

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MARCH 24, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2380

**Introduced by Assembly Member Bonnie Lowenthal
(Coauthor: Assembly Member Portantino)**

February 19, 2010

An act to amend Section 11166 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2380, as amended, Bonnie Lowenthal. Child abuse reporting.

Existing law identifies specified persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity, or within the scope of their employment, they have knowledge of or observe a child who is known or reasonably suspected to have been the victim of child abuse or neglect. Existing law defines the term "reasonable suspicion" for purposes of these child abuse reporting provisions.

This bill would provide that "reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect. ~~The bill would also provide that "reasonable suspicion" may be based on any information considered credible by the reporter, including statements from other individuals.~~

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

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

1 SECTION 1. Section 11166 of the Penal Code is amended to
2 read:

3 11166. (a) Except as provided in subdivision (d), and in
4 Section 11166.05, a mandated reporter shall make a report to an
5 agency specified in Section 11165.9 whenever the mandated
6 reporter, in his or her professional capacity or within the scope of
7 his or her employment, has knowledge of or observes a child whom
8 the mandated reporter knows or reasonably suspects has been the
9 victim of child abuse or neglect. The mandated reporter shall make
10 an initial report to the agency immediately or as soon as is
11 practicably possible by telephone and the mandated reporter shall
12 prepare and send, fax, or electronically transmit a written followup
13 report thereof within 36 hours of receiving the information
14 concerning the incident. The mandated reporter may include with
15 the report any nonprivileged documentary evidence the mandated
16 reporter possesses relating to the incident.

17 (1) For purposes of this article, “reasonable suspicion” means
18 that it is objectively reasonable for a person to entertain a suspicion,
19 based upon facts that could cause a reasonable person in a like
20 position, drawing, when appropriate, on his or her training and
21 experience, to suspect child abuse or neglect. “Reasonable
22 suspicion” does not require certainty that child abuse or neglect
23 has occurred nor does it require a specific medical indication of
24 child abuse or neglect; any “reasonable suspicion” is sufficient.
25 ~~“Reasonable suspicion” may be based on any information~~
26 ~~considered credible by the reporter, including statements from~~
27 ~~other individuals.~~ For the purpose of this article, the pregnancy of
28 a minor does not, in and of itself, constitute a basis for a reasonable
29 suspicion of sexual abuse.

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

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

37 (b) If after reasonable efforts a mandated reporter is unable to
38 submit an initial report by telephone, he or she shall immediately

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

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

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

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

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

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

37 (c) Any mandated reporter who fails to report an incident of
38 known or reasonably suspected child abuse or neglect as required
39 by this section is guilty of a misdemeanor punishable by up to six
40 months confinement in a county jail or by a fine of one thousand

1 dollars (\$1,000) or by both that imprisonment and fine. If a
2 mandated reporter intentionally conceals his or her failure to report
3 an incident known by the mandated reporter to be abuse or severe
4 neglect under this section, the failure to report is a continuing
5 offense until an agency specified in Section 11165.9 discovers the
6 offense.

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

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

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

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

38 (C) The local law enforcement agency shall have jurisdiction
39 to investigate any report of child abuse made pursuant to this

1 paragraph even if the report is made after the victim has reached
2 the age of majority.

3 (e) Any commercial film and photographic print processor who
4 has knowledge of or observes, within the scope of his or her
5 professional capacity or employment, any film, photograph,
6 videotape, negative, or slide depicting a child under the age of 16
7 years engaged in an act of sexual conduct, shall report the instance
8 of suspected child abuse to the law enforcement agency having
9 jurisdiction over the case immediately, or as soon as practicably
10 possible, by telephone and shall prepare and send, fax, or
11 electronically transmit a written report of it with a copy of the film,
12 photograph, videotape, negative, or slide attached within 36 hours
13 of receiving the information concerning the incident. As used in
14 this subdivision, “sexual conduct” means any of the following:

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

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

19 (3) Masturbation for the purpose of sexual stimulation of the
20 viewer.

21 (4) Sadomasochistic abuse for the purpose of sexual stimulation
22 of the viewer.

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

25 (f) Any mandated reporter who knows or reasonably suspects
26 that the home or institution in which a child resides is unsuitable
27 for the child because of abuse or neglect of the child shall bring
28 the condition to the attention of the agency to which, and at the
29 same time as, he or she makes a report of the abuse or neglect
30 pursuant to subdivision (a).

31 (g) Any other person who has knowledge of or observes a child
32 whom he or she knows or reasonably suspects has been a victim
33 of child abuse or neglect may report the known or suspected
34 instance of child abuse or neglect to an agency specified in Section
35 11165.9. For purposes of this section, “any other person” includes
36 a mandated reporter who acts in his or her private capacity and
37 not in his or her professional capacity or within the scope of his
38 or her employment.

39 (h) When two or more persons, who are required to report,
40 jointly have knowledge of a known or suspected instance of child

1 abuse or neglect, and when there is agreement among them, the
2 telephone report may be made by a member of the team selected
3 by mutual agreement and a single report may be made and signed
4 by the selected member of the reporting team. Any member who
5 has knowledge that the member designated to report has failed to
6 do so shall thereafter make the report.

7 (i) (1) The reporting duties under this section are individual,
8 and no supervisor or administrator may impede or inhibit the
9 reporting duties, and no person making a report shall be subject
10 to any sanction for making the report. However, internal procedures
11 to facilitate reporting and apprise supervisors and administrators
12 of reports may be established provided that they are not inconsistent
13 with this article.

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

17 (3) Reporting the information regarding a case of possible child
18 abuse or neglect to an employer, supervisor, school principal,
19 school counselor, coworker, or other person shall not be a substitute
20 for making a mandated report to an agency specified in Section
21 11165.9.

22 (j) A county probation or welfare department shall immediately,
23 or as soon as practicably possible, report by telephone, fax, or
24 electronic transmission to the law enforcement agency having
25 jurisdiction over the case, to the agency given the responsibility
26 for investigation of cases under Section 300 of the Welfare and
27 Institutions Code, and to the district attorney's office every known
28 or suspected instance of child abuse or neglect, as defined in
29 Section 11165.6, except acts or omissions coming within
30 subdivision (b) of Section 11165.2, or reports made pursuant to
31 Section 11165.13 based on risk to a child which relates solely to
32 the inability of the parent to provide the child with regular care
33 due to the parent's substance abuse, which shall be reported only
34 to the county welfare or probation department. A county probation
35 or welfare department also shall send, fax, or electronically transmit
36 a written report thereof within 36 hours of receiving the information
37 concerning the incident to any agency to which it makes a
38 telephone report under this subdivision.

39 (k) A law enforcement agency shall immediately, or as soon as
40 practicably possible, report by telephone, fax, or electronic

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

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