

ASSEMBLY BILL

No. 1713

Introduced by Assembly Member Campos

February 16, 2012

An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1713, as introduced, Campos. Child abuse reporting.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law identifies commercial film and photographic print processors as mandated reporters, and requires any commercial film and photographic print processor who has knowledge of or observed in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse.

This bill would expand the application of those provisions to commercial film and photographic print or image processors, as defined, and would also expand the list of media to which those provisions apply to include, among other things, any representation of information, data, or an image, as specified.

This bill would also make technical, nonsubstantive changes and would update a cross-reference.

By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11165.7 of the Penal Code is amended
- 2 to read:
- 3 11165.7. (a) As used in this article, “mandated reporter” is
- 4 defined as any of the following:
- 5 (1) A teacher.
- 6 (2) An instructional aide.
- 7 (3) A teacher’s aide or teacher’s assistant employed by any
- 8 public or private school.
- 9 (4) A classified employee of any public school.
- 10 (5) An administrative officer or supervisor of child welfare and
- 11 attendance, or a certificated pupil personnel employee of any public
- 12 or private school.
- 13 (6) An administrator of a public or private day camp.
- 14 (7) An administrator or employee of a public or private youth
- 15 center, youth recreation program, or youth organization.
- 16 (8) An administrator or employee of a public or private
- 17 organization whose duties require direct contact and supervision
- 18 of children.
- 19 (9) Any employee of a county office of education or the State
- 20 Department of Education, whose duties bring the employee into
- 21 contact with children on a regular basis.
- 22 (10) A licensee, an administrator, or an employee of a licensed
- 23 community care or child day care facility.
- 24 (11) A Head Start program teacher.

- 1 (12) A licensing worker or licensing evaluator employed by a
2 licensing agency as defined in Section 11165.11.
- 3 (13) A public assistance worker.
- 4 (14) An employee of a child care institution, including, but not
5 limited to, foster parents, group home personnel, and personnel of
6 residential care facilities.
- 7 (15) A social worker, probation officer, or parole officer.
- 8 (16) An employee of a school district police or security
9 department.
- 10 (17) Any person who is an administrator or presenter of, or a
11 counselor in, a child abuse prevention program in any public or
12 private school.
- 13 (18) A district attorney investigator, inspector, or local child
14 support agency caseworker unless the investigator, inspector, or
15 caseworker is working with an attorney appointed pursuant to
16 Section 317 of the Welfare and Institutions Code to represent a
17 minor.
- 18 (19) A peace officer, as defined in Chapter 4.5 (commencing
19 with Section 830) of Title 3 of Part 2, who is not otherwise
20 described in this section.
- 21 (20) A firefighter, except for volunteer firefighters.
- 22 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
23 resident, intern, podiatrist, chiropractor, licensed nurse, dental
24 hygienist, optometrist, marriage and family therapist, clinical social
25 worker, professional clinical counselor, or any other person who
26 is currently licensed under Division 2 (commencing with Section
27 500) of the Business and Professions Code.
- 28 (22) Any emergency medical technician I or II, paramedic, or
29 other person certified pursuant to Division 2.5 (commencing with
30 Section 1797) of the Health and Safety Code.
- 31 (23) A psychological assistant registered pursuant to Section
32 2913 of the Business and Professions Code.
- 33 (24) A marriage and family therapist trainee, as defined in
34 subdivision (c) of Section 4980.03 of the Business and Professions
35 Code.
- 36 (25) An unlicensed marriage and family therapist intern
37 registered under Section 4980.44 of the Business and Professions
38 Code.
- 39 (26) A state or county public health employee who treats a minor
40 for venereal disease or any other condition.

1 (27) A coroner.

2 (28) A medical examiner, or any other person who performs
3 autopsies.

