

AMENDED IN SENATE JUNE 6, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 776

**Introduced by Assembly Member Chu
(Coauthor: Assembly Member Cohn)**

February 18, 2005

An act to amend ~~Section 11165.9~~ *Sections 11165.9 and 11166* of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as amended, Chu. Child abuse reporting.

Existing law requires certain persons to report incidents of suspected child abuse to specified ~~authorities~~ *agencies* by telephone and also by written report *thereof within 36 hours*. ~~Existing law also requires certain agencies to accept reports of suspected child abuse even if those agencies lack jurisdiction to investigate, unless the agency can immediately refer the report of suspected child abuse to the agency with proper jurisdiction.~~

This bill would *require those agencies to keep a log of all reports received for further evaluation and investigation, as specified. This bill would also specify that the agencies required to accept reports of suspected child abuse submitted by mandated reports accept telephone, facsimile, and electronically transmitted reports of suspected child abuse if after reasonable efforts, a mandated reporter is unable to submit a report by telephone, he or she shall immediately or as soon as is practicably possible make a one-time automated written report and be available to respond to telephone follow-up by the agency with which he or she filed the report, as specified. This bill*

would provide that these reports would be captured in the Child Welfare Services/Case Management System and would provide that these provisions would not become operative until that system is updated as necessary and would become inoperative 3 years thereafter or on January 1, 2009, whichever occurs first. This bill would also require the Department of Justice to submit a report reflecting the reasons stated by mandated reporters for filing a one-time automated written report in lieu of the initial telephone report, as specified.

Because this bill would require local officials to perform additional duties and because failure of a mandated reporter to make a report as specified is a crime, this bill would impose a state-mandated local program.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Mandated reporters, as defined in Section 11165.7 of the
- 4 Penal code, are required to submit reports of child abuse or
- 5 suspected child abuse to agencies prescribed in the following
- 6 section, by an initial telephone report and a written follow-up
- 7 report.
- 8 (b) Initial telephone reports of child abuse or suspected child
- 9 abuse are the preferred method of reporting because the screener

1 *answering the call from the mandated reporter has the*
2 *opportunity to assess the validity and seriousness of the report*
3 *for purposes of expediting further investigation. In addition,*
4 *telephone reporting allows for screeners to ask for additional*
5 *known information from the mandated reporters that might not*
6 *otherwise be conveyed in a written report.*

7 *(c) By allowing reports of child abuse or suspected child*
8 *abuse to be received by a means that excludes the initial*
9 *telephone report the agency receiving the report loses an*
10 *essential tool in expediting child abuse investigations: the ability*
11 *to assess the situation through direct contact with the mandated*
12 *reporter. Therefore, situations in which the initial telephone*
13 *report can not be received should be remedied and reduced to*
14 *the extent possible in order to strengthen the child abuse*
15 *reporting safety net set forth in statute.*

16 **SECTION 1.—**

17 *SEC. 2.* Section 11165.9 of the Penal Code is amended to
18 read:

19 11165.9. Reports of suspected child abuse or neglect shall be
20 made by mandated reporters to any police department or sheriff's
21 department, not including a school district police or security
22 department, county probation department, if designated by the
23 county to receive mandated reports, or the county welfare
24 department. Any of those agencies shall accept a ~~telephone,~~
25 ~~facsimile, or electronically transmitted~~ report of suspected child
26 abuse or neglect whether offered by a mandated reporter or
27 another person, or referred by another agency, even if the agency
28 to whom the report is being made lacks subject matter or
29 geographical jurisdiction to investigate the reported case, unless
30 the agency can immediately electronically transfer the call to an
31 agency with proper jurisdiction. When an agency takes a report
32 about a case of suspected child abuse or neglect in which that
33 agency lacks jurisdiction, the agency shall immediately refer the
34 case by telephone, fax, or electronic transmission to an agency
35 with proper jurisdiction. *The agency shall keep a log of the*
36 *reports received, regardless of merit, for further evaluation and*
37 *investigation, as necessary, on a case by case basis. Under no*
38 *circumstances are agencies or employees of agencies required to*
39 *receive reports of child abuse or suspected child abuse to refuse*

