

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 299

Introduced by Assembly Member Maze

February 9, 2005

~~An act to amend Section 11165.9 of the Penal Code, and to amend Section 827 of the Welfare and Institutions Code, relating to juveniles. An act to amend Section 11166 of the Penal Code, relating to mandatory child abuse reporting.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 299, as amended, Maze. ~~Juvenile case files—Mandatory reporting.~~

Existing law requires that reports of suspected child abuse or neglect be made by mandated reporters, *via telephone and written report, following specified procedures and time lines*, to any police department or sheriff's department, county probation department, as specified, or the county welfare department.

~~This bill would require a police department or sheriff's department that receives that report to transmit it to the county welfare office within 60 minutes of receiving it. By imposing new duties on local law enforcement, the bill would impose a state-mandated local program.~~

~~Existing law delineates the persons who are authorized to inspect juvenile case files.~~

~~This bill would make a technical change to that provision.~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

This bill would permit child abuse or neglect reports to be made via fax or electronic transmission.

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

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

1 ~~SECTION 1. Section 11165.9 of the Penal Code is amended~~
2 ~~to read:~~

3 *SECTION 1. Section 11166 of the Penal Code is amended to*
4 *read:*

5 11166. (a) Except as provided in subdivision (c), a mandated
6 reporter shall make a report to an agency specified in Section
7 11165.9 whenever the mandated reporter, in his or her
8 professional capacity or within the scope of his or her
9 employment, has knowledge of or observes a child whom the
10 mandated reporter knows or reasonably suspects has been the
11 victim of child abuse or neglect. The mandated reporter shall
12 make a report to the agency immediately or as soon as is
13 practicably possible by telephone, *fax, or electronic transmission*
14 and the mandated reporter shall prepare and send, *fax, or*
15 *electronically transmit* a written report thereof within 36 hours of
16 receiving the information concerning the incident. The mandated
17 reporter may include with the report any nonprivileged
18 documentary evidence the mandated reporter possesses relating
19 to the incident.

20 (1) For the purposes of this article, “reasonable suspicion”
21 means that it is objectively reasonable for a person to entertain a
22 suspicion, based upon facts that could cause a reasonable person
23 in a like position, drawing, when appropriate, on his or her
24 training and experience, to suspect child abuse or neglect. For the
25 purpose of this article, the pregnancy of a minor does not, in and
26 of itself, constitute a basis for a reasonable suspicion of sexual
27 abuse.

28 (2) The agency shall be notified and a report shall be prepared
29 and sent even if the child has expired, regardless of whether or

1 not the possible abuse was a factor contributing to the death, and
2 even if suspected child abuse was discovered during an autopsy.

3 (3) A report made by a mandated reporter pursuant to this
4 section shall be known as a mandated report.

5 (b) Any mandated reporter who fails to report an incident of
6 known or reasonably suspected child abuse or neglect as required
7 by this section is guilty of a misdemeanor punishable by up to six
8 months confinement in a county jail or by a fine of one thousand
9 dollars (\$1,000) or by both that imprisonment and fine. If a
10 mandated reporter intentionally conceals his or her failure to
11 report an incident known by the mandated reporter to be abuse or
12 severe neglect under this section, the failure to report is a
13 continuing offense until an agency specified in Section 11165.9
14 discovers the offense.

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

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

32 (3) (A) On or before January 1, 2004, a clergy member or any
33 custodian of records for the clergy member may report to an
34 agency specified in Section 11165.9 that the clergy member or
35 any custodian of records for the clergy member, prior to January
36 1, 1997, in his or her professional capacity or within the scope of
37 his or her employment, other than during a penitential
38 communication, acquired knowledge or had a reasonable
39 suspicion that a child had been the victim of sexual abuse that the
40 clergy member or any custodian of records for the clergy

1 member did not previously report the abuse to an agency
2 specified in Section 11165.9. The provisions of Section 11172
3 shall apply to all reports made pursuant to this paragraph.