4 (29) A commercial film and photographic print *or image*
5 processor, as specified in subdivision (e) of Section 11166. As
6 used in this article, “commercial film and photographic print *or*
7 *image* processor” means any person who develops exposed
8 photographic film into negatives, slides, or prints, or who makes
9 prints from negatives or slides, *or who prepares, publishes,*
10 *produces, develops, duplicates, or prints any representation of*
11 *information, data, or an image, including, but not limited to, any*
12 *film, filmstrip, photograph, negative, slide, photocopy, videotape,*
13 *video laser disk, computer hardware, computer software, computer*
14 *floppy disk, data storage medium, CD-ROM, computer-generated*
15 *equipment, or computer-generated image, for compensation. The*
16 term includes any employee of such a person; it does not include
17 a person who develops film or makes prints for a public agency.

18 (30) A child visitation monitor. As used in this article, “child
19 visitation monitor” means any person who, for financial
20 compensation, acts as monitor of a visit between a child and any
21 other person when the monitoring of that visit has been ordered
22 by a court of law.

23 (31) An animal control officer or humane society officer. For
24 the purposes of this article, the following terms have the following
25 meanings:

26 (A) “Animal control officer” means any person employed by a
27 city, county, or city and county for the purpose of enforcing animal
28 control laws or regulations.

29 (B) “Humane society officer” means any person appointed or
30 employed by a public or private entity as a humane officer who is
31 qualified pursuant to Section 14502 or 14503 of the Corporations
32 Code.

33 (32) A clergy member, as specified in subdivision (d) of Section
34 11166. As used in this article, “clergy member” means a priest,
35 minister, rabbi, religious practitioner, or similar functionary of a
36 church, temple, or recognized denomination or organization.

37 (33) Any custodian of records of a clergy member, as specified
38 in this section and subdivision (d) of Section 11166.

1 (34) Any employee of any police department, county sheriff's
2 department, county probation department, or county welfare
3 department.

4 (35) An employee or volunteer of a Court Appointed Special
5 Advocate program, as defined in Rule ~~1424~~ 5.655 of the California
6 Rules of Court.

7 (36) A custodial officer as defined in Section 831.5.

8 (37) Any person providing services to a minor child under
9 Section 12300 or 12300.1 of the Welfare and Institutions Code.

10 (38) An alcohol and drug counselor. As used in this article, an
11 "alcohol and drug counselor" is a person providing counseling,
12 therapy, or other clinical services for a state licensed or certified
13 drug, alcohol, or drug and alcohol treatment program. However,
14 alcohol or drug abuse, or both alcohol and drug abuse, is not in
15 and of itself a sufficient basis for reporting child abuse or neglect.

16 (39) A clinical counselor trainee, as defined in subdivision (g)
17 of Section 4999.12 of the Business and Professions Code.

18 (40) A clinical counselor intern registered under Section 4999.42
19 of the Business and Professions Code.

20 (b) Except as provided in paragraph (35) of subdivision (a),
21 volunteers of public or private organizations whose duties require
22 direct contact with and supervision of children are not mandated
23 reporters but are encouraged to obtain training in the identification
24 and reporting of child abuse and neglect and are further encouraged
25 to report known or suspected instances of child abuse or neglect
26 to an agency specified in Section 11165.9.

27 (c) Employers are strongly encouraged to provide their
28 employees who are mandated reporters with training in the duties
29 imposed by this article. This training shall include training in child
30 abuse and neglect identification and training in child abuse and
31 neglect reporting. Whether or not employers provide their
32 employees with training in child abuse and neglect identification
33 and reporting, the employers shall provide their employees who
34 are mandated reporters with the statement required pursuant to
35 subdivision (a) of Section 11166.5.

36 (d) School districts that do not train their employees specified
37 in subdivision (a) in the duties of mandated reporters under the
38 child abuse reporting laws shall report to the State Department of
39 Education the reasons why this training is not provided.

1 (e) Unless otherwise specifically provided, the absence of
2 training shall not excuse a mandated reporter from the duties
3 imposed by this article.

