

AMENDED IN SENATE JUNE 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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~~ *limit* these latter provisions, ~~thus requiring every mandated reporter who has knowledge of suspected child abuse or neglect to make a report, to mandated reporters who are health care~~

providers, thereby requiring every mandated reporter who is not a health care provider and who has knowledge of suspected child abuse or neglect to make an individual report. The bill would require the person who files a single report on behalf of multiple health care providers who are mandated reporters to include the names of other mandated reporters, if known, who have knowledge of known or suspected instances of child abuse or neglect, as specified. The bill would provide that a person making the report would not be subject to criminal penalties or other sanctions for failing to include one or more names of those persons if his or her failure to include those names is accidental or inadvertent.

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.

1 (1) For purposes of this article, “reasonable suspicion” means
2 that it is objectively reasonable for a person to entertain a suspicion,
3 based upon facts that could cause a reasonable person in a like
4 position, drawing, when appropriate, on his or her training and
5 experience, to suspect child abuse or neglect. “Reasonable
6 suspicion” does not require certainty that child abuse or neglect
7 has occurred nor does it require a specific medical indication of
8 child abuse or neglect; any “reasonable suspicion” is sufficient.
9 For purposes of this article, the pregnancy of a minor does not, in
10 and of itself, constitute a basis for a reasonable suspicion of sexual
11 abuse.

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

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

19 (b) If after reasonable efforts a mandated reporter is unable to
20 submit an initial report by telephone, he or she shall immediately
21 or as soon as is practicably possible, by fax or electronic
22 transmission, make a one-time automated written report on the
23 form prescribed by the Department of Justice, and shall also be
24 available to respond to a telephone followup call by the agency
25 with which he or she filed the report. A mandated reporter who
26 files a one-time automated written report because he or she was
27 unable to submit an initial report by telephone is not required to
28 submit a written followup report.

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

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

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

7 (4) On the inoperative date of these provisions, a report shall
8 be submitted to the counties and the Legislature by the State
9 Department of Social Services that reflects the data collected from
10 automated one-time reports indicating the reasons stated as to why
11 the automated one-time report was filed in lieu of the initial
12 telephone report.

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

17 (c) Any mandated reporter who fails to report an incident of
18 known or reasonably suspected child abuse or neglect as required
19 by this section is guilty of a misdemeanor punishable by up to six
20 months confinement in a county jail or by a fine of one thousand
21 dollars (\$1,000) or by both that imprisonment and fine. If a
22 mandated reporter intentionally conceals his or her failure to report
23 an incident known by the mandated reporter to be abuse or severe
24 neglect under this section, the failure to report is a continuing
25 offense until an agency specified in Section 11165.9 discovers the
26 offense.

27 (d) (1) A clergy member who acquires knowledge or a
28 reasonable suspicion of child abuse or neglect during a penitential
29 communication is not subject to subdivision (a). For the purposes
30 of this subdivision, "penitential communication" means a
31 communication, intended to be in confidence, including, but not
32 limited to, a sacramental confession, made to a clergy member
33 who, in the course of the discipline or practice of his or her church,
34 denomination, or organization, is authorized or accustomed to hear
35 those communications, and under the discipline, tenets, customs,
36 or practices of his or her church, denomination, or organization,
37 has a duty to keep those communications secret.

38 (2) Nothing in this subdivision shall be construed to modify or
39 limit a clergy member's duty to report known or suspected child
40 abuse or neglect when the clergy member is acting in some other

1 capacity that would otherwise make the clergy member a mandated
2 reporter.

3 (3) (A) On or before January 1, 2004, a clergy member or any
4 custodian of records for the clergy member may report to an agency
5 specified in Section 11165.9 that the clergy member or any
6 custodian of records for the clergy member, prior to January 1,
7 1997, in his or her professional capacity or within the scope of his
8 or her employment, other than during a penitential communication,
9 acquired knowledge or had a reasonable suspicion that a child had
10 been the victim of sexual abuse that the clergy member or any
11 custodian of records for the clergy member did not previously
12 report the abuse to an agency specified in Section 11165.9. The
13 provisions of Section 11172 shall apply to all reports made pursuant
14 to this paragraph.

