

**ASSEMBLY BILL**

**No. 1628**

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**Introduced by Assembly Member Beall**

February 9, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as introduced, Beall. Child abuse reporting.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine.

This bill would make technical, nonsubstantive changes to these provisions.

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 (d), and in
- 4 Section 11166.05, a mandated reporter shall make a report to an
- 5 agency specified in Section 11165.9 whenever the mandated

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

12 (1) For purposes of this article, “reasonable suspicion” means  
13 that it is objectively reasonable for a person to entertain a suspicion,  
14 based upon facts that could cause a reasonable person in a like  
15 position, drawing, when appropriate, on his or her training and  
16 experience, to suspect child abuse or neglect. “Reasonable  
17 suspicion” does not require certainty that child abuse or neglect  
18 has occurred nor does it require a specific medical indication of  
19 child abuse or neglect; any “reasonable suspicion” is sufficient.  
20 For the purpose of this article, the pregnancy of a minor does not,  
21 in and of itself, constitute a basis for a reasonable suspicion of  
22 sexual abuse.

23 (2) The agency shall be notified and a report shall be prepared  
24 and sent, faxed, or electronically transmitted even if the child has  
25 expired, regardless of whether or not the possible abuse was a  
26 factor contributing to the death, and even if suspected child abuse  
27 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 Welfare  
9 Services/Case Management System (CWS/CMS). The department  
10 shall work with stakeholders to modify reporting forms and the  
11 CWS/CMS as is necessary to accommodate the changes enacted  
12 by these provisions.

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

16 (3) This subdivision shall become inoperative three years after  
17 this subdivision becomes operative or on January 1, 2009,  
18 whichever 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 *State*  
21 Department of Social Services that reflects the data collected from  
22 automated one-time reports indicating the reasons stated as to why  
23 the automated one-time report was filed in lieu of the initial  
24 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 report  
35 an incident known by the mandated reporter to be abuse or severe  
36 neglect under this section, the failure to report is a continuing  
37 offense until an agency specified in Section 11165.9 discovers the  
38 offense.

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

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

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

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

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

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

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

1 possible, by telephone and shall prepare and send, fax, or  
2 electronically transmit a written report of it with a copy of the film,  
3 photograph, videotape, negative, or slide attached within 36 hours  
4 of receiving the information concerning the incident. As used in  
5 this subdivision, “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 or  
8 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) Sadomasochistic abuse for the purpose of sexual stimulation  
13 of the viewer.

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

16 (f) 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 (g) Any other person who has knowledge of or observes a child  
23 whom he or she knows or reasonably suspects has been a victim  
24 of child abuse or neglect may report the known or suspected  
25 instance of child abuse or neglect to an agency specified in Section  
26 11165.9. For purposes of this section, “any other person” includes  
27 a mandated reporter who acts in his or her private capacity and  
28 not in his or her professional capacity or within the scope of his  
29 or her employment.

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

38 (i) (1) The reporting duties under this section are individual,  
39 and no supervisor or administrator may impede or inhibit the  
40 reporting duties, and no person making a report shall be subject

1 to any sanction for making the report. However, internal procedures  
2 to facilitate reporting and apprise supervisors and administrators  
3 of reports may be established provided that they are not inconsistent  
4 with this article.

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

8 (3) Reporting the information regarding a case of possible child  
9 abuse or neglect to an employer, supervisor, school principal,  
10 school counselor, coworker, or other person shall not be a substitute  
11 for making a mandated report to an agency specified in Section  
12 11165.9.

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

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

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

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