

**Introduced by Senator Hill**

February 20, 2019

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An act to amend Section 1558 of the Health and Safety Code, and to amend Sections ~~11165.7, 11166, 11166.01, and 11167~~ *11165.7 and 11166* of the Penal Code, relating to mandated reporters.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Hill. Mandated reporters: clergy.

Existing law, the Child Abuse and Neglect Reporting Act, makes certain persons, including clergy, mandated reporters. Under existing law, clergy are required to report whenever the clergy, in their professional capacity or within the scope of their employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, except when the clergy acquires the knowledge or reasonable suspicion of child abuse or neglect during a penitential communication. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor.

~~This bill would delete that exception for a penitential communication, thereby requiring clergy to make a mandated report even if they acquired the knowledge or reasonable suspicion of child abuse or neglect during a penitential communication. The bill would make additional, conforming changes. By expanding the scope of a crime and requiring local officials to receive additional reports of suspected child abuse or neglect, further define a penitential communication for purposes of the exception. The bill would also exempt from the exemption any penitential communication made between a clergy member and another person~~

*employed at the same facility or location as that clergy member, or between a clergy member and another clergy member. By redefining an exemption to a crime, this bill would impose a state-mandated local program.*

~~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 no reimbursement is required by this act for specified reasons:~~

~~*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 no reimbursement is required by this act for a specified reason.*~~

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. ~~Section 1558 of the Health and Safety Code is~~  
2 ~~amended to read:~~

3 1558. ~~(a) The department may prohibit any person from being~~  
4 ~~a member of the board of directors, an executive director, or an~~  
5 ~~officer of a licensee, or a licensee from employing, or continuing~~  
6 ~~the employment of, or allowing in a licensed facility or certified~~  
7 ~~family home, or allowing contact with clients of a licensed facility~~  
8 ~~or certified family home by, any employee, prospective employee,~~  
9 ~~or person who is not a client who has:~~

10 ~~(1) Violated, or aided or permitted the violation by any other~~  
11 ~~person of, any provisions of this chapter or of any rules or~~  
12 ~~regulations promulgated under this chapter.~~

13 ~~(2) Engaged in conduct that is inimical to the health, morals,~~  
14 ~~welfare, or safety of either the people of this state or an individual~~  
15 ~~in, or receiving services from, the facility or certified family home.~~

16 ~~(3) Been denied an exemption to work or to be present in a~~  
17 ~~facility or certified family home, when that person has been~~  
18 ~~convicted of a crime, as defined in Section 1522.~~

19 ~~(4) Engaged in any other conduct that would constitute a basis~~  
20 ~~for disciplining a licensee or certified family home.~~

1 ~~(5) Engaged in acts of financial malfeasance concerning the~~  
2 ~~operation of a facility or certified family home, including, but not~~  
3 ~~limited to, improper use or embezzlement of client moneys and~~  
4 ~~property or fraudulent appropriation for personal gain of facility~~  
5 ~~moneys and property, or willful or negligent failure to provide~~  
6 ~~services.~~

7 ~~(b) The excluded person, the facility or certified family home,~~  
8 ~~and the licensee shall be given written notice of the basis of the~~  
9 ~~department's action and of the excluded person's right to an appeal.~~  
10 ~~The notice shall be served either by personal service or by~~  
11 ~~registered mail. Within 15 days after the department serves the~~  
12 ~~notice, the excluded person may file with the department a written~~  
13 ~~appeal of the exclusion order. If the excluded person fails to file~~  
14 ~~a written appeal within the prescribed time, the department's action~~  
15 ~~shall be final.~~

16 ~~(e) (1) The department may require the immediate removal of~~  
17 ~~a member of the board of directors, an executive director, or an~~  
18 ~~officer of a licensee or exclusion of an employee, prospective~~  
19 ~~employee, or person who is not a client from a facility or certified~~  
20 ~~family home pending a final decision of the matter, when, in the~~  
21 ~~opinion of the director, the action is necessary to protect residents~~  
22 ~~or clients from physical or mental abuse, abandonment, or any~~  
23 ~~other substantial threat to their health or safety.~~

24 ~~(2) If the department requires the immediate removal of a~~  
25 ~~member of the board of directors, an executive director, or an~~  
26 ~~officer of a licensee or exclusion of an employee, prospective~~  
27 ~~employee, or person who is not a client from a facility or certified~~  
28 ~~family home, the department shall serve an order of immediate~~  
29 ~~exclusion upon the excluded person that shall notify the excluded~~  
30 ~~person of the basis of the department's action and of the excluded~~  
31 ~~person's right to a hearing.~~

32 ~~(3) Within 15 days after the department serves an order of~~  
33 ~~immediate exclusion, the excluded person may file a written appeal~~  
34 ~~of the exclusion with the department. The department's action~~  
35 ~~shall be final if the excluded person does not appeal the exclusion~~  
36 ~~within the prescribed time. The department shall do both of the~~  
37 ~~following upon receipt of a written appeal:~~

