

AMENDED IN SENATE JULY 11, 2005

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 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 agencies by telephone and also by written report thereof within 36 hours.

This bill would require those agencies to keep a ~~log~~ *record* of all reports received ~~for further evaluation and investigation, as specified.~~ This bill would also specify that 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 followup 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~~ *Social Services* 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: yes.
State-mandated local program: 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 followup
- 7 report.
- 8 (b) Initial telephone reports of child abuse or suspected child
- 9 abuse are the preferred method of reporting because the screener
- 10 answering the call from the mandated reporter has the
- 11 opportunity to assess the validity and seriousness of the report for
- 12 purposes of expediting further investigation. In addition,
- 13 telephone reporting allows for screeners to ask for additional

1 known information from the mandated reporters that might not
2 otherwise be conveyed in a written report.

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

12 SEC. 2. Section 11165.9 of the Penal Code is amended to
13 read:

14 11165.9. Reports of suspected child abuse or neglect shall be
15 made by mandated reporters to any police department or sheriff's
16 department, not including a school district police or security
17 department, county probation department, if designated by the
18 county to receive mandated reports, or the county welfare
19 department. Any of those agencies shall accept a report of
20 suspected child abuse or neglect whether offered by a mandated
21 reporter or another person, or referred by another agency, even if
22 the agency to whom the report is being made lacks subject matter
23 or geographical jurisdiction to investigate the reported case,
24 unless the agency can immediately electronically transfer the call
25 to an agency with proper jurisdiction. When an agency takes a
26 report about a case of suspected child abuse or neglect in which
27 that agency lacks jurisdiction, the agency shall immediately refer
28 the case by telephone, fax, or electronic transmission to an
29 agency with proper jurisdiction. ~~The agency shall keep a log of~~
30 ~~the reports received, regardless of merit, for further evaluation~~
31 ~~and investigation, as necessary, on a case-by-case basis. Under~~
32 ~~no circumstances are agencies or employees of agencies required~~
33 ~~to receive reports of child abuse or suspected child abuse to~~
34 ~~refuse to take a report of child abuse or suspected child abuse~~
35 ~~from a mandated reporter. Agencies that are required to receive~~
36 ~~reports of suspected child abuse or neglect may not refuse to~~
37 ~~accept a report of suspected child abuse or neglect from a~~
38 ~~mandated reporter or another person unless otherwise~~
39 ~~authorized pursuant to this section, and shall maintain a record~~
40 ~~of all reports received.~~

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

2 11166. (a) Except as provided in subdivision (c), a mandated
3 reporter shall make a report to an agency specified in Section
4 11165.9 whenever the mandated reporter, in his or her
5 professional capacity or within the scope of his or her
6 employment, has knowledge of or observes a child whom the
7 mandated reporter knows or reasonably suspects has been the
8 victim of child abuse or neglect. The mandated reporter shall
9 make an initial report to the agency immediately or as soon as is
10 practicably possible by telephone, and the mandated reporter
11 shall prepare and send a written followup report thereof within
12 36 hours of receiving the information concerning the incident.
13 The mandated reporter may include with the report any
14 nonprivileged documentary evidence the mandated reporter
15 possesses relating to the incident.

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

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

28 (3) Any report made by a mandated reporter pursuant to this
29 section shall be known as a mandated report.

30 (b) If after reasonable efforts a mandated reporter is unable to
31 submit an initial report by telephone, he or she shall immediately
32 or as soon as is practicably possible, by fax or electronic
33 transmission, make a one-time automated written report on the
34 form prescribed by the Department of Justice, and shall also be
35 available to respond to a telephone followup call by the agency
36 with which he or she filed the report. A mandated reporter who
37 files a one-time automated written report because he or she was
38 unable to submit an initial report by telephone is not required to
39 submit a written followup report.

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

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

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

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

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

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

39 (d) (1) A clergy member who acquires knowledge or a
40 reasonable suspicion of child abuse or neglect during a

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

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

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

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

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

35 (e) Any commercial film and photographic print processor
36 who has knowledge of or observes, within the scope of his or her
37 professional capacity or employment, any film, photograph,
38 videotape, negative, or slide depicting a child under the age of 16
39 years engaged in an act of sexual conduct, shall report the
40 instance of suspected child abuse to the law enforcement agency

1 having jurisdiction over the case immediately, or as soon as
2 practicably possible, by telephone, and shall prepare and send a
3 written report of it with a copy of the film, photograph,
4 videotape, negative, or slide attached within 36 hours of
5 receiving the information concerning the incident. As used in this
6 subdivision, “sexual conduct” means any of the following:

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

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

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

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

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

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

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

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

36 (i) (1) The reporting duties under this section are individual,
37 and no supervisor or administrator may impede or inhibit the
38 reporting duties, and no person making a report shall be subject
39 to any sanction for making the report. However, internal
40 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 (j) 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 (k) A law enforcement agency shall immediately, or as soon as
30 practicably possible, report by telephone to the agency given
31 responsibility for investigation of cases under Section 300 of the
32 Welfare and Institutions Code and to the district attorney's office
33 every known or suspected instance of child abuse or neglect
34 reported to it, except acts or omissions coming within
35 subdivision (b) of Section 11165.2, which shall be reported only
36 to the county welfare or probation department. A law
37 enforcement agency shall report to the county welfare or
38 probation department every known or suspected instance of child
39 abuse or neglect reported to it which is alleged to have occurred
40 as a result of the action of a person responsible for the child's

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

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution for
11 certain costs that may be incurred by a local agency or school
12 district because, in that regard, this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the
14 penalty for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition of a
16 crime within the meaning of Section 6 of Article XIII B of the
17 California Constitution.

18 However, if the Commission on State Mandates determines
19 that this act contains other costs mandated by the state,
20 reimbursement to local agencies and school districts for those
21 costs shall be made pursuant to Part 7 (commencing with Section
22 17500) of Division 4 of Title 2 of the Government Code.