4 (f) Public and private organizations are encouraged to provide
5 their volunteers whose duties require direct contact with and
6 supervision of children with training in the identification and
7 reporting of child abuse and neglect.

8 SEC. 2. Section 11166 of the Penal Code is amended to read:

9 11166. (a) Except as provided in subdivision (d), and in
10 Section 11166.05, a mandated reporter shall make a report to an
11 agency specified in Section 11165.9 whenever the mandated
12 reporter, in his or her professional capacity or within the scope of
13 his or her employment, has knowledge of or observes a child whom
14 the mandated reporter knows or reasonably suspects has been the
15 victim of child abuse or neglect. The mandated reporter shall make
16 an initial report *by telephone* to the agency immediately or as soon
17 as is practicably possible ~~by telephone~~, and ~~the mandated reporter~~
18 shall prepare and send, fax, or electronically transmit a written
19 followup report ~~thereof~~ within 36 hours of receiving the
20 information concerning the incident. The mandated reporter may
21 include with the report any nonprivileged documentary evidence
22 the mandated reporter possesses relating to the incident.

23 (1) For purposes of this article, “reasonable suspicion” means
24 that it is objectively reasonable for a person to entertain a suspicion,
25 based upon facts that could cause a reasonable person in a like
26 position, drawing, when appropriate, on his or her training and
27 experience, to suspect child abuse or neglect. “Reasonable
28 suspicion” does not require certainty that child abuse or neglect
29 has occurred nor does it require a specific medical indication of
30 child abuse or neglect; any “reasonable suspicion” is sufficient.
31 ~~For the purpose~~ *purposes* of this article, the pregnancy of a minor
32 does not, in and of itself, constitute a basis for a reasonable
33 suspicion of sexual abuse.

34 (2) The agency shall be notified and a report shall be prepared
35 and sent, faxed, or electronically transmitted even if the child has
36 expired, regardless of whether or not the possible abuse was a
37 factor contributing to the death, and even if suspected child abuse
38 was discovered during an autopsy.

39 (3) Any report made by a mandated reporter pursuant to this
40 section shall be known as a mandated report.

1 (b) If after reasonable efforts a mandated reporter is unable to
2 submit an initial report by telephone, he or she shall immediately
3 or as soon as is practicably possible, by fax or electronic
4 transmission, make a one-time automated written report on the
5 form prescribed by the Department of Justice, and shall also be
6 available to respond to a telephone followup call by the agency
7 with which he or she filed the report. A mandated reporter who
8 files a one-time automated written report because he or she was
9 unable to submit an initial report by telephone is not required to
10 submit a written followup report.

11 (1) The one-time automated written report form prescribed by
12 the Department of Justice shall be clearly identifiable so that it is
13 not mistaken for a standard written followup report. In addition,
14 the automated one-time report shall contain a section that allows
15 the mandated reporter to state the reason the initial telephone call
16 was not able to be completed. The reason for the submission of
17 the one-time automated written report in lieu of the procedure
18 prescribed in subdivision (a) shall be captured in the Child Welfare
19 Services/Case Management System (CWS/CMS). The department
20 shall work with stakeholders to modify reporting forms and the
21 CWS/CMS as is necessary to accommodate the changes enacted
22 by these provisions.

23 (2) This subdivision shall not become operative until the
24 CWS/CMS is updated to capture the information prescribed in this
25 subdivision.

26 (3) This subdivision shall become inoperative three years after
27 this subdivision becomes operative or on January 1, 2009,
28 whichever occurs first.

29 (4) On the inoperative date of these provisions, a report shall
30 be submitted to the counties and the Legislature by the Department
31 of Social Services that reflects the data collected from automated
32 one-time reports indicating the reasons stated as to why the
33 automated one-time report was filed in lieu of the initial telephone
34 report.

35 (5) Nothing in this section shall supersede the requirement that
36 a mandated reporter first attempt to make a report via telephone,
37 or that agencies specified in Section 11165.9 accept reports from
38 mandated reporters and other persons as required.