38 ~~(A) Within 30 days of receipt of the appeal, serve an accusation~~  
39 ~~upon the excluded person.~~

1 ~~(B) Within 60 days of receipt of a notice of defense pursuant~~  
2 ~~to Section 11506 of the Government Code by the excluded person~~  
3 ~~to conduct a hearing on the accusation.~~

4 ~~(4) An order of immediate exclusion of the excluded person~~  
5 ~~from the facility or certified family home shall remain in effect~~  
6 ~~until the hearing is completed and the director has made a final~~  
7 ~~determination on the merits. However, the order of immediate~~  
8 ~~exclusion shall be deemed vacated if the director fails to make a~~  
9 ~~final determination on the merits within 60 days after the original~~  
10 ~~hearing has been completed.~~

11 ~~(d) An excluded person who files a written appeal with the~~  
12 ~~department pursuant to this section shall, as part of the written~~  
13 ~~request, provide their current mailing address. The excluded person~~  
14 ~~shall subsequently notify the department in writing of any change~~  
15 ~~in mailing address, until the hearing process has been completed~~  
16 ~~or terminated.~~

17 ~~(e) Hearings held pursuant to this section shall be conducted in~~  
18 ~~accordance with Chapter 5 (commencing with Section 11500) of~~  
19 ~~Division 3 of Title 2 of the Government Code. The standard of~~  
20 ~~proof shall be the preponderance of the evidence and the burden~~  
21 ~~of proof shall be on the department.~~

22 ~~(f) The department may institute or continue a disciplinary~~  
23 ~~proceeding against a member of the board of directors, an executive~~  
24 ~~director, or an officer of a licensee or an employee, prospective~~  
25 ~~employee, or person who is not a client upon any ground provided~~  
26 ~~by this section. The department may enter an order prohibiting~~  
27 ~~any person from being a member of the board of directors, an~~  
28 ~~executive director, or an officer of a licensee or prohibiting the~~  
29 ~~excluded person's employment or presence in the facility or~~  
30 ~~certified family home, or otherwise take disciplinary action against~~  
31 ~~the excluded person, notwithstanding any resignation, withdrawal~~  
32 ~~of employment application, or change of duties by the excluded~~  
33 ~~person, or any discharge, failure to hire, or reassignment of the~~  
34 ~~excluded person by the licensee or that the excluded person no~~  
35 ~~longer has contact with clients at the facility or certified family~~  
36 ~~home.~~

37 ~~(g) A licensee's or certified family home's failure to comply~~  
38 ~~with the department's exclusion order after being notified of the~~  
39 ~~order shall be grounds for disciplining the licensee pursuant to~~  
40 ~~Section 1550.~~

1 ~~(h) (1) (A) In cases in which the excluded person appealed the~~  
2 ~~exclusion order, the person shall be prohibited from working in~~  
3 ~~any facility or being licensed to operate any facility licensed by~~  
4 ~~the department or from being a certified foster parent for the~~  
5 ~~remainder of the excluded person's life, unless otherwise ordered~~  
6 ~~by the department.~~

7 ~~(B) The excluded individual may petition for reinstatement one~~  
8 ~~year after the effective date of the decision and order of the~~  
9 ~~department upholding the exclusion order pursuant to Section~~  
10 ~~11522 of the Government Code. The department shall provide the~~  
11 ~~excluded person with a copy of Section 11522 of the Government~~  
12 ~~Code with the decision and order.~~

13 ~~(2) (A) In cases in which the department informed the excluded~~  
14 ~~person of their right to appeal the exclusion order and the excluded~~  
15 ~~person did not appeal the exclusion order, the person shall be~~  
16 ~~prohibited from working in any facility or being licensed to operate~~  
17 ~~any facility licensed by the department or a certified foster parent~~  
18 ~~for the remainder of the excluded person's life, unless otherwise~~  
19 ~~ordered by the department.~~

20 ~~(B) The excluded individual may petition for reinstatement after~~  
21 ~~one year has elapsed from the date of the notification of the~~  
22 ~~exclusion order pursuant to Section 11522 of the Government~~  
23 ~~Code. The department shall provide the excluded person with a~~  
24 ~~copy of Section 11522 of the Government Code with the exclusion~~  
25 ~~order.~~

26 ~~(i) Notwithstanding paragraph (2) of subdivision (a) or~~  
27 ~~subdivision (c) of Section 1550, the department shall take~~  
28 ~~reasonable action, including, but not limited to, prohibiting a person~~  
29 ~~from being a member of the board of directors, an executive~~  
30 ~~director, or an officer of a licensee of a licensed facility or certified~~  
31 ~~family home, or denying an application for, or suspending or~~  
32 ~~revoking, a license, special permit, certificate of approval, or~~  
33 ~~administrator certificate, issued under this chapter, or denying a~~  
34 ~~transfer of a license pursuant to paragraph (2) of subdivision (c)~~  
35 ~~of Section 1524, upon a finding of a violation of subdivision (h)~~  
36 ~~of Section 11166 of the Penal Code.~~

37 ~~(j) For purposes of this section, exclusion from a licensed foster~~  
38 ~~family home or certified family home shall include exclusion from~~  
39 ~~a resource family, as defined in Section 1517 of this code and~~  
40 ~~Section 16519.5 of the Welfare and Institutions Code.~~

1     ~~SEC. 2.~~

2     SECTION 1. Section 11165.7 of the Penal Code is amended  
3 to read:

4     11165.7. (a) As used in this article, “mandated reporter” is  
5 defined as any of the following:

6     (1) A teacher.