1 *to take a report of child abuse or suspected child abuse from a*
2 *mandated reporter.*

3 *SEC. 3. Section 11166 of the Penal Code is amended to read:*

4 11166. (a) Except as provided in subdivision (c), a mandated
5 reporter shall make a report to an agency specified in Section
6 11165.9 whenever the mandated reporter, in his or her
7 professional capacity or within the scope of his or her
8 employment, has knowledge of or observes a child whom the
9 mandated reporter knows or reasonably suspects has been the
10 victim of child abuse or neglect. The mandated reporter shall
11 make ~~a~~ *an initial* report to the agency immediately or as soon as
12 is practicably possible by telephone, and the mandated reporter
13 shall prepare and send a written *follow-up* report thereof within
14 36 hours of receiving the information concerning the incident.
15 The mandated reporter may include with the report any
16 nonprivileged documentary evidence the mandated reporter
17 possesses relating to the incident.

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

26 (2) The agency shall be notified and a report shall be prepared
27 and sent even if the child has expired, regardless of whether or
28 not the possible abuse was a factor contributing to the death, and
29 even if suspected child abuse was discovered during an autopsy.

30 (3) ~~Any~~ report made by a mandated reporter pursuant to this
31 section shall be known as a mandated report.

32 (b) *If after reasonable efforts a mandated reporter is unable to*
33 *submit an initial report by telephone, he or she shall immediately*
34 *or as soon as is practicably possible, by fax or electronic*
35 *transmission, make a one-time automated written report on the*
36 *form prescribed by the Department of Justice, and shall also be*
37 *available to respond to a telephone follow-up call by the agency*
38 *with which he or she filed the report. A mandated reporter who*
39 *files a one-time automated written report because he or she was*

1 *unable to submit an initial report by telephone is not required to*
2 *submit a written follow-up report.*

3 *(1) The one-time automated written report form prescribed by*
4 *the Department of Justice shall be clearly identifiable so that it is*
5 *not mistaken for a standard written follow-up report. In addition,*
6 *the automated one-time report shall contain a section that allows*
7 *the mandated reporter to state the reason the initial telephone*
8 *call was not able to be completed. The reason for the submission*
9 *of the one-time automated written report in lieu of the procedure*
10 *prescribed in subdivision (a) shall be captured in the Child*
11 *Welfare Services/Case Management System (CWS/CMS). The*
12 *department shall work with stakeholders to modify reporting*
13 *forms and the CWS/CMS as is necessary to accommodate the*
14 *changes enacted by these provisions.*

15 *(2) This subdivision shall not become operative until the*
16 *CWS/CMS is updated to capture the information prescribed in*
17 *this subdivision.*

18 *(3) This subdivision shall become inoperative three years after*
19 *this subdivision becomes operative or on January 1, 2009, which*
20 *ever occurs first.*

21 *(4) On the inoperative date of these provisions, a report shall*
22 *be submitted to the counties and the Legislature by the*
23 *Department of Justice that reflects the data collected from*
24 *automated one-time reports indicating the reasons stated as to*
25 *why the automated one-time report was filed in lieu of the initial*
26 *telephone report.*

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

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

1 ~~(e)~~

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

14 (2) Nothing in this subdivision shall be construed to modify or
15 limit a clergy member’s duty to report known or suspected child
16 abuse or neglect when the clergy member is acting in some other
17 capacity that would otherwise make the clergy member a
18 mandated reporter.