39 (c) Any mandated reporter who fails to report an incident of
40 known or reasonably suspected child abuse or neglect as required

1 by this section is guilty of a misdemeanor punishable by up to six
2 months confinement in a county jail or by a fine of one thousand
3 dollars (\$1,000) or by both that imprisonment and fine. If a
4 mandated reporter intentionally conceals his or her failure to report
5 an incident known by the mandated reporter to be abuse or severe
6 neglect under this section, the failure to report is a continuing
7 offense until an agency specified in Section 11165.9 discovers the
8 offense.

9 (d) (1) A clergy member who acquires knowledge or a
10 reasonable suspicion of child abuse or neglect during a penitential
11 communication is not subject to subdivision (a). For the purposes
12 of this subdivision, “penitential communication” means a
13 communication, intended to be in confidence, including, but not
14 limited to, a sacramental confession, made to a clergy member
15 who, in the course of the discipline or practice of his or her church,
16 denomination, or organization, is authorized or accustomed to hear
17 those communications, and under the discipline, tenets, customs,
18 or practices of his or her church, denomination, or organization,
19 has a duty to keep those communications secret.

20 (2) Nothing in this subdivision shall be construed to modify or
21 limit a clergy member’s duty to report known or suspected child
22 abuse or neglect when the clergy member is acting in some other
23 capacity that would otherwise make the clergy member a mandated
24 reporter.

25 (3) (A) On or before January 1, 2004, a clergy member or any
26 custodian of records for the clergy member may report to an agency
27 specified in Section 11165.9 that the clergy member or any
28 custodian of records for the clergy member, prior to January 1,
29 1997, in his or her professional capacity or within the scope of his
30 or her employment, other than during a penitential communication,
31 acquired knowledge or had a reasonable suspicion that a child had
32 been the victim of sexual abuse that the clergy member or any
33 custodian of records for the clergy member did not previously
34 report the abuse to an agency specified in Section 11165.9. The
35 provisions of Section 11172 shall apply to all reports made pursuant
36 to this paragraph.

37 (B) This paragraph shall apply even if the victim of the known
38 or suspected abuse has reached the age of majority by the time the
39 required report is made.

1 (C) The local law enforcement agency shall have jurisdiction
2 to investigate any report of child abuse made pursuant to this
3 paragraph even if the report is made after the victim has reached
4 the age of majority.

5 (e) Any commercial film and photographic print *or image*
6 processor who has knowledge of or observes, within the scope of
7 his or her professional capacity or employment, any film,
8 photograph, videotape, negative, ~~or~~ slide, *or any representation*
9 *of information, data, or an image, including, but not limited to, a*
10 *film, filmstrip, photograph, negative, slide, photocopy, videotape,*
11 *video laser disk, computer hardware, computer software, computer*
12 *floppy disk, data storage medium, CD-ROM, computer-generated*
13 *equipment, or computer-generated image, depicting a child under*
14 the age of 16 years engaged in an act of sexual conduct, shall report
15 the instance of suspected child abuse to the law enforcement agency
16 having jurisdiction over the case immediately, or as soon as
17 practicably possible, by telephone and shall prepare and send, fax,
18 or electronically transmit a written report of it with a copy of the
19 film, photograph, videotape, negative, or slide attached within 36
20 hours of receiving the information concerning the incident. As
21 used in this subdivision, “sexual conduct” means any of the
22 following:

23 (1) Sexual intercourse, including genital-genital, oral-genital,
24 anal-genital, or oral-anal, whether between persons of the same or
25 opposite sex or between humans and animals.

26 (2) Penetration of the vagina or rectum by any object.

27 (3) Masturbation for the purpose of sexual stimulation of the
28 viewer.

29 (4) Sadomasochistic abuse for the purpose of sexual stimulation
30 of the viewer.