7     (2) An instructional aide.

8     (3) A teacher’s aide or teacher’s assistant employed by a public  
9 or private school.

10    (4) A classified employee of a public school.

11    (5) An administrative officer or supervisor of child welfare and  
12 attendance, or a certificated pupil personnel employee of a public  
13 or private school.

14    (6) An administrator of a public or private day camp.

15    (7) An administrator or employee of a public or private youth  
16 center, youth recreation program, or youth organization.

17    (8) An administrator, board member, or employee of a public  
18 or private organization whose duties require direct contact and  
19 supervision of children, including a foster family agency.

20    (9) An employee of a county office of education or the State  
21 Department of Education whose duties bring the employee into  
22 contact with children on a regular basis.

23    (10) A licensee, an administrator, or an employee of a licensed  
24 community care or child daycare facility.

25    (11) A Head Start program teacher.

26    (12) A licensing worker or licensing evaluator employed by a  
27 licensing agency, as defined in Section 11165.11.

28    (13) A public assistance worker.

29    (14) An employee of a childcare institution, including, but not  
30 limited to, foster parents, group home personnel, and personnel of  
31 residential care facilities.

32    (15) A social worker, probation officer, or parole officer.

33    (16) An employee of a school district police or security  
34 department.

35    (17) A person who is an administrator or presenter of, or a  
36 counselor in, a child abuse prevention program in a public or  
37 private school.

38    (18) A district attorney investigator, inspector, or local child  
39 support agency caseworker, unless the investigator, inspector, or  
40 caseworker is working with an attorney appointed pursuant to

1 Section 317 of the Welfare and Institutions Code to represent a  
2 minor.

3 (19) A peace officer, as defined in Chapter 4.5 (commencing  
4 with Section 830) of Title 3 of Part 2, who is not otherwise  
5 described in this section.

6 (20) A firefighter, except for volunteer firefighters.

7 (21) A physician and surgeon, psychiatrist, psychologist, dentist,  
8 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
9 hygienist, optometrist, marriage and family therapist, clinical social  
10 worker, professional clinical counselor, or any other person who  
11 is currently licensed under Division 2 (commencing with Section  
12 500) of the Business and Professions Code.

13 (22) An emergency medical technician I or II, paramedic, or  
14 other person certified pursuant to Division 2.5 (commencing with  
15 Section 1797) of the Health and Safety Code.

16 (23) A psychological assistant registered pursuant to Section  
17 2913 of the Business and Professions Code.

18 (24) A marriage and family therapist trainee, as defined in  
19 subdivision (c) of Section 4980.03 of the Business and Professions  
20 Code.

21 (25) An unlicensed associate marriage and family therapist  
22 registered under Section 4980.44 of the Business and Professions  
23 Code.

24 (26) A state or county public health employee who treats a minor  
25 for venereal disease or any other condition.

26 (27) A coroner.

27 (28) A medical examiner or other person who performs  
28 autopsies.

29 (29) A commercial film and photographic print or image  
30 processor as specified in subdivision ~~(d)~~ (e) of Section 11166. As  
31 used in this article, “commercial film and photographic print or  
32 image processor” means a person who develops exposed  
33 photographic film into negatives, slides, or prints, or who makes  
34 prints from negatives or slides, or who prepares, publishes,  
35 produces, develops, duplicates, or prints any representation of  
36 information, data, or an image, including, but not limited to, any  
37 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
38 video laser disc, computer hardware, computer software, computer  
39 floppy disk, data storage medium, CD-ROM, computer-generated  
40 equipment, or computer-generated image, for compensation. The

1 term includes any employee of that person; it does not include a  
2 person who develops film or makes prints or images for a public  
3 agency.

4 (30) A child visitation monitor. As used in this article, “child  
5 visitation monitor” means a person who, for financial  
6 compensation, acts as a monitor of a visit between a child and  
7 another person when the monitoring of that visit has been ordered  
8 by a court of law.

9 (31) An animal control officer or humane society officer. For  
10 the purposes of this article, the following terms have the following  
11 meanings:

12 (A) “Animal control officer” means a person employed by a  
13 city, county, or city and county for the purpose of enforcing animal  
14 control laws or regulations.

