

AMENDED IN SENATE MARCH 11, 1999

SENATE BILL

No. 208

Introduced by Senator Polanco

(Principal coauthor: Assembly Member Washington)

January 20, 1999

An act to amend Section ~~11166~~ of the Penal Code, and to add Section ~~317.1~~ to 355.1 of the Welfare and Institutions Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 208, as amended, Polanco. Child abuse: ~~reporting~~ *dependency proceedings.*

Under existing law, where a court in a dependency hearing finds that an injury, injuries, or detrimental condition sustained by a minor, is of such a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that evidence constitutes a presumption that the minor may be declared a dependent child of the court, as specified. Existing law, known as the Child Abuse and Neglect Reporting Act, requires a county probation department or welfare department, among others, to report by telephone and in writing to the district attorney, and others, every known or suspected instance of child abuse, as defined, subject to specified exceptions. ~~Failure to make those reports is a misdemeanor.~~

~~This bill would modify and expand that reporting requirement by making it applicable to probation officers and~~

~~social workers, rather than their departments, and to any attorney appointed to represent a child in dependency proceedings. By expanding the applicability of an existing 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.~~

This bill would provide that, where a court in a dependency hearing finds that either a parent, a guardian, or any other person who resides with, or has care or custody of, a minor who is the subject of a dependency petition has been previously convicted of sexual abuse, as defined, or has been found to have committed an act of sexual abuse in a prior dependency hearing, or is required to register as a sex offender, that finding shall be prima facie evidence that the subject minor is a dependent child and is at substantial risk of abuse or neglect.

The bill would also provide that, where the dependency court believes that a crime has been committed against a minor, the court may direct the child protective agency to take specified actions pursuant to the Child Abuse and Neglect Reporting Act.

The bill would make related legislative findings.

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

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

1 ~~SECTION 1. Section 11166 of the Penal Code is~~
2 ~~amended to read:~~
3 ~~11166. (a) Except as provided in subdivision (b), any~~
4 ~~child care custodian, health practitioner, employee of a~~
5 ~~child protective agency, child visitation monitor,~~
6 ~~firefighter, animal control officer, or humane society~~
7 ~~officer who has knowledge of or observes a child, in his or~~
8 ~~her professional capacity or within the scope of his or her~~
9 ~~employment, whom he or she knows or reasonably~~



1 suspects has been the victim of child abuse, shall report
2 the known or suspected instance of child abuse to a child
3 protective agency immediately or as soon as practically
4 possible by telephone and shall prepare and send a
5 written report thereof within 36 hours of receiving the
6 information concerning the incident. A child protective
7 agency shall be notified and a report shall be prepared
8 and sent even if the child has died, regardless of whether
9 or not the possible abuse was a factor contributing to the
10 death, and even if suspected child abuse was discovered
11 during an autopsy. For the purposes of this article,
12 “reasonable suspicion” means that it is objectively
13 reasonable for a person to entertain a suspicion, based
14 upon facts that could cause a reasonable person in a like
15 position, drawing, when appropriate, on his or her
16 training and experience, to suspect child abuse. For the
17 purpose of this article, the pregnancy of a minor does not,
18 in and of itself, constitute a basis of reasonable suspicion
19 of sexual abuse.

20 (b) Any child care custodian, health practitioner,
21 employee of a child protective agency, child visitation
22 monitor, firefighter, animal control officer, or humane
23 society officer who has knowledge of or who reasonably
24 suspects that mental suffering has been inflicted upon a
25 child or that his or her emotional well-being is
26 endangered in any other way, may report the known or
27 suspected instance of child abuse to a child protective
28 agency.

29 (c) (1) Except as provided in paragraph (2) and
30 subdivision (d), any clergy member who has knowledge
31 of or observes a child, in his or her professional capacity
32 or within the scope of his or her duties, whom he or she
33 knows or reasonably suspects has been the victim of child
34 abuse, shall report the known or suspected instance of
35 child abuse to a child protective agency immediately or
36 as soon as practically possible by telephone and shall
37 prepare and send a written report thereof within 36 hours
38 of receiving the information concerning the incident. A
39 child protective agency shall be notified and a report shall
40 be prepared and sent even if the child has died, regardless



1 of whether or not the possible abuse was a factor
2 contributing to the death.