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

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

11 (d) Any commercial film and photographic print processor
12 who has knowledge of or observes, within the scope of his or her
13 professional capacity or employment, any film, photograph,
14 videotape, negative, or slide depicting a child under the age of 16
15 years engaged in an act of sexual conduct, shall report the
16 instance of suspected child abuse to the law enforcement agency
17 having jurisdiction over the case immediately, or as soon as
18 practicably possible, by telephone, *fax*, or *electronic*
19 *transmission* and shall prepare and send, *fax*, or *electronically*
20 *submit* a written report of it with a copy of the film, photograph,
21 videotape, negative, or slide attached within 36 hours of
22 receiving the information concerning the incident. As used in this
23 subdivision, “sexual conduct” means any of the following:

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

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

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

30 (4) Sadoomasochistic abuse for the purpose of sexual
31 stimulation of the viewer.

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

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

1 (f) Any other person who has knowledge of or observes a
2 child whom he or she knows or reasonably suspects has been a
3 victim of child abuse or neglect may report the known or
4 suspected instance of child abuse or neglect to an agency
5 specified in Section 11165.9.

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

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

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

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

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

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

7 (j) 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,
14 which 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
17 instance of child abuse or neglect reported to it which is alleged
18 to have occurred as a result of the action of a person responsible
19 for the child's welfare, or as the result of the failure of a person
20 responsible for the child's welfare to adequately protect the
21 minor from abuse when the person responsible for the child's
22 welfare knew or reasonably should have known that the minor
23 was in danger of abuse. A law enforcement agency also shall
24 send, fax, or electronically transmit a written report thereof
25 within 36 hours of receiving the information concerning the
26 incident to any agency to which it makes a telephone report
27 under this subdivision.

28 ~~11165.9. Reports of suspected child abuse or neglect shall be~~
29 ~~made by mandated reporters to any police department or sheriff's~~
30 ~~department, not including a school district police or security~~
31 ~~department, county probation department, if designated by the~~
32 ~~county to receive mandated reports, or the county welfare~~
33 ~~department. Any of those agencies shall accept a report of~~
34 ~~suspected child abuse or neglect whether offered by a mandated~~
35 ~~reporter or another person, or referred by another agency, even if~~
36 ~~the agency to whom the report is being made lacks subject matter~~
37 ~~or geographical jurisdiction to investigate the reported case,~~
38 ~~unless the agency can immediately electronically transfer the call~~
39 ~~to an agency with proper jurisdiction. When an agency takes a~~
40 ~~report about a case of suspected child abuse or neglect in which~~

1 that agency lacks jurisdiction, the agency shall immediately refer
2 the case by telephone, fax, or electronic transmission to an
3 agency with proper jurisdiction. A police department or sheriff's
4 department that receives a report pursuant to this section shall
5 transmit that report to the county welfare office within 60
6 minutes of receiving the report.

7 SEC. 2. Section 827 of the Welfare and Institutions Code is
8 amended to read:

9 827. (a) (1) Except as provided in Section 828, a case file
10 may be inspected only by the following:

11 (A) Court personnel.

12 (B) The district attorney, a city attorney, or city prosecutor
13 authorized to prosecute criminal or juvenile cases under state
14 law.

15 (C) The minor who is the subject of the proceeding.

16 (D) His or her parents or guardian.

17 (E) The attorneys for the parties, and judges, referees, other
18 hearing officers, probation officers and law enforcement officers
19 who are actively participating in criminal or juvenile proceedings
20 involving the minor.

21 (F) The superintendent or designee of the school district where
22 the minor is enrolled or attending school.

23 (G) Mandated reporters, as defined in Section 11165.9 of the
24 Penal Code.

25 (H) The State Department of Social Services to carry out its
26 duties pursuant to Division 9 (commencing with Section 10000),
27 and Part 5 (commencing with Section 7900) of Division 12 of the
28 Family Code to oversee and monitor county child welfare
29 agencies, children in foster care or receiving foster care
30 assistance, and out-of-state placements.

