

AMENDED IN ASSEMBLY MAY 26, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 832**

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

February 26, 2015

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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 voluntary sodomy, oral copulation, or sexual penetration, *if there are no indicators of abuse*, 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:*

1     SECTION 1. Section 11165.1 of the Penal Code is amended  
2     to read:  
3     11165.1. As used in this article, “sexual abuse” means sexual  
4     assault or sexual exploitation as defined by the following:  
5     (a) “Sexual assault” means conduct in violation of one or more  
6     of the following sections: Section 261 (rape), subdivision (d) of  
7     Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest),  
8     286 (sodomy), subdivision (a) or (b) of, or paragraph (1) of  
9     subdivision (c) of, Section 288 (lewd or lascivious acts upon a  
10    child), 288a (oral copulation), 289 (sexual penetration), or 647.6  
11    (child molestation). “Sexual assault” for the purposes of this article  
12    does not include voluntary conduct in violation of Section 286,  
13    288a, or 289, *if there are no indicators of abuse*, unless the conduct  
14    is between a person 21 years of age or older and a minor who is  
15    under 16 years of age.  
16    (b) Conduct described as “sexual assault” includes, but is not  
17    limited to, all of the following:  
18    (1) Penetration, however slight, of the vagina or anal opening  
19    of one person by the penis of another person, whether or not there  
20    is the emission of semen.  
21    (2) Sexual contact between the genitals or anal opening of one  
22    person and the mouth or tongue of another person.  
23    (3) Intrusion by one person into the genitals or anal opening of  
24    another person, including the use of an object for this purpose,  
25    except that, it does not include acts performed for a valid medical  
26    purpose.  
27    (4) The intentional touching of the genitals or intimate parts,  
28    including the breasts, genital area, groin, inner thighs, and buttocks,  
29    or the clothing covering them, of a child, or of the perpetrator by  
30    a child, for purposes of sexual arousal or gratification, except that  
31    it does not include acts which may reasonably be construed to be  
32    normal caretaker responsibilities; interactions with, or  
33    demonstrations of affection for, the child; or acts performed for a  
34    valid medical purpose.

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

3 (c) "Sexual exploitation" refers to any of the following:

4 (1) Conduct involving matter depicting a minor engaged in  
5 obscene acts in violation of Section 311.2 (preparing, selling, or  
6 distributing obscene matter) or subdivision (a) of Section 311.4  
7 (employment of a minor to perform obscene acts).

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

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