15 (B) “Humane society officer” means a person appointed or  
16 employed by a public or private entity as a humane officer who is  
17 qualified pursuant to Section 14502 or 14503 of the Corporations  
18 Code.

19 (32) A clergy ~~member~~. *member, except as otherwise provided*  
20 *in subdivision (d) of Section 11166.* As used in this article, “clergy  
21 member” means a priest, minister, rabbi, religious practitioner, or  
22 similar functionary of a church, temple, or recognized  
23 denomination or organization.

24 (33) Any custodian of records of a clergy member.

25 (34) An employee of any police department, county sheriff’s  
26 department, county probation department, or county welfare  
27 department.

28 (35) An employee or volunteer of a Court Appointed Special  
29 Advocate program, as defined in Rule 5.655 of the California Rules  
30 of Court.

31 (36) A custodial officer, as defined in Section 831.5.

32 (37) A person providing services to a minor child under Section  
33 12300 or 12300.1 of the Welfare and Institutions Code.

34 (38) An alcohol and drug counselor. As used in this article, an  
35 “alcohol and drug counselor” is a person providing counseling,  
36 therapy, or other clinical services for a state licensed or certified  
37 drug, alcohol, or drug and alcohol treatment program. However,  
38 alcohol or drug abuse, or both alcohol and drug abuse, is not, in  
39 and of itself, a sufficient basis for reporting child abuse or neglect.



1 (39) A clinical counselor trainee, as defined in subdivision (g)  
2 of Section 4999.12 of the Business and Professions Code.

3 (40) An associate professional clinical counselor registered  
4 under Section 4999.42 of the Business and Professions Code.

5 (41) An employee or administrator of a public or private  
6 postsecondary educational institution, whose duties bring the  
7 administrator or employee into contact with children on a regular  
8 basis, or who supervises those whose duties bring the administrator  
9 or employee into contact with children on a regular basis, as to  
10 child abuse or neglect occurring on that institution's premises or  
11 at an official activity of, or program conducted by, the institution.  
12 Nothing in this paragraph shall be construed as altering the  
13 lawyer-client privilege as set forth in Article 3 (commencing with  
14 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

15 (42) An athletic coach, athletic administrator, or athletic director  
16 employed by any public or private school that provides any  
17 combination of instruction for kindergarten, or grades 1 to 12,  
18 inclusive.

19 (43) (A) A commercial computer technician as specified in  
20 subdivision (d) of Section 11166. As used in this article,  
21 "commercial computer technician" means a person who works for  
22 a company that is in the business of repairing, installing, or  
23 otherwise servicing a computer or computer component, including,  
24 but not limited to, a computer part, device, memory storage or  
25 recording mechanism, auxiliary storage recording or memory  
26 capacity, or any other material relating to the operation and  
27 maintenance of a computer or computer network system, for a fee.  
28 An employer who provides an electronic communications service  
29 or a remote computing service to the public shall be deemed to  
30 comply with this article if that employer complies with Section  
31 2258A of Title 18 of the United States Code.

32 (B) An employer of a commercial computer technician may  
33 implement internal procedures for facilitating reporting consistent  
34 with this article. These procedures may direct employees who are  
35 mandated reporters under this paragraph to report materials  
36 described in subdivision (d) of Section 11166 to an employee who  
37 is designated by the employer to receive the reports. An employee  
38 who is designated to receive reports under this subparagraph shall  
39 be a commercial computer technician for purposes of this article.  
40 A commercial computer technician who makes a report to the

1 designated employee pursuant to this subparagraph shall be deemed  
2 to have complied with the requirements of this article and shall be  
3 subject to the protections afforded to mandated reporters, including,  
4 but not limited to, those protections afforded by Section 11172.

5 (44) Any athletic coach, including, but not limited to, an  
6 assistant coach or a graduate assistant involved in coaching, at  
7 public or private postsecondary educational institutions.

8 (45) An individual certified by a licensed foster family agency  
9 as a certified family home, as defined in Section 1506 of the Health  
10 and Safety Code.

11 (46) An individual approved as a resource family, as defined in  
12 Section 1517 of the Health and Safety Code and Section 16519.5  
13 of the Welfare and Institutions Code.

14 (b) Except as provided in paragraph (35) of subdivision (a),  
15 volunteers of public or private organizations whose duties require  
16 direct contact with and supervision of children are not mandated  
17 reporters but are encouraged to obtain training in the identification  
18 and reporting of child abuse and neglect and are further encouraged  
19 to report known or suspected instances of child abuse or neglect  
20 to an agency specified in Section 11165.9.

21 (c) Except as provided in subdivision (d), employers are strongly  
22 encouraged to provide their employees who are mandated reporters  
23 with training in the duties imposed by this article. This training  
24 shall include training in child abuse and neglect identification and  
25 training in child abuse and neglect reporting. Whether or not  
26 employers provide their employees with training in child abuse  
27 and neglect identification and reporting, the employers shall  
28 provide their employees who are mandated reporters with the  
29 statement required pursuant to subdivision (a) of Section 11166.5.