31 (I) To authorized legal staff or special investigators who are
32 peace officers who are employed by, or who are authorized
33 representatives of, the State Department of Social Services, as
34 necessary to the performance of their duties to inspect, license,
35 and investigate community care facilities, and to ensure that the
36 standards of care and services provided in those facilities are
37 adequate and appropriate and to ascertain compliance with the
38 rules and regulations to which the facilities are subject. The
39 confidential information shall remain confidential except for
40 purposes of inspection, licensing, or investigation pursuant to

1 Chapter 3 (commencing with Section 1500) and Chapter 3.4
2 (commencing with Section 1596.70) of Division 2 of the Health
3 and Safety Code, or a criminal, civil, or administrative
4 proceeding in relation thereto. The confidential information may
5 be used by the State Department of Social Services in a criminal,
6 civil, or administrative proceeding. The confidential information
7 shall be available only to the judge or hearing officer and to the
8 parties to the case. Names that are confidential shall be listed in
9 attachments separate to the general pleadings. The confidential
10 information shall be sealed after the conclusion of the criminal,
11 civil, or administrative hearings, and shall not subsequently be
12 released except in accordance with this subdivision. If the
13 confidential information does not result in a criminal, civil, or
14 administrative proceeding, it shall be sealed after the State
15 Department of Social Services decides that no further action will
16 be taken in the matter of suspected licensing violations. Except as
17 otherwise provided in this subdivision, confidential information
18 in the possession of the State Department of Social Services shall
19 not contain the name of the minor.

20 (J) Members of children's multidisciplinary teams, persons or
21 agencies providing treatment or supervision of the minor.

22 (K) A judge, commissioner, or other hearing officer assigned
23 to a family law case with issues concerning custody or visitation,
24 or both, involving the minor, and the following persons, if
25 actively participating in the family law case: a family court
26 mediator assigned to a case involving the minor pursuant to
27 Article 1 (commencing with Section 3160) of Chapter 11 of Part
28 2 of Division 8 of the Family Code, a court-appointed evaluator
29 or a person conducting a court-connected child custody
30 evaluation, investigation, or assessment pursuant to Section 3118
31 of the Family Code, and counsel appointed for the minor in the
32 family law case pursuant to Section 3150 of the Family Code.
33 Prior to allowing counsel appointed for the minor in the family
34 law case to inspect the file, the court clerk may require counsel to
35 provide a certified copy of the court order appointing him or her
36 as the minor's counsel.

37 (L) Juvenile justice commissions as established under Section
38 225. The confidentiality provisions of Section 10850 shall apply
39 to a juvenile justice commission and its members.

1 ~~(M) Any other person who may be designated by court order~~
2 ~~of the judge of the juvenile court upon filing a petition.~~

3 ~~(2) Notwithstanding any other law and subject to subparagraph~~
4 ~~(A) of paragraph (3), juvenile case files, except those relating to~~
5 ~~matters within the jurisdiction of the court pursuant to Section~~
6 ~~601 or 602, which pertain to a deceased child who was within the~~
7 ~~jurisdiction of the juvenile court pursuant to Section 300, shall be~~
8 ~~released to the public pursuant to an order by the juvenile court~~
9 ~~after a petition has been filed and interested parties have been~~
10 ~~afforded an opportunity to file an objection. Any information~~
11 ~~relating to another child or which could identify another child,~~
12 ~~except for information about the deceased, shall be redacted from~~
13 ~~the juvenile case file prior to release, unless a specific order is~~
14 ~~made by the juvenile court to the contrary. Except as provided in~~
15 ~~this paragraph, the presiding judge of the juvenile court may~~
16 ~~issue an order prohibiting or limiting access to the juvenile case~~
17 ~~file, or any portion thereof, of a deceased child only upon a~~
18 ~~showing that release of the juvenile case file or any portion~~
19 ~~thereof is detrimental to the safety, protection, or physical, or~~
20 ~~emotional well-being of another child who is directly or~~
21 ~~indirectly connected to the juvenile case that is the subject of the~~
22 ~~petition.~~

