

AMENDED IN SENATE JUNE 15, 2005
AMENDED IN ASSEMBLY MARCH 30, 2005
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 299

Introduced by Assembly Member Maze

February 9, 2005

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

LEGISLATIVE COUNSEL'S DIGEST

AB 299, as amended, Maze. Mandatory reporting.

Existing law requires that reports of suspected child abuse or neglect be made by mandated reporters, via telephone and written report, following specified procedures and timelines, to any police department or sheriff's department, county probation department, as specified, or the county welfare department.

This bill would permit child abuse or neglect reports to be made via fax or electronic transmission.

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

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 (c), a mandated
4 reporter shall make a report to an agency specified in Section
5 11165.9 whenever the mandated reporter, in his or her
6 professional capacity or within the scope of his or her

1 employment, has knowledge of or observes a child whom the
2 mandated reporter knows or reasonably suspects has been the
3 victim of child abuse or neglect. The mandated reporter shall
4 make a report to the agency immediately or as soon as is
5 practicably possible by telephone, ~~fax, or electronic transmission~~
6 and the mandated reporter shall prepare and send, fax, or
7 electronically transmit a written report thereof within 36 hours of
8 receiving the information concerning the incident. The mandated
9 reporter may include with the report any nonprivileged
10 documentary evidence the mandated reporter possesses relating
11 to the incident.

12 (1) For the purposes of this article, “reasonable suspicion”
13 means that it is objectively reasonable for a person to entertain a
14 suspicion, based upon facts that could cause a reasonable person
15 in a like position, drawing, when appropriate, on his or her
16 training and experience, to suspect child abuse or neglect. For the
17 purpose of this article, the pregnancy of a minor does not, in and
18 of itself, constitute a basis for a reasonable suspicion of sexual
19 abuse.

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

25 (3) A report made by a mandated reporter pursuant to this
26 section shall be known as a mandated report.

27 (b) Any mandated reporter who fails to report an incident of
28 known or reasonably suspected child abuse or neglect as required
29 by this section is guilty of a misdemeanor punishable by up to six
30 months confinement in a county jail or by a fine of one thousand
31 dollars (\$1,000) or by both that imprisonment and fine. If a
32 mandated reporter intentionally conceals his or her failure to
33 report an incident known by the mandated reporter to be abuse or
34 severe neglect under this section, the failure to report is a
35 continuing offense until an agency specified in Section 11165.9
36 discovers the offense.

37 (c) (1) A clergy member who acquires knowledge or a
38 reasonable suspicion of child abuse or neglect during a
39 penitential communication is not subject to subdivision (a). For
40 the purposes of this subdivision, “penitential communication”

1 means a communication, intended to be in confidence, including,
2 but not limited to, a sacramental confession, made to a clergy
3 member who, in the course of the discipline or practice of his or
4 her church, denomination, or organization, is authorized or
5 accustomed to hear those communications, and under the
6 discipline, tenets, customs, or practices of his or her church,
7 denomination, or organization, has a duty to keep those
8 communications secret.

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

14 (3) (A) On or before January 1, 2004, a clergy member or any
15 custodian of records for the clergy member may report to an
16 agency specified in Section 11165.9 that the clergy member or
17 any custodian of records for the clergy member, prior to January
18 1, 1997, in his or her professional capacity or within the scope of
19 his or her employment, other than during a penitential
20 communication, acquired knowledge or had a reasonable
21 suspicion that a child had been the victim of sexual abuse that the
22 clergy member or any custodian of records for the clergy
23 member did not previously report the abuse to an agency
24 specified in Section 11165.9. The provisions of Section 11172
25 shall apply to all reports made pursuant to this paragraph.

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

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

33 (d) Any commercial film and photographic print processor
34 who has knowledge of or observes, within the scope of his or her
35 professional capacity or employment, any film, photograph,
36 videotape, negative, or slide depicting a child under the age of 16
37 years engaged in an act of sexual conduct, shall report the
38 instance of suspected child abuse to the law enforcement agency
39 having jurisdiction over the case immediately, or as soon as
40 practicably possible, by telephone, ~~fax, or electronic transmission~~

1 and shall prepare and send, fax, or electronically submit a written
2 report of it with a copy of the film, photograph, videotape,
3 negative, or slide attached within 36 hours of receiving the
4 information concerning the incident. As used in this subdivision,
5 “sexual conduct” means any of the following:

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

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

10 (3) Masturbation for the purpose of sexual stimulation of the
11 viewer.

12 (4) Sadoomasochistic abuse for the purpose of sexual
13 stimulation of the viewer.

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

16 (e) Any mandated reporter who knows or reasonably suspects
17 that the home or institution in which a child resides is unsuitable
18 for the child because of abuse or neglect of the child shall bring
19 the condition to the attention of the agency to which, and at the
20 same time as, he or she makes a report of the abuse or neglect
21 pursuant to subdivision (a).

22 (f) Any other person who has knowledge of or observes a
23 child whom he or she knows or reasonably suspects has been a
24 victim of child abuse or neglect may report the known or
25 suspected instance of child abuse or neglect to an agency
26 specified in Section 11165.9.

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

35 (h) (1) The reporting duties under this section are individual,
36 and no supervisor or administrator may impede or inhibit the
37 reporting duties, and no person making a report shall be subject
38 to any sanction for making the report. However, internal
39 procedures to facilitate reporting and apprise supervisors and

1 administrators of reports may be established provided that they
2 are not inconsistent with this article.

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

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

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

29 (j) A law enforcement agency shall immediately, or as soon as
30 practicably possible, report by telephone, fax, or electronic
31 transmission to the agency given responsibility for investigation
32 of cases under Section 300 of the Welfare and Institutions Code
33 and to the district attorney's office every known or suspected
34 instance of child abuse or neglect reported to it, except acts or
35 omissions coming within subdivision (b) of Section 11165.2,
36 which shall be reported only to the county welfare or probation
37 department. A law enforcement agency shall report to the county
38 welfare or probation department every known or suspected
39 instance of child abuse or neglect reported to it which is alleged
40 to have occurred as a result of the action of a person responsible

1 for the child's welfare, or as the result of the failure of a person
2 responsible for the child's welfare to adequately protect the
3 minor from abuse when the person responsible for the child's
4 welfare knew or reasonably should have known that the minor
5 was in danger of abuse. A law enforcement agency also shall
6 send, fax, or electronically transmit a written report thereof
7 within 36 hours of receiving the information concerning the
8 incident to any agency to which it makes a telephone report
9 under this subdivision.

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