30 (d) Pursuant to Section 44691 of the Education Code, school  
31 districts, county offices of education, state special schools and  
32 diagnostic centers operated by the State Department of Education,  
33 and charter schools shall annually train their employees and persons  
34 working on their behalf specified in subdivision (a) in the duties  
35 of mandated reporters under the child abuse reporting laws. The  
36 training shall include, but not necessarily be limited to, training in  
37 child abuse and neglect identification and child abuse and neglect  
38 reporting.

39 (e) (1) On and after January 1, 2018, pursuant to Section  
40 1596.8662 of the Health and Safety Code, a childcare licensee

1 applicant shall take training in the duties of mandated reporters  
2 under the child abuse reporting laws as a condition of licensure,  
3 and a childcare administrator or an employee of a licensed child  
4 daycare facility shall take training in the duties of mandated  
5 reporters during the first 90 days when the childcare administrator  
6 or employee is employed by the facility.

7 (2) A person specified in paragraph (1) who becomes a licensee,  
8 administrator, or employee of a licensed child daycare facility shall  
9 take renewal mandated reporter training every two years following  
10 the date on which the person completed the initial mandated  
11 reporter training. The training shall include, but not necessarily be  
12 limited to, training in child abuse and neglect identification and  
13 child abuse and neglect reporting.

14 (f) Unless otherwise specifically provided, the absence of  
15 training shall not excuse a mandated reporter from the duties  
16 imposed by this article.

17 (g) Public and private organizations are encouraged to provide  
18 their volunteers whose duties require direct contact with and  
19 supervision of children with training in the identification and  
20 reporting of child abuse and neglect.

21 ~~SEC. 3.~~

22 *SEC. 2.* Section 11166 of the Penal Code is amended to read:

23 11166. (a) Except as provided in *subdivision (d) and in* Section  
24 11166.05, a mandated reporter shall make a report to an agency  
25 specified in Section 11165.9 whenever the mandated reporter, in  
26 their professional capacity or within the scope of their employment,  
27 has knowledge of or observes a child whom the mandated reporter  
28 knows or reasonably suspects has been the victim of child abuse  
29 or neglect. The mandated reporter shall make an initial report by  
30 telephone to the agency immediately or as soon as is practicably  
31 possible, and shall prepare and send, fax, or electronically transmit  
32 a written followup report within 36 hours of receiving the  
33 information concerning the incident. The mandated reporter may  
34 include with the report any nonprivileged documentary evidence  
35 the mandated reporter possesses relating to the incident.

36 (1) For purposes of this article, “reasonable suspicion” means  
37 that it is objectively reasonable for a person to entertain a suspicion,  
38 based upon facts that could cause a reasonable person in a like  
39 position, drawing, when appropriate, on their training and  
40 experience, to suspect child abuse or neglect. “Reasonable

1 suspicion” does not require certainty that child abuse or neglect  
2 has occurred nor does it require a specific medical indication of  
3 child abuse or neglect; any “reasonable suspicion” is sufficient.  
4 For purposes of this article, the pregnancy of a minor does not, in  
5 and of itself, constitute a basis for a reasonable suspicion of sexual  
6 abuse.

7 (2) The agency shall be notified and a report shall be prepared  
8 and sent, faxed, or electronically transmitted even if the child has  
9 expired, regardless of whether or not the possible abuse was a  
10 factor contributing to the death, and even if suspected child abuse  
11 was discovered during an autopsy.

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

14 (b) If, after reasonable efforts, a mandated reporter is unable to  
15 submit an initial report by telephone, the mandated reporter shall  
16 immediately or as soon as is practicably possible, by fax or  
17 electronic transmission, make a one-time automated written report  
18 on the form prescribed by the Department of Justice, and shall also  
19 be available to respond to a telephone followup call by the agency  
20 with which they filed the report. A mandated reporter who files a  
21 one-time automated written report because they were unable to  
22 submit an initial report by telephone is not required to submit a  
23 written followup report.

24 (1) The one-time automated written report form prescribed by  
25 the Department of Justice shall be clearly identifiable so that it is  
26 not mistaken for a standard written followup report. In addition,  
27 the automated one-time report shall contain a section that allows  
28 the mandated reporter to state the reason the initial telephone call  
29 was not able to be completed. The reason for the submission of  
30 the one-time automated written report in lieu of the procedure  
31 prescribed in subdivision (a) shall be captured in the Child Welfare  
32 Services/Case Management System (CWS/CMS). The department  
33 shall work with stakeholders to modify reporting forms and the  
34 CWS/CMS as is necessary to accommodate the changes enacted  
35 by these provisions.

36 (2) This subdivision shall not become operative until the  
37 CWS/CMS is updated to capture the information prescribed in this  
38 subdivision.