3 (2) A clergy member who acquires knowledge or
4 reasonable suspicion of child abuse during a penitential
5 communication is not subject to paragraph (1). For the
6 purposes of this subdivision, “penitential
7 communication” means a communication, intended to be
8 in confidence, including, but not limited to, a sacramental
9 confession, made to a clergy member who, in the course
10 of the discipline or practice of his or her church,
11 denomination, or organization, is authorized or
12 accustomed to hear those communications, and under the
13 discipline, tenets, customs, or practices of his or her
14 church, denomination, or organization, has a duty to keep
15 those communications secret.

16 (3) Nothing in this subdivision shall be construed to
17 modify or limit a clergy member’s duty to report known
18 or suspected child abuse when he or she is acting in the
19 capacity of a child care custodian, health practitioner,
20 employee of a child protective agency, child visitation
21 monitor, firefighter, animal control officer, humane
22 society officer, or commercial film print processor.

23 (d) Any member of the clergy who has knowledge of
24 or who reasonably suspects that mental suffering has
25 been inflicted upon a child or that his or her emotional
26 well-being is endangered in any other way may report the
27 known or suspected instance of child abuse to a child
28 protective agency.

29 (e) Any commercial film and photographic print
30 processor who has knowledge of or observes, within the
31 scope of his or her professional capacity or employment,
32 any film, photograph, videotape, negative, or slide
33 depicting a child under the age of 16 years engaged in an
34 act of sexual conduct, shall report the instance of
35 suspected child abuse to the law enforcement agency
36 having jurisdiction over the case immediately, or as soon
37 as practically possible, by telephone, and shall prepare
38 and send a written report of it with a copy of the film,
39 photograph, videotape, negative, or slide attached within
40 36 hours of receiving the information concerning the



1 incident. As used in this subdivision, “sexual conduct”
2 means any of the following:

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

7 (2) Penetration of the vagina or rectum by any object.

8 (3) Masturbation for the purpose of sexual stimulation
9 of the viewer.

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

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

15 (f) Any other person who has knowledge of or
16 observes a child whom he or she knows or reasonably
17 suspects has been a victim of child abuse may report the
18 known or suspected instance of child abuse to a child
19 protective agency.

20 (g) When two or more persons who are required to
21 report are present and jointly have knowledge of a known
22 or suspected instance of child abuse, and when there is
23 agreement among them, the telephone report may be
24 made by a member of the team selected by mutual
25 agreement and a single report may be made and signed
26 by the selected member of the reporting team. Any
27 member who has knowledge that the member
28 designated to report has failed to do so shall thereafter
29 make the report.

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

38 The internal procedures shall not require any
39 employee required to make reports pursuant to this
40 article to disclose his or her identity to the employer.



1 (i) (1) ~~A county probation officer or social worker and~~
2 ~~any attorney representing a child in dependency~~
3 ~~proceedings shall immediately, or as soon as practically~~
4 ~~possible, report by telephone to the law enforcement~~
5 ~~agency having jurisdiction over the case, to the agency~~
6 ~~given the responsibility for investigation of cases under~~
7 ~~Section 300 of the Welfare and Institutions Code, and to~~
8 ~~the district attorney's office every known or suspected~~
9 ~~instance of child abuse, as defined in Section 11165.6,~~
10 ~~except acts or omissions coming within subdivision (b) of~~
11 ~~Section 11165.2, or reports made pursuant to Section~~
12 ~~11165.13 based on risk to a child that relates solely to the~~
13 ~~inability of the parent to provide the child with regular~~
14 ~~care due to the parent's substance abuse, that shall be~~
15 ~~reported only to the county welfare department. The~~
16 ~~probation officer or social worker and the attorney~~
17 ~~representing the child in dependency court, if any, also~~
18 ~~shall send a written report thereof within 36 hours of~~
19 ~~receiving the information concerning the incident to any~~
20 ~~agency to which it is required to make a telephone report~~
21 ~~under this subdivision.~~