23 ~~(3) Access to juvenile case files pertaining to matters within~~
24 ~~the jurisdiction of the juvenile court pursuant to Section 300 shall~~
25 ~~be limited as follows:~~

26 ~~(A) If a juvenile case file, or any portion thereof, is privileged~~
27 ~~or confidential pursuant to any other state law or federal law or~~
28 ~~regulation, the requirements of that state law or federal law or~~
29 ~~regulation prohibiting or limiting release of the juvenile case file~~
30 ~~or any portions thereof shall prevail. Unless a person is listed in~~
31 ~~subparagraphs (A) to (L), inclusive, of paragraph (1) and is~~
32 ~~entitled to access under the other state law or federal law or~~
33 ~~regulation without a court order, all those seeking access,~~
34 ~~pursuant to other authorization, to portions of, or information~~
35 ~~relating to the contents of, juvenile case files protected under~~
36 ~~another state law or federal law or regulation, shall petition the~~
37 ~~juvenile court. The juvenile court may only release the portion~~
38 ~~of, or information relating to the contents of, juvenile case files~~
39 ~~protected by another state law or federal law or regulation if~~
40 ~~disclosure is not detrimental to the safety, protection, or physical~~

1 or emotional well-being of a child who is directly or indirectly
2 connected to the juvenile case that is the subject of the petition.
3 This paragraph shall not be construed to limit the ability of the
4 juvenile court to carry out its duties in conducting juvenile court
5 proceedings.

6 (B) Prior to the release of the juvenile case file or any portion
7 thereof, the court shall afford due process, including a notice of
8 and an opportunity to file an objection to the release of the record
9 or report to all interested parties.

10 (4) A juvenile case file, any portion thereof, and information
11 relating to the content of the juvenile case file, shall not be
12 disseminated by the receiving agencies to any persons or
13 agencies, other than those persons or agencies authorized to
14 receive documents pursuant to this section. Further, a juvenile
15 case file, any portion thereof, and information relating to the
16 content of the juvenile case file, shall not be made as an
17 attachment to any other documents without the prior approval of
18 the presiding judge of the juvenile court, unless it is used in
19 connection with and in the course of a criminal investigation or a
20 proceeding brought to declare a person a dependent child or ward
21 of the juvenile court.

22 (b) (1) While the Legislature reaffirms its belief that juvenile
23 court records, in general, should be confidential, it is the intent of
24 the Legislature in enacting this subdivision to provide for a
25 limited exception to juvenile court record confidentiality to
26 promote more effective communication among juvenile courts,
27 family courts, law enforcement agencies, and schools to ensure
28 the rehabilitation of juvenile criminal offenders as well as to
29 lessen the potential for drug use, violence, other forms of
30 delinquency, and child abuse.

31 (2) Notwithstanding subdivision (a), written notice that a
32 minor enrolled in a public school, kindergarten to grade 12,
33 inclusive, has been found by a court of competent jurisdiction to
34 have committed any felony or any misdemeanor involving
35 curfew, gambling, alcohol, drugs, tobacco products, carrying of
36 weapons, a sex offense listed in Section 290 of the Penal Code,
37 assault or battery, larceny, vandalism, or graffiti shall be
38 provided by the court, within seven days, to the superintendent of
39 the school district of attendance. Written notice shall include
40 only the offense found to have been committed by the minor and

1 the disposition of the minor's case. This notice shall be
2 expeditiously transmitted by the district superintendent to the
3 principal at the school of attendance. The principal shall
4 expeditiously disseminate the information to those counselors
5 directly supervising or reporting on the behavior or progress of
6 the minor. In addition, the principal shall disseminate the
7 information to any teacher or administrator directly supervising
8 or reporting on the behavior or progress of the minor whom the
9 principal believes needs the information to work with the pupil in
10 an appropriate fashion, to avoid being needlessly vulnerable or to
11 protect other persons from needless vulnerability.