1 (3) This subdivision shall become inoperative three years after  
2 this subdivision becomes operative or on January 1, 2009,  
3 whichever occurs first.

4 (4) On the inoperative date of these provisions, a report shall  
5 be submitted to the counties and the Legislature by the State  
6 Department of Social Services that reflects the data collected from  
7 automated one-time reports indicating the reasons stated as to why  
8 the automated one-time report was filed in lieu of the initial  
9 telephone report.

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

14 (c) A mandated reporter who fails to report an incident of known  
15 or reasonably suspected child abuse or neglect as required by this  
16 section is guilty of a misdemeanor punishable by up to six months  
17 confinement in a county jail or by a fine of one thousand dollars  
18 (\$1,000) or by both that imprisonment and fine. If a mandated  
19 reporter intentionally conceals their failure to report an incident  
20 known by the mandated reporter to be abuse or severe neglect  
21 under this section, the failure to report is a continuing offense until  
22 an agency specified in Section 11165.9 discovers the offense.

23 (d) (1) *Except as otherwise provided in paragraph (5),*  
24 *subdivision (a) does not apply to knowledge or reasonable*  
25 *suspicion of child abuse or neglect obtained by a clergy member*  
26 *during a penitential communication. For the purposes of this*  
27 *subdivision, “penitential communication” means a communication*  
28 *that meets all of the following requirements:*

29 (A) *Is communicated orally.*

30 (B) *Is made privately to a clergy member.*

31 (C) *Is intended by the communicant to be an act of contrition*  
32 *or a matter of conscience.*

33 (D) *Is intended by both parties to be confidential at the time the*  
34 *communication was made.*

35 (E) *Is made in the manner and context that places the clergy*  
36 *member specifically and strictly under a level of confidentiality*  
37 *that is considered inviolate by church doctrine.*

38 (2) *For purposes of this subdivision, “penitential*  
39 *communication” does not include any of the following activities,*

1 *unless such activities take place as part of a penitential*  
2 *communication as defined in paragraph (1):*  
3 *(A) Providing spiritual direction.*  
4 *(B) Religious counseling.*  
5 *(C) Individual or group therapy.*  
6 *(D) Activity related to human resources or personnel*  
7 *management.*  
8 *(E) Clergy assignment work.*  
9 *(F) Communications between clergy, laity, or other members*  
10 *of the faith that occur outside of a penitential context.*  
11 *(G) Activity relating to church administration or management.*  
12 *(3) A written communication shall not qualify as a penitential*  
13 *communication.*  
14 *(4) This subdivision shall not be construed to modify or limit*  
15 *the duty of a clergy member to report known or suspected child*  
16 *abuse or neglect when a clergy member receives information about*  
17 *abuse or neglect from any source other than a penitential*  
18 *communication. A clergy member is required to report any*  
19 *information obtained outside of a penitential communication even*  
20 *if the clergy member has also received information relating to*  
21 *abuse or neglect regarding the same person or incident during a*  
22 *penitential communication.*  
23 *(5) The exception described in paragraph (1) does not apply to*  
24 *either of the following:*  
25 *(A) A penitential communication between a clergy member and*  
26 *another person that is employed at the same site or facility as the*  
27 *clergy member.*  
28 *(B) A penitential communication between a clergy member and*  
29 *another clergy member.*  
30 ~~(d)~~  
31 *(e) (1) A commercial film, photographic print, or image*  
32 *processor who has knowledge of or observes, within the scope of*  
33 *their professional capacity or employment, any film, photograph,*  
34 *videotape, negative, slide, or any representation of information,*  
35 *data, or an image, including, but not limited to, any film, filmstrip,*  
36 *photograph, negative, slide, photocopy, videotape, video laser disc,*  
37 *computer hardware, computer software, computer floppy disk,*  
38 *data storage medium, CD-ROM, computer-generated equipment,*  
39 *or computer-generated image depicting a child under 16 years of*  
40 *age engaged in an act of sexual conduct, shall, immediately or as*

1 soon as practicably possible, telephonically report the instance of  
2 suspected abuse to the law enforcement agency located in the  
3 county in which the images are seen. Within 36 hours of receiving  
4 the information concerning the incident, the reporter shall prepare  
5 and send, fax, or electronically transmit a written followup report  
6 of the incident with a copy of the image or material attached.

7 (2) A commercial computer technician who has knowledge of  
8 or observes, within the scope of their professional capacity or  
9 employment, any representation of information, data, or an image,  
10 including, but not limited to, any computer hardware, computer  
11 software, computer file, computer floppy disk, data storage  
12 medium, CD-ROM, computer-generated equipment, or  
13 computer-generated image that is retrievable in perceivable form  
14 and that is intentionally saved, transmitted, or organized on an  
15 electronic medium, depicting a child under 16 years of age engaged  
16 in an act of sexual conduct, shall immediately, or as soon as  
17 practicably possible, telephonically report the instance of suspected  
18 abuse to the law enforcement agency located in the county in which  
19 the images or materials are seen. As soon as practicably possible  
20 after receiving the information concerning the incident, the reporter  
21 shall prepare and send, fax, or electronically transmit a written  
22 followup report of the incident with a brief description of the  
23 images or materials.