22 (2) ~~A law enforcement agency shall immediately, or as~~
23 ~~soon as practically possible, report by telephone to the~~
24 ~~agency given responsibility for investigation of cases~~
25 ~~under Section 300 of the Welfare and Institutions Code~~
26 ~~and to the district attorney's office every known or~~
27 ~~suspected instance of child abuse reported to it, except~~
28 ~~acts or omissions coming within subdivision (b) of Section~~
29 ~~11165.2, that shall be reported only to the county welfare~~
30 ~~department. A law enforcement agency shall report to~~
31 ~~the county welfare department every known or~~
32 ~~suspected instance of child abuse reported to it that is~~
33 ~~alleged to have occurred as a result of the action of a~~
34 ~~person responsible for the child's welfare, or as the result~~
35 ~~of the failure of a person responsible for the child's~~
36 ~~welfare to adequately protect the minor from abuse when~~
37 ~~the person responsible for the child's welfare knew or~~
38 ~~reasonably should have known that the minor was in~~
39 ~~danger of abuse. A law enforcement agency also shall~~
40 ~~send a written report thereof within 36 hours of receiving~~



1 ~~the information concerning the incident to any agency to~~
2 ~~which it is required to make a telephone report under this~~
3 ~~subdivision.~~

4 ~~SEC. 2. Section 317.1 is added to the Welfare and~~
5 ~~Institutions Code, to read:~~

6 ~~317.1. Notwithstanding any other provision of law,~~
7 ~~any counsel appointed under Section 317 to represent a~~
8 ~~child shall be subject to the requirements of the Child~~
9 ~~Abuse and Neglect Reporting Act (Article 2.5~~
10 ~~(commencing with Section 11164) of Chapter 2 of Title~~
11 ~~4 of Part 4 of the Penal Code).~~

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

22 ~~Notwithstanding Section 17580 of the Government~~
23 ~~Code, unless otherwise specified, the provisions of this act~~
24 ~~shall become operative on the same date that the act~~
25 ~~takes effect pursuant to the California Constitution.~~

26 *SECTION 1. The Legislature finds that children of*
27 *the State of California are placed at risk when permitted*
28 *contact with a parent or caretaker who has committed a*
29 *sex crime. Further, the Legislature finds that children*
30 *subject to juvenile court dependency jurisdiction based*
31 *on allegations of molestation are in need of protection*
32 *from those persons. Therefore, the purpose of this act is*
33 *to ensure information regarding those acts is*
34 *appropriately considered by the juvenile court in*
35 *determining whether a child is in need of juvenile court*
36 *dependency protection.*

37 ~~SEC. 2. Section 355.1 of the Welfare and Institutions~~
38 ~~Code is amended to read:~~

39 ~~355.1. (a) Where the court finds, based upon~~
40 ~~competent professional evidence, that an injury, injuries,~~



1 or detrimental condition sustained by a minor, of such a
2 nature as would ordinarily not be sustained except as the
3 result of the unreasonable or neglectful acts or omissions
4 of either parent, the guardian, or other person who has
5 the care or custody of the minor, that evidence shall be
6 prima facie evidence that the minor is a person described
7 by subdivision (a), (b), or (d) of Section 300.

8 (b) Proof that either parent, the guardian, or other
9 person who has the care or custody of a minor who is the
10 subject of a petition filed under Section 300, has physically
11 abused, neglected, or cruelly treated another minor shall
12 be admissible in evidence.

13 (c) The presumption created by subdivision (a)
14 constitutes a presumption affecting the burden of
15 producing evidence.

16 (d) *Where the court finds that either a parent, a*
17 *guardian, or any other person who resides with, or has the*
18 *care or custody of, a minor who is the subject of a petition*
19 *filed under Section 300 has been previously convicted of*
20 *sexual abuse as defined in Section 11165.1 of the Penal*
21 *Code, or has been found to have committed an act of*
22 *sexual abuse in a prior dependency hearing, or is required*
23 *to register as a sex offender pursuant to Section 290 of the*
24 *Penal Code, that finding shall be prima facie evidence in*
25 *any proceeding that the subject minor is a person*
26 *described by subdivision (a), (b), (c), or (d) of Section*
27 *300 and is at substantial risk of abuse or neglect.*

28 (e) *Where the court believes that a crime has been*
29 *committed against a minor, the court may direct the child*
30 *protective agency to take action pursuant to subdivision*
31 *(i) of Section 11166 of the Penal Code.*

32 (f) Testimony by a parent, guardian, or other person
33 who has the care or custody of the minor made the subject
34 of a proceeding under Section 300 shall not be admissible
35 as evidence in any other action or proceeding.

