45 CFR § 1340.3-3(d)(2)(i).) We determine that the Child Abuse Reporting Law is consistent with these requirements of federal law.

The legislative purpose in protecting records of Lanterman-Petris-Short Act services from public disclosure is to assure privacy for the recipients of those services. But this protective shield was not intended to hide cases of child abuse. The physical and mental well-being of children is a prime interest of the state. This is demonstrated by the numerous programs, described previously, designed to guard and guide the welfare of children. Children are vulnerable to the misconduct of those older and stronger than themselves. They are least able to help themselves. The Legislature, by the Child Abuse Reporting Law, has placed a duty upon others to act on behalf of these children. We perceive the legislative intent to be that this law prevails over Welfare and Institutions Code section 5328 where there is a conflict. The exception to confidentiality contained in the reporting law is a relatively mild incursion into the confidentiality of Lanterman-Petris-Short Act services.

We conclude the duty to report child abuse under the Child Abuse Reporting Law (Pen. Code, § 11165-11174) supersedes the confidentiality provisions of the Lanterman- Petris-Short Act (Welf. & Inst. Code, § 5328).
