

ASSEMBLY BILL

No. 1817

Introduced by Assembly Member Atkins

February 21, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1817, as introduced, Atkins. 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.

This bill would expand the list of persons identified as mandated reporters to include commercial computer technicians, as defined.

Existing law 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 to a law enforcement agency, as specified.

This bill would in addition make those provisions applicable to commercial computer technicians, and instead require a report to be made when those individuals have knowledge of or observe a child who appears to be under 16 years of age being subject to or involved in an

act of sexual conduct. The bill would make those provisions applicable to a picture, graphic, or image that is intentionally saved, transmitted, or organized on an electronic medium, as defined. The bill would revise the agencies to which those individuals may report an incident of suspected abuse.

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.

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

1 (24) A marriage and family therapist trainee, as defined in
2 subdivision (c) of Section 4980.03 of the Business and Professions
3 Code.

4 (25) An unlicensed marriage and family therapist intern
5 registered under Section 4980.44 of the Business and Professions
6 Code.

7 (26) A state or county public health employee who treats a minor
8 for venereal disease or any other condition.

9 (27) A coroner.

10 (28) A medical examiner, or any other person who performs
11 autopsies.

12 (29) A commercial film and photographic print processor, as
13 specified in subdivision (e) of Section 11166. As used in this
14 article, “commercial film and photographic print processor” means
15 any person who develops exposed photographic film into negatives,
16 slides, or prints, or who makes prints from negatives or slides, for
17 compensation. The term includes any employee of such a person;
18 it does not include a person who develops film or makes prints for
19 a public agency.

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

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

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

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

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

39 (33) Any custodian of records of a clergy member, as specified
40 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 (41) *A commercial computer technician. As used in this article,*
21 *"commercial computer technician" means a person who works*
22 *for a company with 50 or more employees who, in that capacity,*
23 *repairs, installs, or otherwise services a computer or computer*
24 *component, including, but not limited to, a computer part, device,*
25 *memory storage or recording mechanism, auxiliary storage*
26 *recording or memory capacity, or any other materials relating to*
27 *the operation and maintenance of a computer or computer network*
28 *system, for a fee.*

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

36 (c) Employers are strongly encouraged to provide their
37 employees who are mandated reporters with training in the duties
38 imposed by this article. This training shall include training in child
39 abuse and neglect identification and training in child abuse and
40 neglect reporting. Whether or not employers provide their

1 employees with training in child abuse and neglect identification
2 and reporting, the employers shall provide their employees who
3 are mandated reporters with the statement required pursuant to
4 subdivision (a) of Section 11166.5.

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

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

12 (f) Public and private organizations are encouraged to provide
13 their volunteers whose duties require direct contact with and
14 supervision of children with training in the identification and
15 reporting of child abuse and neglect.

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

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

31 (1) For purposes of this article, “reasonable suspicion” means
32 that it is objectively reasonable for a person to entertain a suspicion,
33 based upon facts that could cause a reasonable person in a like
34 position, drawing, when appropriate, on his or her training and
35 experience, to suspect child abuse or neglect. “Reasonable
36 suspicion” does not require certainty that child abuse or neglect
37 has occurred nor does it require a specific medical indication of
38 child abuse or neglect; any “reasonable suspicion” is sufficient.
39 For ~~the purpose~~ *purposes* of this article, the pregnancy of a minor

1 does not, in and of itself, constitute a basis for a reasonable
2 suspicion of sexual abuse.

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

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

10 (b) If after reasonable efforts a mandated reporter is unable to
11 submit an initial report by telephone, he or she shall immediately
12 or as soon as is practicably possible, by fax or electronic
13 transmission, make a one-time automated written report on the
14 form prescribed by the Department of Justice, and shall also be
15 available to respond to a telephone followup call by the agency
16 with which he or she filed the report. A mandated reporter who
17 files a one-time automated written report because he or she was
18 unable to submit an initial report by telephone is not required to
19 submit a written followup report.

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

32 (2) This subdivision shall not become operative until the
33 CWS/CMS is updated to capture the information prescribed in this
34 subdivision.

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

38 (4) On the inoperative date of these provisions, a report shall
39 be submitted to the counties and the Legislature by the Department
40 of Social Services that reflects the data collected from automated

1 one-time reports indicating the reasons stated as to why the
2 automated one-time report was filed in lieu of the initial telephone
3 report.

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

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

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

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

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

1 been the victim of sexual abuse that the clergy member or any
2 custodian of records for the clergy member did not previously
3 report the abuse to an agency specified in Section 11165.9. The
4 provisions of Section 11172 shall apply to all reports made pursuant
5 to this paragraph.