31 (5) Exhibition of the genitals, pubic, or rectal areas of any person
32 for the purpose of sexual stimulation of the viewer.

33 (f) Any mandated reporter who knows or reasonably suspects
34 that the home or institution in which a child resides is unsuitable
35 for the child because of abuse or neglect of the child shall bring
36 the condition to the attention of the agency to which, and at the
37 same time as, he or she makes a report of the abuse or neglect
38 pursuant to subdivision (a).

39 (g) Any other person who has knowledge of or observes a child
40 whom he or she knows or reasonably suspects has been a victim

1 of child abuse or neglect may report the known or suspected
2 instance of child abuse or neglect to an agency specified in Section
3 11165.9. For purposes of this section, “any other person” includes
4 a mandated reporter who acts in his or her private capacity and
5 not in his or her professional capacity or within the scope of his
6 or her employment.

7 (h) When two or more persons, who are required to report,
8 jointly have knowledge of a known or suspected instance of child
9 abuse or neglect, and when there is agreement among them, the
10 telephone report may be made by a member of the team selected
11 by mutual agreement and a single report may be made and signed
12 by the selected member of the reporting team. Any member who
13 has knowledge that the member designated to report has failed to
14 do so shall thereafter make the report.

15 (i) (1) The reporting duties under this section are individual,
16 and no supervisor or administrator may impede or inhibit the
17 reporting duties, and no person making a report shall be subject
18 to any sanction for making the report. However, internal procedures
19 to facilitate reporting and apprise supervisors and administrators
20 of reports may be established provided that they are not inconsistent
21 with this article.

22 (2) The internal procedures shall not require any employee
23 required to make reports pursuant to this article to disclose his or
24 her identity to the employer.

25 (3) Reporting the information regarding a case of possible child
26 abuse or neglect to an employer, supervisor, school principal,
27 school counselor, coworker, or other person shall not be a substitute
28 for making a mandated report to an agency specified in Section
29 11165.9.

30 (j) A county probation or welfare department shall immediately,
31 or as soon as practicably possible, report by telephone, fax, or
32 electronic transmission to the law enforcement agency having
33 jurisdiction over the case, to the agency given the responsibility
34 for investigation of cases under Section 300 of the Welfare and
35 Institutions Code, and to the district attorney’s office every known
36 or suspected instance of child abuse or neglect, as defined in
37 Section 11165.6, except acts or omissions coming within
38 subdivision (b) of Section 11165.2, or reports made pursuant to
39 Section 11165.13 based on risk to a child which relates solely to
40 the inability of the parent to provide the child with regular care

1 due to the parent’s substance abuse, which shall be reported only
2 to the county welfare or probation department. A county probation
3 or welfare department also shall send, fax, or electronically transmit
4 a written report thereof within 36 hours of receiving the information
5 concerning the incident to any agency to which it makes a
6 telephone report under this subdivision.

7 (k) A law enforcement agency shall immediately, or as soon as
8 practicably possible, report by telephone, fax, or electronic
9 transmission to the agency given responsibility for investigation
10 of cases under Section 300 of the Welfare and Institutions Code
11 and to the district attorney’s office every known or suspected
12 instance of child abuse or neglect reported to it, except acts or
13 omissions coming within subdivision (b) of Section 11165.2, which
14 shall be reported only to the county welfare or probation
15 department. A law enforcement agency shall report to the county
16 welfare or probation department every known or suspected instance
17 of child abuse or neglect reported to it which is alleged to have
18 occurred as a result of the action of a person responsible for the
19 child’s welfare, or as the result of the failure of a person responsible
20 for the child’s welfare to adequately protect the minor from abuse
21 when the person responsible for the child’s welfare knew or
22 reasonably should have known that the minor was in danger of
23 abuse. A law enforcement agency also shall send, fax, or
24 electronically transmit a written report thereof within 36 hours of
25 receiving the information concerning the incident to any agency
26 to which it makes a telephone report under this subdivision.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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