24 (3) For purposes of this article, “commercial computer  
25 technician” includes an employee designated by an employer to  
26 receive reports pursuant to an established reporting process  
27 authorized by subparagraph (B) of paragraph (43) of subdivision  
28 (a) of Section 11165.7.

29 (4) As used in this subdivision, “electronic medium” includes,  
30 but is not limited to, a recording, CD-ROM, magnetic disk memory,  
31 magnetic tape memory, CD, DVD, thumbdrive, or any other  
32 computer hardware or media.

33 (5) As used in this subdivision, “sexual conduct” means any of  
34 the following:

35 (A) Sexual intercourse, including genital-genital, oral-genital,  
36 anal-genital, or oral-anal, whether between persons of the same or  
37 opposite sex or between humans and animals.

38 (B) Penetration of the vagina or rectum by any object.

39 (C) Masturbation for the purpose of sexual stimulation of the  
40 viewer.

1 (D) Sadomasochistic abuse for the purpose of sexual stimulation  
2 of the viewer.

3 (E) Exhibition of the genitals, pubic, or rectal areas of a person  
4 for the purpose of sexual stimulation of the viewer.

5 ~~(e)~~

6 (f) Any mandated reporter who knows or reasonably suspects  
7 that the home or institution in which a child resides is unsuitable  
8 for the child because of abuse or neglect of the child shall bring  
9 the condition to the attention of the agency to which, and at the  
10 same time as, the mandated reporter makes a report of the abuse  
11 or neglect pursuant to subdivision (a).

12 ~~(f)~~

13 (g) Any other person who has knowledge of or observes a child  
14 whom they know or reasonably suspect has been a victim of child  
15 abuse or neglect may report the known or suspected instance of  
16 child abuse or neglect to an agency specified in Section 11165.9.  
17 For purposes of this section, “any other person” includes a  
18 mandated reporter who acts in their private capacity and not in  
19 their professional capacity or within the scope of their employment.

20 ~~(g)~~

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

29 ~~(h)~~

30 (i) (1) The reporting duties under this section are individual,  
31 and no supervisor or administrator may impede or inhibit the  
32 reporting duties, and no person making a report shall be subject  
33 to any sanction for making the report. However, internal procedures  
34 to facilitate reporting and apprise supervisors and administrators  
35 of reports may be established provided that they are not inconsistent  
36 with this article. An internal policy shall not direct an employee  
37 to allow their supervisor to file or process a mandated report under  
38 any circumstances.



1 (2) The internal procedures shall not require any employee  
2 required to make reports pursuant to this article to disclose their  
3 identity to the employer.

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

9 (i)

10 (j) (1) A county probation or welfare department shall  
11 immediately, or as soon as practicably possible, report by  
12 telephone, fax, or electronic transmission to the law enforcement  
13 agency having jurisdiction over the case, to the agency given the  
14 responsibility for investigation of cases under Section 300 of the  
15 Welfare and Institutions Code, and to the district attorney's office  
16 every known or suspected instance of child abuse or neglect, as  
17 defined in Section 11165.6, except acts or omissions coming within  
18 subdivision (b) of Section 11165.2, or reports made pursuant to  
19 Section 11165.13 based on risk to a child that relates solely to the  
20 inability of the parent to provide the child with regular care due  
21 to the parent's substance abuse, which shall be reported only to  
22 the county welfare or probation department. A county probation  
23 or welfare department also shall send, fax, or electronically transmit  
24 a written report thereof within 36 hours of receiving the information  
25 concerning the incident to any agency to which it makes a  
26 telephone report under this subdivision.

27 (2) A county probation or welfare department shall immediately,  
28 and in no case in more than 24 hours, report to the law enforcement  
29 agency having jurisdiction over the case after receiving information  
30 that a child or youth who is receiving child welfare services has  
31 been identified as the victim of commercial sexual exploitation,  
32 as defined in subdivision (d) of Section 11165.1.

33 (3) When a child or youth who is receiving child welfare  
34 services and who is reasonably believed to be the victim of, or is  
35 at risk of being the victim of, commercial sexual exploitation, as  
36 defined in Section 11165.1, is missing or has been abducted, the  
37 county probation or welfare department shall immediately, or in  
38 no case later than 24 hours from receipt of the information, report  
39 the incident to the appropriate law enforcement authority for entry  
40 into the National Crime Information Center database of the Federal

1 Bureau of Investigation and to the National Center for Missing  
2 and Exploited Children.

3 (j)