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

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

13 (e) (1) Any commercial film and photographic print processor
14 *or commercial computer technician* who ~~has knowledge of or~~
15 ~~observes~~, within the scope of his or her professional capacity or
16 employment, *has knowledge of or observes* any film, photograph,
17 videotape, negative, ~~or slide, or computer file, including a picture,~~
18 *graphic, or image that is retrievable in perceivable form and that*
19 *is intentionally saved, transmitted, or organized on an electronic*
20 *medium, depicting a child under the age of 16 years engaged in*
21 *who appears to be under 16 years of age being subject to, or*
22 *involved in, an act of sexual conduct, shall immediately, or as soon*
23 *as practicably possible, make an initial report by telephone of the*
24 *instance of suspected child abuse to the a local, state, or federal*
25 *law enforcement agency having jurisdiction over the case*
26 *immediately, or as soon as practicably possible, by telephone and*
27 *shall located in the county in which the images are seen, and,*
28 *within 36 hours of receiving the information concerning the*
29 *incident, shall prepare and send, fax, or electronically transmit a*
30 *written followup report of it with a copy of the film, photograph,*
31 *videotape, negative, or slide attached within 36 hours of receiving*
32 *the information concerning the incident brief description of the*
33 *images. A report filed with the CyberTipline at the National Center*
34 *for Missing and Exploited Children shall fulfill the requirement*
35 *for a commercial computer technician to make a report pursuant*
36 *to this section. As used in this subdivision, "sexual conduct" means*
37 any of the following:

38 (1)

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

4 ~~(2)~~

5 (B) Penetration of the vagina or rectum by any object.

6 ~~(3)~~

7 (C) Masturbation for the purpose of sexual stimulation of the
8 viewer.

9 ~~(4)~~

10 (D) Sadomasochistic abuse for the purpose of sexual stimulation
11 of the viewer.

12 ~~(5)~~

13 (E) Exhibition of the genitals, pubic, or rectal areas of any
14 person for the purpose of sexual stimulation of the viewer.

15 (2) *As used in this subdivision, “electronic medium” includes,*
16 *but is not limited to, a recording, CD-ROM, magnetic disk memory,*
17 *magnetic tape memory, CD, DVD, thumbdrive, or any other*
18 *computer hardware or media.*

19 (f) Any mandated reporter who knows or reasonably suspects
20 that the home or institution in which a child resides is unsuitable
21 for the child because of abuse or neglect of the child shall bring
22 the condition to the attention of the agency to which, and at the
23 same time as, he or she makes a report of the abuse or neglect
24 pursuant to subdivision (a).

25 (g) Any other person who has knowledge of or observes a child
26 whom he or she knows or reasonably suspects has been a victim
27 of child abuse or neglect may report the known or suspected
28 instance of child abuse or neglect to an agency specified in Section
29 11165.9. For purposes of this section, “any other person” includes
30 a mandated reporter who acts in his or her private capacity and
31 not in his or her professional capacity or within the scope of his
32 or her employment.

33 (h) When two or more persons, who are required to report,
34 jointly have knowledge of a known or suspected instance of child
35 abuse or neglect, and when there is agreement among them, the
36 telephone report may be made by a member of the team selected
37 by mutual agreement and a single report may be made and signed
38 by the selected member of the reporting team. Any member who
39 has knowledge that the member designated to report has failed to
40 do so shall thereafter make the report.

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

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

11 (3) Reporting the information regarding a case of possible child
12 abuse or neglect to an employer, supervisor, school principal,
13 school counselor, coworker, or other person shall not be a substitute
14 for making a mandated report to an agency specified in Section
15 11165.9.

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

33 (k) A law enforcement agency shall immediately, or as soon as
34 practicably possible, report by telephone, fax, or electronic
35 transmission to the agency given responsibility for investigation
36 of cases under Section 300 of the Welfare and Institutions Code
37 and to the district attorney's office every known or suspected
38 instance of child abuse or neglect reported to it, except acts or
39 omissions coming within subdivision (b) of Section 11165.2, which
40 shall be reported only to the county welfare or probation

1 department. A law enforcement agency shall report to the county
2 welfare or probation department every known or suspected instance
3 of child abuse or neglect reported to it which is alleged to have
4 occurred as a result of the action of a person responsible for the
5 child’s welfare, or as the result of the failure of a person responsible
6 for the child’s welfare to adequately protect the minor from abuse
7 when the person responsible for the child’s welfare knew or
8 reasonably should have known that the minor was in danger of
9 abuse. A law enforcement agency also shall send, fax, or
10 electronically transmit a written report thereof within 36 hours of
11 receiving the information concerning the incident to any agency
12 to which it makes a telephone report under this subdivision.

13 SEC. 3. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.