

Search FindLaw

Register | Login Not a Legal Professional? Visit our consumer site

CASES & CODES PRACTICE MANAGEMENT JOBS & CAREERS LEGAL NEWS BLOGS SERVICE PROVIDERS

Forms Law Technology Lawyer Marketing Corporate Counsel Law Students JusticeMail Newsletters



[See All FindLaw Blogs >>](#)
[Go To California Case Law Main Page >>](#)

About California Case Law

California Case Law features news and information from the Supreme Court of California and the California Courts of Appeal, as well as news that would be of interest to legal professionals practicing in California. Have a comment or tip? [Write to us.](#)



- [Subscribe to this blog's feed](#)
- [Subscribe to FindLaw news for legal professionals](#)
- [Subscribe to Supreme Court of California case law updates](#)
- [See all FindLaw RSS feeds](#)

Popular Topics

[ADMINISTRATIVE LAW](#) [Attorney's Fees](#) [California Supreme Court](#) [Civil Procedure](#) [civil procedure](#) [civil procedures](#) [Constitutional Law](#) [Contract Law](#) [criminal law](#) [CRIMINAL LAW & PROCEDURE](#) [CRIMINAL LAW AND PROCEDURE](#) [Environmental Law](#) [evidence](#) [Family Law](#) [GOVERNMENT LAW](#) [government law](#) [INJURY AND TORT LAW](#) [Insurance Law](#) [Labor and Employment Law](#) [SENTENCING.](#)

Categories

[Bankruptcy Law \(5\)](#)
[CLE](#)
[Civil Rights Law \(91\)](#)
[Contract Law \(165\)](#)
[Court News \(41\)](#)
[Court Rules \(14\)](#)
[Criminal Law \(490\)](#)
[Employment Law \(154\)](#)
[Ethics \(15\)](#)
[Family Law \(126\)](#)
[Immigration Law \(4\)](#)
[Injury & Tort Law \(226\)](#)
[Intellectual Property Law \(16\)](#)
[People and Events \(26\)](#)
[Property Law \(132\)](#)
[Trusts & Estates Law \(50\)](#)

Search California Case Law

Recent Posts

[Cal. Supreme Court Affirms SVPA Psychotherapist-Patient Privilege](#)
[5 Things to Know About FBI National Security Letters](#)
[Mixed Motive Discrimination Upends 'Price is Right' Model's Win](#)
[Women Rule at Oakland Courthouse](#)
[Cal Supreme Court Upholds Marsy's Law Parole Delays](#)

Archives

 Select a Month...

Recent CA Supreme Court Decisions

[People v. Pearson](#)
[People v. Gonzales](#)
[PEOPLE v. WILKINS](#)
[People v. Wilkins](#)
[People v. ...](#)

Does a Cop Have a Duty to Report His Own Crimes?

By Robyn Hagan Cain on January 17, 2013 12:09 PM

Does a mandated reporter have a duty to report abuse when he's responsible for that abuse?

According to a recent decision from California's Fifth Appellate District Court, the Fifth Amendment trumps the mandatory reporting law.

Kassey S. was sexually assaulted by Turlock Police Officer Jorge Cruz on multiple occasions when she was participating as a minor in the Turlock Police Department explorer program. The assaults took place during one-on-one ride alongs while Cruz was on duty. Kassey [sued the City of Turlock and the Turlock Police Department](#), alleging that the City was vicariously liable for Cruz's negligence based on his [failure to report](#) the sexual abuse to a child protective agency.

The trial court sustained the City's demurrer, holding that the [Child Abuse and Neglect Reporting Act](#) did not impose a "mandatory duty" on a mandated reporter to report his or her own acts of abuse since such a requirement would forfeit the Fifth Amendment privilege against self-incrimination. Since the mandatory duty was not breached -- and the alleged molestations took place outside the course and scope of Cruz's employment -- the court found the City could not be directly or vicariously liable for Cruz's actions.

Sadly, this isn't an uncharted area of the law. California's Fourth Appellate District ruled in [Doe 1 v. City of Murrieta](#) that a police department is not vicariously liable for the misconduct when a cop sexually assaults a minor participating in a police explorer program. Although the police officer is on duty, such misconduct does not come within the course and scope of the police officer's employment.

While Kassey acknowledged that the City couldn't be held vicariously liable for Cruz's first assault, she argued that the City was vicariously liable for Cruz's subsequent assaults based on his breach of duty to report his first assault. Kassey's reasoning was that both before and after the assaults, Cruz was acting within the scope of his duties as a police officer and had a mandatory duty to report his own misconduct.

The appellate court disagreed, noting that it would not interpret the statute in a [manner that would make it unconstitutional](#), (such as requiring self-incrimination).

While Kassey's argument was novel, the Fifth Amendment takes priority over mandatory reporting laws.

Related Resources:

- [Kassey S. v. City of Turlock](#) (California Courts)
- [Primary Assumption of Risk Applies to Bumper Cars](#) (FindLaw's California Case Law Blog)
- [Checklist: Are You a Mandatory Reporter of Child Abuse?](#) (FindLaw)

Follow @HaganCain 109 followers