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

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

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

38 ~~(d)~~

39 ~~(e)~~ Any commercial film and photographic print processor
40 who has knowledge of or observes, within the scope of his or her

1 professional capacity or employment, any film, photograph,
2 videotape, negative, or slide depicting a child under the age of 16
3 years engaged in an act of sexual conduct, shall report the
4 instance of suspected child abuse to the law enforcement agency
5 having jurisdiction over the case immediately, or as soon as
6 practicably possible, by telephone, and shall prepare and send a
7 written report of it with a copy of the film, photograph,
8 videotape, negative, or slide attached within 36 hours of
9 receiving the information concerning the incident. As used in this
10 subdivision, "sexual conduct" means any of the following:

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

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

15 (3) Masturbation for the purpose of sexual stimulation of the
16 viewer.

17 (4) Sadomasochistic abuse for the purpose of sexual
18 stimulation of the viewer.

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

21 ~~(e)~~

22 (f) Any mandated reporter who knows or reasonably suspects
23 that the home or institution in which a child resides is unsuitable
24 for the child because of abuse or neglect of the child shall bring
25 the condition to the attention of the agency to which, and at the
26 same time as, he or she makes a report of the abuse or neglect
27 pursuant to subdivision (a).

28 ~~(f)~~

29 (g) Any other person who has knowledge of or observes a
30 child whom he or she knows or reasonably suspects has been a
31 victim of child abuse or neglect may report the known or
32 suspected instance of child abuse or neglect to an agency
33 specified in Section 11165.9.

34 ~~(g)~~

35 (h) When two or more persons, who are required to report,
36 jointly have knowledge of a known or suspected instance of child
37 abuse or neglect, and when there is agreement among them, the
38 telephone report may be made by a member of the team selected
39 by mutual agreement and a single report may be made and signed
40 by the selected member of the reporting team. Any member who

1 has knowledge that the member designated to report has failed to
2 do so shall thereafter make the report.

3 ~~(h)~~

4 (i) (1) The reporting duties under this section are individual,
5 and no supervisor or administrator may impede or inhibit the
6 reporting duties, and no person making a report shall be subject
7 to any sanction for making the report. However, internal
8 procedures to facilitate reporting and apprise supervisors and
9 administrators of reports may be established provided that they
10 are not inconsistent with this article.

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

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

19 ~~(i)~~

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

38 ~~(j)~~

39 (k) A law enforcement agency shall immediately, or as soon as
40 practicably possible, report by telephone to the agency given

1 responsibility for investigation of cases under Section 300 of the
2 Welfare and Institutions Code and to the district attorney's office
3 every known or suspected instance of child abuse or neglect
4 reported to it, except acts or omissions coming within
5 subdivision (b) of Section 11165.2, which shall be reported only
6 to the county welfare or probation department. A law
7 enforcement agency shall report to the county welfare or
8 probation department every known or suspected instance of child
9 abuse or neglect reported to it which is alleged to have occurred
10 as a result of the action of a person responsible for the child's
11 welfare, or as the result of the failure of a person responsible for
12 the child's welfare to adequately protect the minor from abuse
13 when the person responsible for the child's welfare knew or
14 reasonably should have known that the minor was in danger of
15 abuse. A law enforcement agency also shall send, fax, or
16 electronically transmit a written report thereof within 36 hours of
17 receiving the information concerning the incident to any agency
18 to which it makes a telephone report under this subdivision.

19 *SEC. 4. No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution for*
21 *certain costs that may be incurred by a local agency or school*
22 *district because, in that regard, this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the*
24 *penalty for a crime or infraction, within the meaning of Section*
25 *17556 of the Government Code, or changes the definition of a*
26 *crime within the meaning of Section 6 of Article XIII B of the*
27 *California Constitution.*

28 *However, if the Commission on State Mandates determines that*
29 *this act contains other costs mandated by the state,*
30 *reimbursement to local agencies and school districts for those*
31 *costs shall be made pursuant to Part 7 (commencing with Section*
32 *17500) of Division 4 of Title 2 of the Government Code.*

O