

ASSEMBLY BILL

No. 790

Introduced by Assembly Member Gomez

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 790, as introduced, Gomez. Child abuse: reporting.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law further requires the mandated reporter to make an initial report by telephone to the agency immediately or as soon as is practicably possible, and to prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident.

Existing law additionally provides that, when 2 or more mandated reporters have joint knowledge of suspected child abuse or neglect, they may select a member of the team by mutual agreement to make and sign a single report. Any member who has knowledge that the member designated to report has failed to do so is required to thereafter make the report.

This bill would delete these latter provisions, thus requiring every mandated reporter who has knowledge of suspected child abuse or neglect to make a report, as specified.

Because this bill would expand the definition of a crime, it would impose a state-mandated 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 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 by telephone to the agency immediately or as soon
11 as is practicably possible, and shall prepare and send, fax, or
12 electronically transmit a written followup report within 36 hours
13 of receiving the information concerning the incident. The mandated
14 reporter may include with the report any nonprivileged
15 documentary evidence the mandated reporter possesses relating
16 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 For purposes of this article, the pregnancy of a minor does not, in
26 and of itself, constitute a basis for a reasonable suspicion of sexual
27 abuse.

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

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

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

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

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

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

36 (4) On the inoperative date of these provisions, a report shall
37 be submitted to the counties and the Legislature by the State
38 Department of Social Services that reflects the data collected from
39 automated one-time reports indicating the reasons stated as to why

1 the automated one-time report was filed in lieu of the initial
2 telephone report.

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

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

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

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

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

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

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

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

12 (e) (1) Any commercial film, photographic print, or image
13 processor who has knowledge of or observes, within the scope of
14 his or her professional capacity or employment, any film,
15 photograph, videotape, negative, slide, or any representation of
16 information, data, or an image, including, but not limited to, any
17 film, filmstrip, photograph, negative, slide, photocopy, videotape,
18 video laser disc, computer hardware, computer software, computer
19 floppy disk, data storage medium, CD-ROM, computer-generated
20 equipment, or computer-generated image depicting a child under
21 16 years of age engaged in an act of sexual conduct, shall
22 immediately, or as soon as practically possible, telephonically
23 report the instance of suspected abuse to the law enforcement
24 agency located in the county in which the images are seen. Within
25 36 hours of receiving the information concerning the incident, the
26 reporter shall prepare and send, fax, or electronically transmit a
27 written followup report of the incident with a copy of the image
28 or material attached.

29 (2) Any commercial computer technician who has knowledge
30 of or observes, within the scope of his or her professional capacity
31 or employment, any representation of information, data, or an
32 image, including, but not limited, to any computer hardware,
33 computer software, computer file, computer floppy disk, data
34 storage medium, CD-ROM, computer-generated equipment, or
35 computer-generated image that is retrievable in perceivable form
36 and that is intentionally saved, transmitted, or organized on an
37 electronic medium, depicting a child under 16 years of age engaged
38 in an act of sexual conduct, shall immediately, or as soon as
39 practicably possible, telephonically report the instance of suspected
40 abuse to the law enforcement agency located in the county in which

1 the images or material are seen. As soon as practicably possible
2 after receiving the information concerning the incident, the reporter
3 shall prepare and send, fax, or electronically transmit a written
4 followup report of the incident with a brief description of the
5 images or materials.

6 (3) For purposes of this article, “commercial computer
7 technician” includes an employee designated by an employer to
8 receive reports pursuant to an established reporting process
9 authorized by subparagraph (B) of paragraph (41) of subdivision
10 (a) of Section 11165.7.

11 (4) As used in this subdivision, “electronic medium” includes,
12 but is not limited to, a recording, CD-ROM, magnetic disk memory,
13 magnetic tape memory, CD, DVD, thumbdrive, or any other
14 computer hardware or media.

15 (5) As used in this subdivision, “sexual conduct” means any of
16 the following:

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

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

21 (C) Masturbation for the purpose of sexual stimulation of the
22 viewer.

23 (D) Sadomasochistic abuse for the purpose of sexual stimulation
24 of the viewer.

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

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

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

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

~~(i)~~

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

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

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

~~(j)~~

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

1 concerning the incident to any agency to which it makes a
2 telephone report under this subdivision.

3 ~~(k)~~

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

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.