

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 832

Introduced by Assembly Member Cristina Garcia
(Coauthor: Assembly Member Eggman)

February 26, 2015

An act to amend Section 11165.1 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL’S DIGEST

AB 832, as amended, Cristina Garcia. Child abuse: reportable conduct.

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 provides that “child abuse or neglect” for these purposes includes “sexual assault,” that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration.

This bill would provide that “sexual assault” for these purposes does not include ~~consensual~~ *voluntary* sodomy, oral copulation, or sexual penetration, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

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

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

SECTION 1. Section 11165.1 of the Penal Code is amended to read:

11165.1. As used in this article, “sexual abuse” means sexual assault or sexual exploitation as defined by the following:

(a) “Sexual assault” means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or ~~(b)~~; *(b) of*, or paragraph (1) of subdivision (c) ~~of of~~, Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation). “Sexual assault” for the purposes of this article does not include ~~consensual~~ *voluntary* conduct in violation of Section 286, 288a, or 289, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

(b) Conduct described as “sexual assault” includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator’s genitals in the presence of a child.

(c) “Sexual exploitation” refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or

1 distributing obscene matter) or subdivision (a) of Section 311.4
2 (employment of *a* minor to perform obscene acts).

3 (2) A person who knowingly promotes, aids, or assists, employs,
4 uses, persuades, induces, or coerces a child, or a person responsible
5 for a child's welfare, who knowingly permits or encourages a child
6 to engage in, or assist others to engage in, prostitution or a live
7 performance involving obscene sexual conduct, or to either pose
8 or model alone or with others for purposes of preparing a film,
9 photograph, negative, slide, drawing, painting, or other pictorial
10 depiction, involving obscene sexual conduct. For the purpose of
11 this section, "person responsible for a child's welfare" means a
12 parent, guardian, foster parent, or a licensed administrator or
13 employee of a public or private residential home, residential school,
14 or other residential institution.

15 (3) A person who depicts a child in, or who knowingly develops,
16 duplicates, prints, downloads, streams, accesses through any
17 electronic or digital media, or exchanges, a film, photograph,
18 videotape, video recording, negative, or slide in which a child is
19 engaged in an act of obscene sexual conduct, except for those
20 activities by law enforcement and prosecution agencies and other
21 persons described in subdivisions (c) and (e) of Section 311.3.