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

24 ~~SEC. 4. Section 11166.01 of the Penal Code is amended to~~  
25 ~~read:~~

26 ~~11166.01. (a) Except as provided in subdivision (b), any~~  
27 ~~supervisor or administrator who violates paragraph (1) of~~  
28 ~~subdivision (h) of Section 11166 shall be punished by not more~~  
29 ~~than six months in a county jail, by a fine of not more than one~~  
30 ~~thousand dollars (\$1,000), or by both that fine and imprisonment.~~

31 ~~(b) Notwithstanding Section 11162 or subdivision (c) of Section~~  
32 ~~11166, any mandated reporter who willfully fails to report abuse~~  
33 ~~or neglect, or any person who impedes or inhibits a report of abuse~~  
34 ~~or neglect, in violation of this article, where that abuse or neglect~~  
35 ~~results in death or great bodily injury, shall be punished by not~~  
36 ~~more than one year in a county jail, by a fine of not more than five~~  
37 ~~thousand dollars (\$5,000), or by both that fine and imprisonment.~~

38 ~~SEC. 5. Section 11167 of the Penal Code is amended to read:~~

39 ~~11167. (a) Reports of suspected child abuse or neglect pursuant~~  
40 ~~to Section 11166 or Section 11166.05 shall include the name,~~

1 business address, and telephone number of the mandated reporter;  
2 the capacity that makes the person a mandated reporter; and the  
3 information that gave rise to the reasonable suspicion of child  
4 abuse or neglect and the source or sources of that information. If  
5 a report is made, the following information, if known, shall also  
6 be included in the report: the child's name, the child's address,  
7 present location, and, if applicable, school, grade, and class; the  
8 names, addresses, and telephone numbers of the child's parents or  
9 guardians; and the name, address, telephone number, and other  
10 relevant personal information about the person or persons who  
11 might have abused or neglected the child. The mandated reporter  
12 shall make a report even if some of this information is not known  
13 or is uncertain to them.

14 (b) Information relevant to the incident of child abuse or neglect  
15 and information relevant to a report made pursuant to Section  
16 11166.05 may be given to an investigator from an agency that is  
17 investigating the known or suspected case of child abuse or neglect.

18 (c) Information relevant to the incident of child abuse or neglect,  
19 including the investigation report and other pertinent materials,  
20 and information relevant to a report made pursuant to Section  
21 11166.05 may be given to the licensing agency when it is  
22 investigating a known or suspected case of child abuse or neglect.

23 (d) (1) The identity of all persons who report under this article  
24 shall be confidential and disclosed only among agencies receiving  
25 or investigating mandated reports, to the prosecutor in a criminal  
26 prosecution or in an action initiated under Section 602 of the  
27 Welfare and Institutions Code arising from alleged child abuse,  
28 or to counsel appointed pursuant to subdivision (c) of Section 317  
29 of the Welfare and Institutions Code, or to the county counsel or  
30 prosecutor in a proceeding under Part 4 (commencing with Section  
31 7800) of Division 12 of the Family Code or Section 300 of the  
32 Welfare and Institutions Code, or to a licensing agency when abuse  
33 or neglect in out-of-home care is reasonably suspected, or when  
34 those persons waive confidentiality, or by court order.

35 (2) No agency or person listed in this subdivision shall disclose  
36 the identity of any person who reports under this article to that  
37 person's employer, except with the employee's consent or by court  
38 order.

39 (e) Notwithstanding the confidentiality requirements of this  
40 section, a representative of a child protective services agency

1 performing an investigation that results from a report of suspected  
2 child abuse or neglect made pursuant to Section 11166 or Section  
3 11166.05, at the time of the initial contact with the individual who  
4 is subject to the investigation, shall advise the individual of the  
5 complaints or allegations against them, in a manner that is  
6 consistent with laws protecting the identity of the reporter under  
7 this article.

8 (f) Persons who may report pursuant to subdivision (f) of Section  
9 11166 are not required to include their names.

10 SEC. 6. To the extent that this act has an overall effect of  
11 increasing certain costs already borne by a local agency for  
12 programs or levels of service mandated by the 2011 Realignment  
13 Legislation within the meaning of Section 36 of Article XIII of  
14 the California Constitution, it shall apply to local agencies only to  
15 the extent that the state provides annual funding for those cost  
16 increases. Any new program or higher level of service provided  
17 by a local agency pursuant to this act above the level for which  
18 funding has been provided shall not require a subvention of funds  
19 by the state nor otherwise be subject to Section 6 of Article XIII B  
20 of the California Constitution.

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

30 SEC. 3. *No reimbursement is required by this act pursuant to*  
31 *Section 6 of Article XIII B of the California Constitution because*  
32 *the only costs that may be incurred by a local agency or school*  
33 *district will be incurred because this act creates a new crime or*  
34 *infraction, eliminates a crime or infraction, or changes the penalty*  
35 *for a crime or infraction, within the meaning of Section 17556 of*  
36 *the Government Code, or changes the definition of a crime within*  
37 *the meaning of Section 6 of Article XIII B of the California*  
38 *Constitution.*

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