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

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

22 (e) (1) Any commercial film, photographic print, or image
23 processor who has knowledge of or observes, within the scope of
24 his or her professional capacity or employment, any film,
25 photograph, videotape, negative, slide, or any representation of
26 information, data, or an image, including, but not limited to, any
27 film, filmstrip, photograph, negative, slide, photocopy, videotape,
28 video laser disc, computer hardware, computer software, computer
29 floppy disk, data storage medium, CD-ROM, computer-generated
30 equipment, or computer-generated image depicting a child under
31 16 years of age engaged in an act of sexual conduct, shall
32 immediately, or as soon as practically possible, telephonically
33 report the instance of suspected abuse to the law enforcement
34 agency located in the county in which the images are seen. Within
35 36 hours of receiving the information concerning the incident, the
36 reporter shall prepare and send, fax, or electronically transmit a
37 written followup report of the incident with a copy of the image
38 or material attached.

39 (2) Any commercial computer technician who has knowledge
40 of or observes, within the scope of his or her professional capacity

1 or employment, any representation of information, data, or an
2 image, including, but not limited, to any computer hardware,
3 computer software, computer file, computer floppy disk, data
4 storage medium, CD-ROM, computer-generated equipment, or
5 computer-generated image that is retrievable in perceivable form
6 and that is intentionally saved, transmitted, or organized on an
7 electronic medium, depicting a child under 16 years of age engaged
8 in an act of sexual conduct, shall immediately, or as soon as
9 practicably possible, telephonically report the instance of suspected
10 abuse to the law enforcement agency located in the county in which
11 the images or material are seen. As soon as practicably possible
12 after receiving the information concerning the incident, the reporter
13 shall prepare and send, fax, or electronically transmit a written
14 followup report of the incident with a brief description of the
15 images or materials.

16 (3) For purposes of this article, “commercial computer
17 technician” includes an employee designated by an employer to
18 receive reports pursuant to an established reporting process
19 authorized by subparagraph (B) of paragraph (41) of subdivision
20 (a) of Section 11165.7.

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

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

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

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

31 (C) Masturbation for the purpose of sexual stimulation of the
32 viewer.

33 (D) Sadomasochistic abuse for the purpose of sexual stimulation
34 of the viewer.

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

37 (f) Any mandated reporter who knows or reasonably suspects
38 that the home or institution in which a child resides is unsuitable
39 for the child because of abuse or neglect of the child shall bring
40 the condition to the attention of the agency to which, and at the

1 same time as, he or she makes a report of the abuse or neglect
2 pursuant to subdivision (a).

3 (g) Any other person who has knowledge of or observes a child
4 whom he or she knows or reasonably suspects has been a victim
5 of child abuse or neglect may report the known or suspected
6 instance of child abuse or neglect to an agency specified in Section
7 11165.9. For purposes of this section, “any other person” includes
8 a mandated reporter who acts in his or her private capacity and
9 not in his or her professional capacity or within the scope of his
10 or her employment.

11 (h) (1) *When two or more health care providers, who are*
12 *required to report, jointly have knowledge of a known or suspected*
13 *instance of child abuse or neglect, and when there is agreement*
14 *among them, the telephone report may be made by a member of*
15 *the team selected by mutual agreement and a single report may*
16 *be made and signed by the selected member of the reporting team.*
17 *Any member who has knowledge that the member designated to*
18 *report has failed to do so shall thereafter make the report. The*
19 *person who makes the report pursuant to this subdivision shall*
20 *provide the names of all other mandated reporters, if known, who*
21 *have knowledge of known or suspected instances of child abuse*
22 *or neglect, but he or she shall not be subject to criminal penalties*
23 *or other sanctions for failing to include one or more names of*
24 *those persons if his or her failure to do so is accidental or*
25 *inadvertent.*

26 (2) *For purposes of this subdivision, a “health care provider”*
27 *means any person licensed or certified pursuant to Division 2*
28 *(commencing with Section 500) of the Business and Professions*
29 *Code.*

30 ~~(h)~~

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

38 (2) The internal procedures shall not require any employee
39 required to make reports pursuant to this article to disclose his or
40 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.

(i)

(j) 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 concerning the incident to any agency to which it makes a telephone report under this subdivision.

(j)

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given 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 reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of

1 abuse. A law enforcement agency also shall send, fax, or
2 electronically transmit a written report thereof within 36 hours of
3 receiving the information concerning the incident to any agency
4 to which it makes a telephone report under this subdivision.

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.