12 Any information received by a teacher, counselor, or
13 administrator under this subdivision shall be received in
14 confidence for the limited purpose of rehabilitating the minor and
15 protecting students and staff, and shall not be further
16 disseminated by the teacher, counselor, or administrator, except
17 insofar as communication with the juvenile, his or her parents or
18 guardians, law enforcement personnel, and the juvenile's
19 probation officer is necessary to effectuate the juvenile's
20 rehabilitation or to protect students and staff.

21 An intentional violation of the confidentiality provisions of this
22 paragraph is a misdemeanor punishable by a fine not to exceed
23 five hundred dollars (\$500).

24 (3) If a minor is removed from public school as a result of the
25 court's finding described in subdivision (b), the superintendent
26 shall maintain the information in a confidential file and shall
27 defer transmittal of the information received from the court until
28 the minor is returned to public school. If the minor is returned to
29 a school district other than the one from which the minor came,
30 the parole or probation officer having jurisdiction over the minor
31 shall so notify the superintendent of the last district of
32 attendance, who shall transmit the notice received from the court
33 to the superintendent of the new district of attendance.

34 (e) Each probation report filed with the court concerning a
35 minor whose record is subject to dissemination pursuant to
36 subdivision (b) shall include on the face sheet the school at which
37 the minor is currently enrolled. The county superintendent shall
38 provide the court with a listing of all of the schools within each
39 school district, within the county, along with the name and
40 mailing address of each district superintendent.

1 ~~(d) Each notice sent by the court pursuant to subdivision (b)~~
2 ~~shall be stamped with the instruction: “Unlawful Dissemination~~
3 ~~Of This Information Is A Misdemeanor.” Any information~~
4 ~~received from the court shall be kept in a separate confidential~~
5 ~~file at the school of attendance and shall be transferred to the~~
6 ~~minor’s subsequent schools of attendance and maintained until~~
7 ~~the minor graduates from high school, is released from juvenile~~
8 ~~court jurisdiction, or reaches the age of 18, whichever occurs~~
9 ~~first. After that time the confidential record shall be destroyed. At~~
10 ~~any time after the date by which a record required to be~~
11 ~~destroyed by this section should have been destroyed, the minor~~
12 ~~or his or her parent or guardian shall have the right to make a~~
13 ~~written request to the principal of the school that the minor’s~~
14 ~~school records be reviewed to ensure that the record has been~~
15 ~~destroyed. Upon completion of any requested review and no later~~
16 ~~than 30 days after the request for the review was received, the~~
17 ~~principal or his or her designee shall respond in writing to the~~
18 ~~written request and either shall confirm that the record has been~~
19 ~~destroyed or, if the record has not been destroyed, shall explain~~
20 ~~why destruction has not yet occurred.~~

21 ~~Except as provided in paragraph (2) of subdivision (b), no~~
22 ~~liability shall attach to any person who transmits or fails to~~
23 ~~transmit any notice or information required under subdivision~~
24 ~~(b).~~

25 ~~(e) For purposes of this section, a “juvenile case file” means a~~
26 ~~petition filed in any juvenile court proceeding, reports of the~~
27 ~~probation officer, and all other documents filed in that case or~~
28 ~~made available to the probation officer in making his or her~~
29 ~~report, or to the judge, referee, or other hearing officer, and~~
30 ~~thereafter retained by the probation officer, judge, referee, or~~
31 ~~other hearing officer.~~

32 ~~SEC. 3. If the Commission on State Mandates determines that~~
33 ~~this act contains costs mandated by the state, reimbursement to~~
34 ~~local agencies and school districts for those costs shall be made~~
35 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
36 ~~4 of Title 2 of the Government Code.~~