

AMENDED IN SENATE AUGUST 24, 2005

AMENDED IN SENATE JULY 11, 2005

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AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 776**

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

February 18, 2005

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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 record of all reports received. *This bill would permit those written reports to be made via fax or electronic transmission.* 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 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.~~

*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, with regard to certain mandates, no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

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:

1 (a) Mandated reporters, as defined in Section 11165.7 of the  
2 Penal Code, are required to submit reports of child abuse or  
3 suspected child abuse to agencies prescribed in the following  
4 section, by an initial telephone report and a written followup  
5 report.

6 (b) Initial telephone reports of child abuse or suspected child  
7 abuse are the preferred method of reporting because the screener  
8 answering the call from the mandated reporter has the  
9 opportunity to assess the validity and seriousness of the report for  
10 purposes of expediting further investigation. In addition,  
11 telephone reporting allows for screeners to ask for additional  
12 known information from the mandated reporters that might not  
13 otherwise be conveyed in a written report.

14 (c) By allowing reports of child abuse or suspected child abuse  
15 to be received by a means that excludes the initial telephone  
16 report the agency receiving the report loses an essential tool in  
17 expediting child abuse investigations: the ability to assess the  
18 situation through direct contact with the mandated reporter.  
19 Therefore, situations in which the initial telephone report cannot  
20 be received should be remedied and reduced to the extent  
21 possible in order to strengthen the child abuse reporting safety  
22 net set forth in statute.

23 SEC. 2. Section 11165.9 of the Penal Code is amended to  
24 read:

25 11165.9. Reports of suspected child abuse or neglect shall be  
26 made by mandated reporters to any police department or sheriff's  
27 department, not including a school district police or security  
28 department, county probation department, if designated by the  
29 county to receive mandated reports, or the county welfare  
30 department. Any of those agencies shall accept a report of  
31 suspected child abuse or neglect whether offered by a mandated  
32 reporter or another person, or referred by another agency, even if  
33 the agency to whom the report is being made lacks subject matter  
34 or geographical jurisdiction to investigate the reported case,  
35 unless the agency can immediately electronically transfer the call  
36 to an agency with proper jurisdiction. When an agency takes a  
37 report about a case of suspected child abuse or neglect in which  
38 that agency lacks jurisdiction, the agency shall immediately refer  
39 the case by telephone, fax, or electronic transmission to an  
40 agency with proper jurisdiction. Agencies that are required to

1 receive reports of suspected child abuse or neglect may not  
2 refuse to accept a report of suspected child abuse or neglect from  
3 a mandated reporter or another person unless otherwise  
4 authorized pursuant to this section, and shall maintain a record of  
5 all reports received.

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

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

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

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

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

36 (b) If after reasonable efforts a mandated reporter is unable to  
37 submit an initial report by telephone, he or she shall immediately  
38 or as soon as is practicably possible, by fax or electronic  
39 transmission, make a one-time automated written report on the  
40 form prescribed by the Department of Justice, and shall also be

1 available to respond to a telephone followup call by the agency  
2 with which he or she filed the report. A mandated reporter who  
3 files a one-time automated written report because he or she was  
4 unable to submit an initial report by telephone is not required to  
5 submit a written followup report.

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

18 (2) This subdivision shall not become operative until the  
19 CWS/CMS is updated to capture the information prescribed in  
20 this subdivision.

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

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

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

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

1 severe neglect under this section, the failure to report is a  
2 continuing offense until an agency specified in Section 11165.9  
3 discovers the offense.

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

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

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

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

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

1 (e) Any commercial film and photographic print processor  
2 who has knowledge of or observes, within the scope of his or her  
3 professional capacity or employment, any film, photograph,  
4 videotape, negative, or slide depicting a child under the age of 16  
5 years engaged in an act of sexual conduct, shall report the  
6 instance of suspected child abuse to the law enforcement agency  
7 having jurisdiction over the case immediately, or as soon as  
8 practicably possible, by telephone; and shall prepare and send,  
9 *fax, or electronically transmit* a written report of it with a copy of  
10 the film, photograph, videotape, negative, or slide attached  
11 within 36 hours of receiving the information concerning the  
12 incident. As used in this subdivision, “sexual conduct” means  
13 any of the following:

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

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

18 (3) Masturbation for the purpose of sexual stimulation of the  
19 viewer.

20 (4) Sadomasochistic abuse for the purpose of sexual  
21 stimulation of the viewer.

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

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

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

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

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

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

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

36 (k) A law enforcement agency shall immediately, or as soon as  
37 practicably possible, report by telephone, *fax*, or *electronic*  
38 *transmission* to the agency given responsibility for investigation  
39 of cases under Section 300 of the Welfare and Institutions Code  
40 and to the district attorney's office every known or suspected

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

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

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

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